K.A.R. 47-1-3. Communication. Each application for a surface mining permit required to be filed with the secretary shall be filed in the office of the surface mining section within the time limits for such filing. Each document so addressed or filed shall be deemed to be officially received by the secretary when actually delivered at the office of the surface mining section. Each application shall be accompanied by appropriate fees. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-406; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended Feb. 11, 1991; amended May 2, 1997.)

K.A.R. 47-1-8. Petitions to initiate rulemaking. (a) Any person may petition the secretary to initiate a proceeding for the issuance, amendment, or repeal of any regulation under the state act. Each petition shall be submitted to the chief of the surface mining section.

(b) Each petition shall contain a concise statement of the facts, technical justification, and law that requires issuance, amendment, or repeal of a regulation and shall indicate whether or not the petitioner desires a public hearing.

(c) The secretary or the secretary's designee shall determine whether or not the petition sets forth facts, technical justification, and law that provides a reasonable basis for conducting a hearing to consider issuance, amendment, or repeal of a regulation. Facts, technical justification, or law previously considered in a petition or in rulemaking on the same issue shall not provide a reasonable basis.

(d) If the secretary or secretary's designee determines that the petition has a reasonable basis, a notice shall be published seeking comments from the public on the proposed change. A public hearing, an investigation, or other necessary action may be taken by the secretary or secretary's designee to determine whether or not the petition should be granted.

(e) A written decision either granting or denying the petition shall be issued by the secretary or secretary's designee within 90 days after its receipt by the surface mining section.

(1) If the petition is granted, the rulemaking process shall be initiated by the secretary.

(2) If the petition is denied, the petitioner shall be notified in writing by the secretary, setting forth the reasons for denial. (Authorized by and implementing K.S.A. 49-405; effective E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991; amended May 2, 1997.)

K.A.R. 47-1-9. Notice of citizen suits. (a) Each person who intends to initiate a civil action on the person’s own behalf under K.S.A. 49-426(a)(2) shall give notice of this intent as follows:

(1) a copy of the notice shall be sent by certified mail to the chief of the surface mining section and the secretary;

(2) a copy of the notice shall be sent by first-class mail to the field office director of the office of surface mining, United States department of the interior; and

(3) a copy of the notice shall be sent by certified mail to the alleged violator if the complaint alleges a violation of the state act or any regulation, order, or permit issued under the state act.

(b) Service of the notice shall be complete upon receipt by the person being notified.

(c) Each person giving notice regarding an alleged violation shall state the following to the extent known:
(1) sufficient information to identify the provision of the state act, rule or regulation, 
order, or permit allegedly violated;  
(2) the act or omission constituting the alleged violation;  
(3) the name, address, and telephone numbers of the person or persons responsible for 
the alleged violation;  
(4) the date, time, and location of the alleged violation;  
(5) the name, address, and telephone number of the person giving notice; and  
(6) the name, address, and telephone number of legal counsel, if any, of the person 
giving notice.  
(d) Each person giving notice of an alleged failure by the secretary to perform a 
mandatory act or duty under the state act shall state the following to the extent known:  
(1) the provision of the state act containing the mandatory act or duty allegedly not 
performed;  
(2) sufficient information to identify the omission constituting the alleged failure to 
perform a mandatory act or duty;  
(3) the name, address, and telephone number of the person giving notice; and  
(4) the name, address, and telephone number of legal counsel, if any, of the person 
giving notice.  (Authorized by K.S.A. 49-405; implementing K.S.A. 49-426; effective, E-81-30, 

K.A.R. 47-1-11. Permittee; preparation and submission of reports. The secretary or 
secretary's designee may require a permittee to do the following:  
(a) establish and maintain appropriate records;  
(b) make appropriate monthly reports;  
(c) install, use, and maintain any necessary monitoring equipment or methods and 
evaluate the results in accordance with those methods, at the locations, intervals, and in the 
manner prescribed; and  
(d) provide any other information relative to surface coal mining and reclamation 
operations that the secretary or secretary's designee deems reasonable and necessary.  
(Authorized by and implementing K.S.A. 49-405; effective May 1, 1985; amended Feb. 11, 
1991; amended May 2, 1997.)
K.A.R. 47-2-21. “Employee” defined. “Employee” means a person employed by the department who performs any function or duty under the state act, or a consultant who performs decision-making functions under the authority of state law or these regulations. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-404; effective May 1, 1980; amended May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)


K.A.R. 47-2-58. “Significant, imminent environmental harm to land, air or water resources” defined. A “significant, imminent environmental harm to land, air or water resources” shall include the following elements.
   (a) An environmental harm is an adverse impact on land, air or water resources, including plant and animal life.
   (b) An environmental harm is imminent if a condition, practice, or violation exists that is causing harm or may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under these regulations and the state law.
   (c) An environmental harm is significant if that harm is appreciable and not immediately reparable. (Authorized by and implementing K.S.A. 49-405; effective May 1, 1980; amended May 2, 1997.)


K.A.R. 47-2-67. “Surety bond” defined. “Surety bond” means an indemnity agreement, in a specific sum payable to the Kansas department of health and environment and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the state of Kansas. (Authorized by and implementing K.S.A. 49-405, and K.S.A. 49-406; effective May 1, 1980; amended Feb. 11, 1991; amended May 2, 1997.)
K.A.R. 47-2-74. “Public road” defined. “Public road” means a thoroughfare open to the public that has been and is being used by the public for vehicular travel. (Authorized by K.S.A. 49-405, and implementing K.S.A. 49-405b; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 2, 1997.)

K.A.R. 47-2-75. Definitions; adoption by reference. The following federal regulations, as in effect on July 1, 2001, are adopted by reference, except as otherwise indicated in this regulation:

(a) The section titled definitions, 30 CFR 700.5, shall be altered as follows:

(1) “Regulatory authority” and “state regulatory authority” shall have the meaning specified in K.A.R. 47-2-53.

(2) “Surface coal mining operations” shall have the meaning specified in K.S.A. 49-403, and amendments thereto.

(3) “Surface coal mining and reclamation operations” shall have the meaning specified in K.S.A. 49-403, and amendments thereto.

(4) The following text shall be deleted from the definition of “anthracite”: “Notices of changes made to this publication will be periodically published by the Office of Surface Mining in the Federal Register. This ASTM standard is on file and available for inspection at the OSM Office, U.S. Department of the Interior, South Interior Building, Washington, D.C. 20240, at each OSM Regional Office, District Office and Field Office, and at the central office of the applicable State Regulatory Authority, if any. Copies of this publication may also be obtained by writing to the above locations. A copy of this publication will also be on file for public inspection at the Federal Register Library, 800 North Capitol Street, N.W., suite 700, Washington, D.C. Incorporation by reference provisions approved by the Director of the Federal Register February 7, 1979. The Director’s approval of this incorporation by reference expires on July 1, 1981.”

(5) “Regulatory program” shall have the meaning specified in K.A.R. 47-2-53a.

(6) “Director” means the director, office of surface mining reclamation and enforcement, in the following instances:

(A) K.A.R. 47-3-42 (a)(39), adopting by reference 30 CFR 785.13;

(B) K.A.R. 47-14-7 (a)(1), adopting by reference 30 CFR 705.4 (a);

(C) K.A.R. 47-14-7 (a)(3), adopting by reference 30 CFR 705.11 (c) and (d);

(D) K.A.R. 47-14-7 (a)(4), adopting by reference 30 CFR 705.13;

(E) K.A.R. 47-14-7 (a)(5), adopting by reference 30 CFR 705.15;

(F) K.A.R. 47-14-7 (a)(8), adopting by reference 30 CFR 705.19 (a); and

(G) K.A.R. 47-14-7 (a)(9), adopting by reference 30 CFR 705.21. All other references to “the director” shall be replaced by “the secretary of the Kansas department of health and environment.”

(7) “Department” means the Kansas department of health and environment.

(8) “Secretary” means secretary of the Kansas department of health and environment.

(9) “This chapter” shall be replaced by “these regulations.”

(10) “Act” shall be replaced by “state act.”

(b) The section titled definitions, 30 CFR 701.5, shall be altered as follows:

(1) “Imminent danger to the health and safety of the public” shall have the meaning
(2) “Operator” shall have the meaning specified in K.S.A. 49-403, and amendments thereto.

(3) “Permit” shall have the meaning specified in K.S.A. 49-403, and amendments thereto.

(4) “Permit area” shall have the meaning specified in K.S.A. 49-403, and amendments thereto.

(5) “Significant, imminent environmental harm to land, air or water resources” shall have the meaning specified in K.A.R. 47-2-58.

(6) The following federal definitions shall be deleted:
   (A) “Agricultural activities”;
   (B) “alluvial valley floors”;
   (C) “arid and semiarid area”;
   (D) “essential hydrologic functions”;
   (E) “farming”;
   (F) “flood irrigation”;
   (G) “materially damage the quality and quantity of water”;
   (H) “special bituminous coal mines”;
   (I) “subirrigation”;
   (J) “undeveloped rangeland”; and
   (K) “upland areas.”

(7) In the definition of “Cumulative impact area,” the following text shall be deleted: “and (d) all operations required to meet diligent development requirements for leased Federal coal for which there is actual mine development information available.” The word “and” shall be placed immediately before subsection (c).

(8) “30 CFR 816.49 and 816.56, 816.133 or 817.49, 817.56, and 817.133” shall be replaced by “K.A.R. 47-9-1 (c)(12), (13), and (45) or K.A.R. 47-9-1 (d)(12), (13), and (43).”

(9) “30 CFR parts 816 and 817” shall be replaced by “K.A.R. 47-9-1 (c) and (d).”

(10) “Subchapter J of this chapter” shall be replaced by “article 8 of these regulations.”

(11) “§§ 816.102(d) and 817.102(d) of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(35) and (d)(33).”

(12) “§§ 784.20 and 817.121 of this chapter” and “§§ 784.20 and 817.121” shall be replaced by “K.A.R. 47-10-1 (a)(2)(K) and K.A.R. 47-9-1 (d)(39).”

(13) “Parts 773, 774, and 778” shall be replaced by “articles 3 and 6 of these regulations and K.A.R. 47-3-42 (a)(1) through (11).”

(14) “30 CFR chapter VII” shall be replaced by “article 1 of these regulations.”

(15) “30 CFR 785.17 (c)(1)” shall be replaced by “K.A.R. 47-3-42 (a)(40).”

(16) “Subchapter K” shall be replaced by “article 9 of these regulations.”

(17) “§761.5 of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(1).”

(18) “§773.13 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(53).”

(19) “Sections 507 and 510(c) of the Act” shall be replaced by “K.S.A. 49-406 and K.S.A. 49-407 (b), and amendments thereto.”

(20) “§ 843.12 of this chapter” shall be replaced by “K.A.R. 47-15-1a (a)(9).”

(21) “§ 843.11 of this chapter” shall be replaced by “K.A.R. 47-15-1a (a)(8).”

(22) “Part 845 or 846 of this chapter” and “parts 724 and 846 of this chapter” shall be
replaced by “K.A.R. 47-5-5a.”

(23) “§800.50 of this chapter” and “§800.50 (d)(1) of this chapter” shall be replaced by “K.A.R. 47-8-9 (a)(14).”

(24) “§800.11(e) of this chapter” shall be replaced by “K.A.R. 47-8-9 (a)(3).”

(25) “Section 502” shall be replaced by “K.S.A. 49-406, and amendments thereto.”

(26) “Section 521 of the Act” shall be replaced by “K.S.A. 49-405, and amendments thereto.”

(27) “Section 518 (b) or section 703 of the Act” shall be replaced by “K.S.A. 49-405c or K.S.A. 75-2973, and amendments thereto.”

(28) In the definition of “permittee,” the phrase “by the Director pursuant to a Federal program, by the Director pursuant to a Federal lands program,” shall be deleted. In the definition of “permittee,” “Director” shall mean the director, office of surface mining reclamation and enforcement.

(29) In the definitions of “federal program” and “state program” located in this subsection, “Secretary” shall mean the director, office of surface mining reclamation and enforcement. In the definition of “prime farmland” located in this subsection, the term “Secretary” shall mean the secretary of agriculture. All other references to “Secretary” shall mean the secretary of the Kansas department of health and environment. In the definition of “federal program,” “Director” shall mean the director, office of surface mining reclamation and enforcement.

(30) The phrase “and § 843.21 of this chapter” shall be deleted.

(31) “Section 404 or under section 402(g)(4) of the Act” shall be replaced by “K.S.A. 49-428, and amendments thereto.”

(32) In the definitions of “Applicant/Violator System or AVS,” “Federal Program,” “State Program,” and the portion of the definition for “Permittee” that states “section 523 of the Act,” the word “Act” shall mean the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87). All other references to “Act” shall mean the “state act.”

(33) The text “(1) A failure to comply with a condition of a Federally-issued permit or of any other permit that OSM is directly enforcing under section 502 or 521 of the Act or the regulations implementing those sections” shall be replaced with the following text: “(1) A failure to comply with a condition of a permit issued by the Kansas department of health and environment under K.S.A. 49-405 and K.S.A. 49-406, and amendments thereto, or the regulations implementing those sections.”

(34) The definition of “performance bond” shall be replaced with the following:

“Performance bond means a surety bond, collateral bond or a combination thereof, by which a permittee assures faithful performance of all the requirements of the state act, these regulations, a state program, and the requirements of the permit and reclamation plan.”

(35) “This chapter” shall be replaced by “these regulations.”

(36) “Act” shall be replaced by “state act.”

(c) The section titled definitions, 30 CFR 705.5, shall be altered as follows:

(1) “Employee” shall have the meaning specified in K.A.R. 47-2-21.

(2) “State regulatory authority” shall have the meaning specified in K.A.R. 47-2-53.

(3) “Act” shall be replaced by “state act.” (Authorized by K.S.A. 49-404, K.S.A. 49-405, and K.S.A. 49-408; implementing K.S.A. 49-405 and K.S.A. 49-408; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended May 1,
30 CFR 700.5 Definitions. As used throughout this chapter, the following terms have the specified meaning except where otherwise indicated–

- **Act** means the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87).
- **Anthracite** means coal classified as anthracite in ASTM Standard D 388-77. Coal classifications are published by the American Society of Testing and Materials under the title, Standard Specification for Classification of Coals by Rank, ASTM D 388-77, on pages 220 through 224. Table 1 which classifies the coals by rank is presented on page 223. This publication is hereby incorporated by reference as it exists on the date of adoption of these regulations. Notices of changes made to this publication will be periodically published by the Office of Surface Mining in the Federal Register. This ASTM Standard is on file and available for inspection at the OSM Office, U.S. Department of the Interior, South Interior Building, Washington, DC 20240, at each OSM Regional Office, District Office and Field Office, and at the central office of the applicable State Regulatory Authority, if any. Copies of this publication may also be obtained by writing to the above locations. A copy of this publication will also be on file for public inspection at the Federal Register Library, 800 North Capitol Street, NW., suite 700, Washington, DC. Incorporation by reference provisions approved by the Director of the Federal Register February 7, 1979. The Director's approval of this incorporation by reference expires on July 1, 1981.
- **Coal** means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77, referred to and incorporated by reference in the definition of Anthracite immediately above.
- **Department** means the Department of the Interior.
- **Director** means the Director, Office of Surface Mining Reclamation and Enforcement, or the Director's representative.
- **Federal lands** means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands. However, lands or mineral interests east of the 100th meridian west longitude owned by the United States and entrusted to or managed by the Tennessee Valley Authority are not subject to sections 714 (surface owner protection) and 715 (Federal lessee protection) of the Act.
- **Federal lands program** means a program established by the Secretary pursuant to section 523 of the Act to regulate surface coal mining and reclamation operations on Federal lands.
- **Fund** means the Abandoned Mine Reclamation Fund established pursuant to section 401 of the Act.
- **Indian lands** means all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.
- **Indian tribe** means any Indian tribe, band, group, or community having a governing body recognized by the Secretary.
- **Office** means the Office of Surface Mining Reclamation and Enforcement established under title II of the Act.
OSM and OSMRE mean the Office of Surface Mining Reclamation and Enforcement established under title II of the Act.

Person means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization and any agency, unit, or instrumentality of Federal, State or local government including any publicly owned utility or publicly owned corporation of Federal State or local government.

Person having an interest which is or may be adversely affected or person with a valid legal interest shall include any person--

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

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

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

Regional Director means a Regional Director of the Office or a Regional Director's representative.

Regulatory authority means the department or agency in each State which has primary responsibility at the State level for administering the Act in the initial program, or the State regulatory authority where the State is administering the Act under a State regulatory program, or the Secretary in the initial or permanent program where the Secretary is administering the Act, or the Secretary when administering a Federal program or Federal lands program or when enforcing a State program pursuant to section 521(b) of the Act.

Regulatory program means any approved State or Federal program or, in a State with no approved State or Federal program and coal exploration and surface coal mining and reclamation operations are on Federal lands, the requirements of subchapters A, F, G, J, K, L, M, and P of this chapter.

Secretary means the Secretary of the Interior or the Secretary's representative.

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

Surface coal mining operations mean--

(a) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of section 516 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountain top removal, box cut, open pit, and area mining; the use of explosives and blasting; in situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. Provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed $16\frac{2}{3}\%$ percent of the tonnage of minerals removed for purposes of commercial use or sale, or
coal exploration subject to section 512 of the Act; and, Provided further, that excavation for the
purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(b) The areas upon which the activities described in paragraph (a) of this definition occur or where such activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

Surface coal mining and reclamation operations means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term surface coal mining operations.


30 CFR 701.5 Definitions. As used in this chapter, the following terms have the specified meanings, except where otherwise indicated:

Acid drainage means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

Acid-forming materials means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

Adjacent area means the area outside the permit area where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed mining operations, including probable impacts from underground workings.

Administratively complete application means an application for permit approval or approval for coal exploration where required, which the regulatory authority determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

Affected area means any land or water surface area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas...
upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings. The affected area shall include every road used for purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road (a) was designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (c) there is substantial (more than incidental) public use.

*Agricultural activities* means, with respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life, based on regional agricultural practices, where the use is enhanced or facilitated by subirrigation or flood irrigation. These uses include, but are not limited to, farming and the pasturing or grazing of livestock. These uses do not include agricultural activities which have no relationship to the availability of water from subirrigation or flood irrigation practices.

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

*Alluvial valley floors* means the unconsolidated stream-laid deposits holding streams with water availability sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits formed by unconcentrated runoff or slope wash, together with talus, or other mass-movement accumulations, and windblown deposits.

*Applicant* means any person seeking a permit, permit revision, renewal, and transfer, assignment, or sale of permit rights from a regulatory authority to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

*Applicant/Violator System or AVS* means an automated information system of applicant, permittee, operator, violation and related data OSM maintains to assist in implementing the Act.

*Application* means the documents and other information filed with the regulatory authority under this chapter for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

*Approximate original contour* means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles and coal refuse piles eliminated. Permanent water impoundments may be permitted where the regulatory authority has determined that they comply with 30 CFR 816.49 and 816.56, 816.133 or 817.49, 817.56, and 817.133.

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

*Arid and semiarid area* means, in the context of alluvial valley floors, an area of the interior western United States, west of the 100th meridian west longitude, experiencing water deficits, where water use by native vegetation equals or exceeds that supplied by precipitation. All coalfields located in North Dakota west of the 100th meridian west longitude, all coalfields
in Montana, Wyoming, Utah, Colorado, New Mexico, Idaho, Nevada, and Arizona, the Eagle Pass field in Texas, and the Stone Canyon and Ione fields in California are in arid and semiarid areas.

**Auger mining** means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

**Best technology currently available** means equipment, devices, systems, methods, or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable State or Federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Director, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 30 CFR parts 816 and 817. Within the constraints of the permanent program, the regulatory authority shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by the Act and this chapter.

**Coal exploration** means the field gathering of: (a) surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or (b) the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of this chapter.

**Coal mine waste** means coal processing waste and underground development waste.

**Coal preparation** means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

**Coal preparation plant** means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to the following: loading facilities; storage and stockpile facilities; sheds; shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

**Coal processing waste** means earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.

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

**Compaction** means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

**Complete and accurate application** means an application for permit approval or approval for coal exploration where required, which the regulatory authority determines to contain all information required under the Act, this subchapter, and the regulatory program that is necessary to make a decision on permit issuance.
Control or controller, when used in parts 773, 774, and 778 and § 843.21 of this chapter, refers to or means--

(1) A permittee of a surface coal mining operation;
(2) An operator of a surface coal mining operation;
(3) A general partner in a partnership;
(4) A person who has the ability to, directly or indirectly, commit the financial or real property assets or working resources of an applicant, a permittee, or an operator; or
(5) Any other person who has the ability, alone or in concert with others, to determine, indirectly or directly, the manner in which a surface coal mining operation is conducted.

Examples of persons who may, but do not necessarily, meet this criterion include--

(i) The president, an officer, a director (or a person performing functions similar to a director), or an agent of an entity;
(ii) A partner in a partnership, or a participant, member, or manager of a limited liability company;

(iii) A person who owns between 10 and 50 percent of the voting securities or other forms of ownership of an entity, depending upon the relative percentage of ownership compared to the percentage of ownership by other persons, whether a person is the greatest single owner, or whether there is an opposing voting bloc of greater ownership;

(iv) An entity with officers or directors in common with another entity, depending upon the extent of overlap;

(v) A person who owns or controls the coal mined or to be mined by another person through lease, assignment, or other agreement and who also has the right to receive or direct delivery of the coal after mining; and

(vi) A person who contributes capital or other working resources under conditions that allow that person to substantially influence the manner in which a surface coal mining operation is or will be conducted. Relevant contributions of capital or working resources include, but are not limited to--

(A) Providing mining equipment in exchange for the coal to be extracted;
(B) Providing the capital necessary to conduct a surface coal mining operation when that person also directs the disposition of the coal; or
(C) Personally guaranteeing the reclamation bond in anticipation of a future profit or loss from a surface coal mining operation.

Cropland means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

Cumulative impact area means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface- and ground-water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond releases of: (a) The proposed operation, (b) all existing operations, (c) any operation for which a permit application has been submitted to the regulatory authority, and (d) all operations required to meet diligent development requirements for leased Federal coal for which there is actual mine development information available.

Disturbed area means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until
reclamation is complete and the performance bond or other assurance of performance required by subchapter J of this chapter is released.

**Diversion** means a channel, embankment, or other manmade structure constructed to divert water from one area to another.

**Downslope** means the land surface between the projected outcrop of the lowest coal bed being mined along each highwall and a valley floor.

**Drinking, domestic or residential water supply** means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption or human sanitation, or domestic use.

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

**Ephemeral stream** means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

**Essential hydrologic functions** means the role of an alluvial valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape, and the physical properties of its underlying materials. A combination of these functions provides a water supply during extended periods of low precipitation.

**Excess spoil** means spoil material disposed of in a location other than the mined-out area; provided that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with §§ 816.102(d) and 817.102(d) of this chapter in non-steep slope areas shall not be considered excess spoil.

**Existing structure** means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of a State program or implementation of a Federal program or Federal lands program, whichever occurs first.

**Federal program** means a program established by the Secretary pursuant to section 504 of the Act to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within a State in accordance with the Act and this chapter.

(a) Complete Federal program means a program established by the Secretary pursuant to section 504 of the Act before June 3, 1980, or upon the complete withdrawal of a State program after June 3, 1980, by which the Director regulates all coal exploration and surface coal mining and reclamation operations.

(b) Partial Federal program means a program established by the Secretary pursuant to sections 102, 201 and 504 of the Act upon the partial withdrawal of a State program, by which the Director may regulate appropriate portions of coal exploration and surface coal mining and reclamation operations.

**Flood irrigation** means, with respect to alluvial valley floors, supplying water to plants by natural overflow or the diversion of flows, so that the irrigated surface is largely covered by a sheet of water.
**Fugitive dust** means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.

**Gravity discharge** means, with respect to underground mining activities, mine drainage that flows freely in an open channel down gradient. Mine drainage that occurs as a result of flooding a mine to the level of the discharge is not gravity discharge.

**Ground cover** means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.

**Ground water** means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

**Half-shrub** means a perennial plant with a woody base whose annually produced stems die back each year.

**Head-of-hollow fill** means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow, measured at the steepest point, are greater than 20 degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10 degrees. In head-of-hollow fills the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

**Higher or better uses** means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

**Highwall** means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

**Highwall remnant** means that portion of highwall that remains after backfilling and grading of a remining permit area.

**Historically used** for cropland means (a) lands that have been used for cropland for any 5 years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease or option the conduct of surface coal mining and reclamation operations; (b) lands that the regulatory authority determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or (c) lands that would likely have been used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

**Hydrologic balance** means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

**Hydrologic regime** means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric
water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

_Imminent danger to the health and safety of the public_ means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

_Impounding structure_ means a dam, embankment or other structure used to impound water, slurry, or other liquid or semi-liquid material.

_Impoundments_ means all water, sediment, slurry or other liquid or semi-liquid holding structures and depressions, either naturally formed or artificially built.

_In situ processes_ means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

_Intermittent stream_ means—

(a) A stream or reach of a stream that drains a watershed of at least one square mile, or
(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

_Irreparable damage to the environment_ means any damage to the environment, in violation of the Act, the regulatory program, or this chapter, that cannot be corrected by actions of the applicant.

_Knowing or knowingly_ means that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation.

_Land use_ means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. Changes of land use from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the regulatory authority.

(a) Cropland. Land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

(b) Pastureland or land occasionally cut for hay. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(c) Grazingland. Land used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.

(d) Forestry. Land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

(e) Residential. Land used for single-and multiple-family housing, mobile home parks, or other residential lodgings.
(f) Industrial/Commercial. Land used for—
(1) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(2) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(g) Recreation. Land used for public or private leisure-time activities, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(h) Fish and wildlife habitat. Land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

(i) Developed water resources. Land used for storing water for beneficial uses, such as stock ponds, irrigation, fire protection, flood control, and water supply.

(j) Undeveloped land or no current use or land management. Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

Lands eligible for remining means those lands that would otherwise be eligible for expenditures under section 404 or under section 402(g)(4) of the Act.

Material damage, in the context of §§ 784.20 and 817.121 of this chapter, means:
(a) Any functional impairment of surface lands, features, structures or facilities;
(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or
(c) Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

Materially damage the quantity or quality of water means, with respect to alluvial valley floors, to degrade or reduce by surface coal mining and reclamation operations the water quantity or quality supplied to the alluvial valley floor to the extent that resulting changes would significantly decrease the capability of the alluvial valley floor to support farming.

MSHA means the Mine Safety and Health Administration.

Moist bulk density means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at 105°C.

Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

Non-commercial building means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in § 761.5 of this chapter. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

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

Occupied residential dwelling and structures related thereto means, for purposes of §§ 784.20 and 817.121, any building or other structure that, at the time the subsidence occurs, is
used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

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

*Other treatment facilities* mean any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and are utilized:

(a) To prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area, or

(b) To comply with all applicable State and Federal water-quality laws and regulations.

*Outslope* means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

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

*Own, owner, or ownership*, as used in parts 773, 774, and 778 and § 843.21 of this chapter (except when used in the context of ownership of real property), means being a sole proprietor or possessing or controlling in excess of 50 percent of the voting securities or other instruments of ownership of an entity.

*Perennial stream* means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

*Performance bond* means a surety bond, collateral bond or self-bond or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Act, this chapter, a State, Federal or Federal lands program, and the requirements of the permit and reclamation plan.

*Permanent diversion* means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the regulatory authority and other appropriate State and Federal agencies.

*Permanent impoundment* means an impoundment which is approved by the regulatory authority and, if required, by other State and Federal agencies for retention as part of the postmining land use.

*Permit* means a permit to conduct surface coal mining and reclamation operations issued by the State regulatory authority pursuant to a State program or by the Secretary pursuant to a Federal program. For purposes of the Federal lands program, permit means a permit issued by the State regulatory authority under a cooperative agreement or by OSM where there is no cooperative agreement.
Permit area means the area of land, indicated on the approved map submitted by the operator with his or her application, required to be covered by the operator's performance bond under subchapter J of this chapter and which shall include the area of land upon which the operator proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided that areas adequately bonded under another valid permit may be excluded from the permit area.

Permittee means a person holding or required by the Act or this chapter to hold a permit to conduct surface coal mining and reclamation operations issued by a State regulatory authority pursuant to a State program, by the Director pursuant to a Federal program, by the Director pursuant to a Federal lands program, or, where a cooperative agreement pursuant to section 523 of the Act has been executed, by the Director and the State regulatory authority.

Precipitation event means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in these regulations, precipitation event also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.

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.

Prime farmland means those lands which are defined by the Secretary of Agriculture in 7 CFR part 657 (Federal Register Vol. 4 No. 21) and which have historically been used for cropland as that phrase is defined above.

Principal shareholder means any person who is the record or beneficial owner of 10 percent or more of any class of voting stock.

Property to be mined means both the surface estates and mineral estates within the permit area and the area covered by underground workings.

Rangeland means land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grasslands and savannas, such as prairies, and juniper savannas, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

Reasonably available spoil means spoil and suitable coal mine waste material generated by the remining operation or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

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

Reclamation means those actions taken to restore mined land as required by this chapter to a postmining land use approved by the regulatory authority.

Recurrence interval means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in 10 years.

Reference area means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the regulatory authority. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

Refuse pile means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.
Remining means conducting surface coal mining and reclamation operations which affect previously mined areas.

Renewable resource lands means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazinglands.

Replacement of water supply means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

Road means a surface right-of-way for purposes of travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

Safety factor means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

Sedimentation pond means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

Significant, imminent environmental harm to land, air or water resources means--

(a) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life.

(b) An environmental harm is imminent, if a condition, practice, or violation exists which--

(1) Is causing such harm; or,

(2) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under section 521(a)(3) of the Act.

(c) An environmental harm is significant if that harm is appreciable and not immediately reparable.

Siltation structure means a sedimentation pond, a series of sedimentation ponds, or other treatment facility.
Slope means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

Soil horizons means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four master soil horizons are:

(a) A horizon. The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest;

(b) E horizon. The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of those properties;

(c) B horizon. The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons; and

(d) C horizon. The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

Soil survey means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in 30 CFR 785.17(c)(1).

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

(a) Surface mining takes place on a relatively limited site for an extended period of time. The surface opening of the excavation is at least the full size of the excavation and has a continuous border.

(b) Excavation of the mine pit follows a coal seam that inclines 15° or more from the horizontal, and as the excavation proceeds downward it expands laterally to maintain stability of the pitwall or as necessary to accommodate the orderly expansion of the total mining operation.

(c) The amount of material removed from the pit is large in comparison to the surface area disturbed.

(d) There is no practicable alternative to the deep open-pit method of mining the coal.

(e) There is no practicable way to reclaim the land as required in subchapter K.

Spoil means overburden that has been removed during surface coal mining operations.

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

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

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

Subirrigation means, with respect to alluvial valley floors, the supplying of water to plants from underneath or from a semisaturated or saturated subsurface zone where water is available for use by vegetation.

Substantially disturb means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

Successor in interest means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

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

Suspended solids or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR part 136).

Temporary diversion means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the regulatory authority to remain after reclamation as part of the approved postmining land use.

Temporary impoundment means an impoundment used during surface coal mining and reclamation operations, but not approved by the regulatory authority to remain as part of the approved postmining land use.

Topsoil means the A and E soil horizon layers of the four master soil horizons.

Toxic-forming materials means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

Toxic mine drainage means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

Transfer, assignment, or sale of permit rights means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the regulatory authority.

Unanticipated event or condition, as used in § 773.13 of this chapter, means an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for remining and was not contemplated by the applicable permit.
Underground development waste means waste-rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with underground mining activities.

Underground mining activities means a combination of:

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

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

Undeveloped rangeland means, for purposes of alluvial valley floors, lands where the use is not specifically controlled and managed.

Upland areas means, with respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

Valley fill means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees.

Violation, when used in the context of the permit application information or permit eligibility requirements of sections 507 and 510(c) of the Act and related regulations, means--

(1) A failure to comply with an applicable provision of a Federal or State law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or

(2) A noncompliance for which OSM has provided one or more of the following types of notice or a State regulatory authority has provided equivalent notice under corresponding provisions of a State regulatory program--

(i) A notice of violation under § 843.12 of this chapter.

(ii) A cessation order under § 843.11 of this chapter.

(iii) A final order, bill, or demand letter pertaining to a delinquent civil penalty assessed under part 845 or 846 of this chapter.

(iv) A bill or demand letter pertaining to delinquent reclamation fees owed under part 870 of this chapter.

(v) A notice of bond forfeiture under § 800.50 of this chapter when--

(A) One or more violations upon which the forfeiture was based have not been abated or corrected;

(B) The amount forfeited and collected is insufficient for full reclamation under § 800.50(d)(1) of this chapter, the regulatory authority orders reimbursement for additional reclamation costs, and the person has not complied with the reimbursement order; or

(C) The site is covered by an alternative bonding system approved under § 800.11(e) of this chapter, that system requires reimbursement of any reclamation costs incurred by the system...
above those covered by any site-specific bond, and the person has not complied with the
reimbursement requirement and paid any associated penalties.

Violation, failure or refusal, for purposes of parts 724 and 846 of this chapter, means--
(1) A failure to comply with a condition of a Federally-issued permit or of any other
permit that OSM is directly enforcing under section 502 or 521 of the Act or the regulations
implementing those sections; or
(2) A failure or refusal to comply with any order issued under section 521 of the Act, or
any order incorporated in a final decision issued by the Secretary under the Act, except an order
incorporated in a decision issued under section 518(b) or section 703 of the Act.

Violation notice means any written notification from a regulatory authority or other
governmental entity, as specified in the definition of violation in this section.

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

Willful or willfully means that a person who authorized, ordered or carried out an act or
omission that resulted in either a violation or the failure to abate or correct a violation acted--
(1) Intentionally, voluntarily, or consciously; and
(2) With intentional disregard or plain indifference to legal requirements.

Editorial Note: For Federal Register citations affecting § 701.5, see the List of CFR
Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO
Access.

Effective Date Note: In § 701.5, the definition of Affected area, insofar as it excludes
roads which are included in the definition of Surface coal mining operations, was suspended at
51 FR 41960, Nov. 20, 1986.

30 CFR 705.5. Definitions. Act. Means the Surface Mining Control and Reclamation Act of

Coal mining operation. Means the business of developing, producing, preparing or
loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas
upon which such activities occur.

Direct financial interest. Means ownership or part ownership by an employee of lands,
stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any
other arrangement where the employee may benefit from his or her holding in or salary from
coal mining operations. Direct financial interests include employment, pensions, creditor, real
property and other financial relationships.

Director. Means the Director or Acting Director of the Office of Surface Mining
Reclamation and Enforcement within the U.S. Department of the Interior.

Employee. Means (a) any person employed by the State Regulatory Authority who
performs any function or duty under the Act, and (b) advisory board or commission members
and consultants who perform any function or duty under the Act, if they perform decision
making functions for the State Regulatory Authority under the authority of State law or
regulations. However, members of advisory boards or commissions established in accordance
with State law or regulations to represent multiple interests are not considered to be employees.
State officials
may through State law or regulations expand this definition to meet their program needs.
Indirect financial interest. Means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.


Performing any function or duty under this Act. Means those decisions or actions, which if performed or not performed by an employee, affect the programs under the Act.

Prohibited financial interest. Means any direct or indirect financial interest in any coal mining operation.

Secretary. Means the Secretary of the Interior.

State Regulatory Authority. Means that office in each State which has primary responsibility at the State level for administering this Act. Until an office is established under the provisions of section 503 or section 504 of the Act, this term shall refer to those existing State offices having primary jurisdiction for regulating, enforcing, and inspecting any surface coal mining and reclamation operations within the State during the interim period between the effective date of the Act and the establishment of the State Regulatory Authority under section 503 or section 504.
K.A.R. 47-3-1. Application for mining permit. Each person who conducts or expects to
conduct surface or underground coal mining and reclamation operations shall file an original and
four copies of a complete and accurate application for a permit for those operations with the
secretary at least 90 days before permit decision. (Authorized by K.S.A. 49-405 and K.S.A. 49-
406; implementing K.S.A. 49-406; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972;
amended May 1, 1975; amended May 1, 1980; amended Feb. 11, 1991; amended May 2, 1997.)

K.A.R. 47-3-2. Application for mining permit; adoption by reference. (a) Each permit
application submitted with a request for variances from the applicable regulations shall contain
an outline of the proposed variances. The outline shall be indexed to the regulations and be
placed at the beginning of the application documents.
(b) The following federal regulations as in effect on July 1, 2001 are adopted by
reference, except as otherwise indicated in this regulation:
   (1) Format and contents, 30 CFR 777.11;
   (2) reporting of technical data, 30 CFR 777.13;
   (3) maps and plans; general requirements, 30 CFR 777.14. The phrase “in accordance
      with section 710.12 of this chapter” shall be deleted; and
   (4) completeness, 30 CFR 777.15.
   (c) The following phrases shall be replaced with the phrases specified in this subsection
      wherever the phrases appear in the text of the federal regulations adopted by reference in this
      regulation:
      (1) “This chapter” and “this subchapter” shall be replaced by “these regulations.”
      (2) “Parts 778, 779, and 780 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(1)
         through (38).”
      (3) “Part 785 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(39) through (45).”
      (4) “Parts 778, 783, and 784 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(1)
         through (11) and K.A.R. 47-10-1 (a)(1) and (2) ” and “K.A.R. 47-10-1.” (Authorized by K.S.A.
         49-405; implementing K.S.A. 49-406; effective May 1, 1980; amended May 1, 1986; amended
         Feb. 11, 1991; amended May 2, 1997; amended December 1, 2006.)

30 CFR 777.11 Format and Contents. (a) An application shall--
(1) Contain current information, as required by these regulations;
(2) Be clear and concise; and
(3) Be filed in the format required by the regulatory authority.
(b) If used in the application, referenced materials shall either be provided to the
regulatory authority by the applicant or be readily available to the regulatory authority. If
provided, relevant portions of referenced published materials shall be presented briefly and
concisely in the application by photocopying or abstracting and with explicit citations.
(c) Applications for permits; revisions; renewals; or transfers, sales or assignments of
permit rights shall be verified under oath, by a responsible official of the applicant, that the
information contained in the application is true and correct to the best of the official's
information and belief.
30 CFR 777.13 Reporting of Technical data. (a) All technical data submitted in the application shall be accompanied by the names of persons or organizations that collected and analyzed the data, dates of the collection and analysis of the data, and descriptions of the methodology used to collect and analyze the data.

(b) Technical analyses shall be planned by or under the direction of a professional qualified in the subject to be analyzed.

30 CFR 777.14 Maps and Plans; General Requirements. (a) Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include all the types of information that are set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area shall be at a scale of 1:6,000 or larger. Maps of the adjacent area shall clearly show the lands and waters within those areas and be in a scale determined by the regulatory authority, but in no event smaller than 1:24,000.

(b) All maps and plans submitted with the application shall distinguish among each of the phases during which surface coal mining operations were or will be conducted at any place within the life of operations. At a minimum, distinctions shall be clearly shown among those portions of the life of operations in which surface coal mining operations occurred--

(1) Prior to August 3, 1977;
(2) After August 3, 1977, and prior to either--
   (i) May 3, 1978; or
   (ii) In the case of an applicant or operator which obtained a small operator's exemption, January 1, 1979;
(3) After May 3, 1978 (or January 1, 1979, for persons who received a small operator's exemption) and prior to the approval of the applicable regulatory program;
(4) After the estimated date of issuance of a permit by the regulatory authority under the approved regulatory program.

30 CFR 777.15 Completeness. An application for a permit to conduct surface coal mining and reclamation operations shall be complete and shall include at a minimum--

(a) For surface mining activities, the information required under parts 778, 779, and 780 of this chapter, and, as applicable to the operation, part 785 of this chapter; and

(b) For underground mining activities, the information required under parts 778, 783, and 784 of this chapter, and, as applicable to the operation, part 785 of this chapter.

K.A.R. 47-3-3a. Application for mining permit; maps. (a) Each map, plan, and cross section required for a permit application shall be certified by a qualified, licensed engineer and shall be updated as required by the secretary or secretary's designee.

(b) Each change in a facility or feature that would be caused by the proposed mining operations shall be shown in the maps and plans accompanying the permit application.

(1) A color code, or other method approved in writing by the secretary or secretary's designee, shall be used to indicate critical features of the permit area as follows:
   (A) green for areas of coal removal;
   (B) red for the boundary of the land affected, including access roads and haulageways;
   (C) brown for access roads and haulageways; and
(D) blue for watercourses, impoundments, drainageways, and other water areas.
(2) A color code, or other method approved, in writing, by the secretary or secretary's
designee, shall be used to indicate critical features of any reclamation plan as follows:
   (A) green for areas of proposed grassland;
   (B) red for the permit boundaries;
   (C) brown for any roads to be left through the disturbed area;
   (D) blue for proposed water impoundment and drainage;
   (E) yellow for proposed cropland; and
   (F) orange for proposed woodland. (Authorized by K.S.A. 49-405; implementing K.S.A.
49-406; effective May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997.)

K.A.R. 47-3-42. Application for mining permit; adoption by reference. (a) The following
federal regulations, as in effect on July 1, 2001, are adopted by reference, except for the
additions and deletions specified:
   (1) Certifying and updating existing permit application information, 30 CFR 778.9;
   (2) providing applicant, operator, and ownership and control information, 30 CFR
778.11;
   (3) providing permit history information, 30 CFR 778.12;
   (4) providing property interest information, 30 CFR 778.13;
   (5) providing violation information, 30 CFR 778.14;
   (6) right-of-entry information, 30 CFR 778.15;
   (7) status of unsuitability claims, 30 CFR 778.16, except that the phrase “parts 762, 764,
and 769 of this chapter” shall be replaced by “K.A.R. 47-12-4”;
   (8) permit term, 30 CFR 778.17 (a);
   (9) insurance, 30 CFR 778.18;
   (10) proof of publication, 30 CFR 778.21;
   (11) facilities or structures used in common, 30 CFR 778.22;
   (12) responsibilities, 30 CFR 779.4. The phrase “this part” shall be replaced by “K.A.R.
47-3-42 (a)(12) through (19)”;
   (13) general requirements, 30 CFR 779.11;
   (14) general environmental resources information, 30 CFR 779.12;
   (15) climatological information, 30 CFR 779.18;
   (16) vegetation information, 30 CFR 779.19;
   (17) soil resources information, 30 CFR 779.21;
   (18) maps: general requirements, 30 CFR 779.24;
   (19) cross sections, maps, and plans, 30 CFR 779.25;
   (20) responsibilities, 30 CFR 780.4. The phrase “this part” shall be replaced by “K.A.R.
47-3-42 (a) (20) through (38)”;
   (21) operation plan: general requirements, 30 CFR 780.11;
   (22) operation plan: existing structures, 30 CFR 780.12;
   (23) operation plan: blasting, 30 CFR 780.13;
   (24) operation plan: maps and plans, 30 CFR 780.14;
   (25) air pollution control plan, 30 CFR 780.15;
   (26) fish and wildlife information, 30 CFR 780.16;
   (27) reclamation plan: general requirements, 30 CFR 780.18;
(28) hydrologic information, 30 CFR 780.21;
(29) geologic information, 30 CFR 780.22;
(30) reclamation plan: land uses information, 30 CFR 780.23;
(31) reclamation plan: siltation structures, impoundments, banks, dams, and embankments, 30 CFR 780.25;
(32) reclamation plan: surface mining near underground mining, 30 CFR 780.27;
(33) diversions, 30 CFR 780.29;
(34) protection of public parks and historic places, 30 CFR 780.31;
(35) relocation or use of public roads, 30 CFR 780.33;
(36) disposal of excess spoil, 30 CFR 780.35;
(37) road systems, 30 CFR 780.37;
(38) support facilities, 30 CFR 780.38;
(39) experimental practices mining, 30 CFR 785.13, except that the word “Act” shall be replaced by “state act”;
(40) prime farmland, 30 CFR 785.17. The last sentence in 30 CFR 785.17 (c)(1)(i) shall be deleted;
(41) variances for delay in contemporaneous reclamation requirement in combined surface and underground mining activities, 30 CFR 785.18, except that in subsections (b)(3) and (7), the word “Act” shall be replaced by “state act”;
(42) augering, 30 CFR 785.20;
(43) coal preparation plants not located within the permit area of a mine, 30 CFR 785.21, except that subsections (d) and (e) shall be deleted;
(44) in situ processing activities, 30 CFR 785.22;
(45) lands eligible for remining, 30 CFR 785.25;
(46) public participation in permit processing, 30 CFR 773.6. The phrase “developed in accordance with section 503 (a)(6) or section 504 (h) of the Act, or §773.5” in 30 CFR 773.6 (a)(3)(ii) and the sentence “The requirements of section 5 of the administrative procedures act, as amended (5 U.S.C. 554), shall not apply to the conduct of the informal conference.” in 30 CFR 773.6 (c)(2)(iv) shall be deleted;
(47) review of permit applications, 30 CFR 773.7;
(48) general provisions for review of permit application information and entry of information into AVS, 30 CFR 773.8;
(49) review of applicant, operator, and ownership and control information, 30 CFR 773.9;
(50) review of permit history, 30 CFR 773.10;
(51) review of compliance history, 30 CFR 773.11, except that the word “Act” shall be replaced by “state act”;
(52) permit eligibility determination, 30 CFR 773.12;
(53) unanticipated events or conditions at remining sites, 30 CFR 773.13;
(54) eligibility for provisionally issued permits, 30 CFR 773.14;
(55) written findings for permit application approval, 30 CFR 773.15. Subsection (d) shall be deleted, and in subsections (a) and (b), the word “Act” shall be replaced by “state act.” The phrases “parts 764 and 769 of this chapter” and “parts 762 and 764 or 769 of this chapter” shall be replaced by “K.A.R. 47-12-4”;
(56) performance bond submittal, 30 CFR 773.16;
(57) permit issuance and right of renewal, 30 CFR 773.19. The clause “unless the requirements of 778.17 of this chapter are met” shall be deleted;

(58) initial review and findings requirements for improvidently issued permits, 30 CFR 773.21, except that in subsection (c)(2), the phrase “and on the avs office internet home page (internet address: http://www.avs.osmre.gov)” shall be deleted;

(59) notice requirements for improvidently issued permits, 30 CFR 773.22;

(60) suspension or rescission requirements for improvidently issued permits, 30 CFR 773.23;

(61) who may challenge ownership or control listings and findings, 30 CFR 773.25;

(62) how to challenge an ownership or control listing or finding, 30 CFR 773.26, except that in subsection (a), the phrases “as identified in the following table” and “the table” shall be deleted. The word “Act” shall be replaced by “state act”;

(63) burden of proof for ownership or control challenges, 30 CFR 773.27;

(64) written agency decision on challenges to ownership or control listings or findings, 30 CFR 773.28; and

(65) applicability, 30 CFR 701.11 subsections (d) and (e) only. Subsections (a), (b), (c), and (f) shall be deleted, and the word “Act” shall be replaced by “state act.”

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation.

(1) “Subchapter K (Permanent Program Standards) of this chapter,” “subchapter K” and “subchapter K of this chapter” shall be replaced by “K.A.R. 47-9-1.”

(2) “This chapter,” “this subchapter,” “this part,” and “subchapter G of this chapter” shall be replaced by “these regulations.”

(3) “Act” shall be replaced by “state act.”

(4) “Section 515 of the Act,” “section 515 (b) of the Act,” “section 515 (b)(22) of the Act,” and “sections 515 and 516 of the Act” shall be replaced by “K.S.A. 49-405a, 49-408 through 49-413, and 49-429, and amendments thereto.”

(5) “Subchapter J of this chapter,” “subchapter J,” and “part 800 of this chapter” shall be replaced by “article 8 of these regulations.”

(6) “Section 508 of the Act” shall be replaced by “K.S.A. 49-406, and amendments thereto.”

(7) “Section 515(b)(16) of the Act” shall be replaced by “K.S.A. 49-429, and amendments thereto.”

(8) “Subchapter R of this chapter” shall be replaced by “the office.”

(9) “Subchapter B (Interim Program Standards) of this chapter” and “subchapter B of this chapter” shall be replaced by “K.A.R. 47-9-4.”

(10) “Part 775 of this chapter” and “part 775 of this subchapter” shall be replaced by “K.S.A. 49-407 (d), 49-416a, and 49-422a, and amendments thereto, and article 4 of these regulations.”

(11) “Part 816” and “part 816 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c).”

(12) “Part 785 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(39) through (45).”

(13) “30 CFR 773.15” and “§ 773.15 of this part” shall be replaced by “K.A.R. 47-3-42 (a)(55).”
(14) “§ 774.15” shall be replaced by “K.A.R. 47-6-3.”
(15) “§ 761.14 of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(4).”
(16) “§ 785.13” shall be replaced by “K.A.R. 47-3-42 (a)(39).”
(17) “§ 761.12(d) of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(3).”
(18) “§ 773.6(d)(3)(ii) of this chapter,” “§ 773.6(a)(1) of this chapter,” and “§ 773.6 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(46).”
(19) “§§ 773.9 through 773.11 of this part” shall be replaced by “K.A.R. 47-3-42 (a)(49) through (51).”
(20) “§ 778.11 of this subchapter,” “§§ 778.11(c)(5) and 778.11(d) of this subchapter,” and “§ 778.11(c)(5) of this subchapter” shall be replaced by “K.A.R. 47-3-42 (a)(2).”
(21) “§ 778.12 of this subchapter” shall be replaced by “K.A.R. 47-3-42 (a)(3).”
(22) “§ 773.12 of this part” and “§ 773.12” shall be replaced by “K.A.R. 47-3-42 (a)(52).”
(23) “§ 774.11(c) of this subchapter” and “§ 774.11(f) of this subchapter” shall be replaced by “K.A.R. 47-3-42 (a)(54).”
(24) “§ 778.14 of this subchapter” shall be replaced by “K.A.R. 47-3-42 (a)(5).”
(25) “§ 773.13” and “§ 773.13(c)” shall be replaced by “K.A.R. 47-3-42 (a)(53).”
(26) “§ 773.14(b) of this part” and “§§ 773.14(c)(1) through (4)” shall be replaced by “K.A.R. 47-3-42 (a)(54).”
(27) “Section 510(c) of the Act” shall be replaced by “K.S.A. 49-407 (b), and amendments thereto.”
(28) “§ 778.9(d) of this subchapter” shall be replaced by “K.A.R. 47-3-42 (a)(1).”
(29) “§ 773.19 of this part” shall be replaced by “K.A.R. 47-3-42 (a)(57).”
(30) “43 CFR 4.1360 through 4.1369” shall be replaced by “K.A.R. 47-4-14a.”
(31) “§ 843.12 of this chapter” shall be replaced by “K.A.R. 47-15-1a (a)(9).”
(32) “§§ 773.25 through 773.27 of this part” shall be replaced by “K.A.R. 47-3-42 (a)(61) through (63).”
(33) “§§ 773.22 and 773.23 of this part” shall be replaced by “K.A.R. 47-3-42 (a)(59) and (60).”
(34) “§ 761.11 of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(2).”
(35) “§ 816.111(d) or § 817.111(d)” shall be replaced by “K.A.R. 47-9-1 (c)(39) or (d)(35).”
(36) “§ 816.106 or § 817.106 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(38) or (d)(34).”
(37) “§ 701.5 of this chapter” shall be replaced by “K.A.R. 47-2-75 (b).”
(38) “§§ 773.7 through 773.14 of this part” shall be replaced by “K.A.R. 47-3-42 (a)(47) through (54).”
(39) “§ 773.21(d) of this part” and “paragraphs (a) and (b) § 773.21 of this part” shall be replaced by “K.A.R. 47-3-42 (a)(58).”
(40) “§ 773.23 of this part” shall be replaced by “K.A.R. 47-3-42 (a)(60).”

(41) “The procedures at 43 CFR 4.1370 through 4.1377 (when OSM is the regulatory authority) or under the State regulatory program equivalent (when a State is the regulatory authority)” shall be replaced by “K.A.R. 47-4-14a.”
(42) “§ 843.14 of this chapter, or the state regulatory program equivalent” shall be
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replaced by “K.A.R. 47-15-1a (a)(11).”

(43) “§ 773.22(b) or (c) of this part” and “§ 773.22 (e) of this part” shall be replaced by “K.A.R. 47-3-42 (a)(59).”

(44) “§ 773.26(a) of this part” shall be replaced by “K.A.R. 47-3-42 (a)(62).”

(45) “§ 773.27(b) of this part” shall be replaced by “K.A.R. 47-3-42 (a)(63).”

(46) “§§ 773.27 and 773.28 of this part” shall be replaced by “K.A.R. 47-3-42 (a)(63) and (64).”

(47) “§ 842.16 of this chapter (when osm is the regulatory authority) or under § 840.14 of this chapter (when a state is the regulatory authority)” shall be replaced by “K.A.R. 47-15-1a (a)(2).”

(48) “Rule 4 of the federal rules of civil procedure, or its state regulatory program counterparts” shall be replaced by “K.A.R. 47-4-14a.”

(49) “43 CFR 4.1380 through 4.1387 or, when a state is the regulatory authority, the state regulatory program counterparts” shall be replaced by “K.A.R. 47-4-14a and K.S.A. 49-416a, and amendments thereto.”

(50) “By a reviewing administrative or judicial tribunal” shall be replaced by “by an administrative or a judicial review of an agency action concerning the aforementioned Kansas department of health and environment determination.”

(51) “State regulatory authority with jurisdiction over the application or permit” and “regulatory authority” shall be replaced by “the Kansas department of health and environment.”

(52) “Central office of the applicable state regulatory authority, if any” shall be replaced by “the Kansas department of health and environment, surface mining section.”

(53) “Office of hearings and appeals or its state counterpart” shall be replaced by “office of administrative hearings, a division of the Kansas department of administration.”

(54) “§ 762.13(c) of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(12).”

(55) “§ 761.14 or § 761.15 of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(4) or (5).”

(56) “§ 800.60 of this chapter” shall be replaced by “K.A.R. 47-8-9 (a)(15).”

(57) “§§ 773.21 or 774.11(f) of this subchapter” shall be replaced by “K.A.R. 47-3-42 (a)(58) and K.A.R. 47-6-11 (a)(1).”

(58) “30 CFR 780.16” shall be replaced by “K.A.R. 47-3-42 (a)(26).”

(59) “30 CFR 816.22,” “§ 816.22 of this chapter,” and “§ 816.22(b) of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(5).”

(60) “§ 816.133” and “30 CFR 816.133” shall be replaced by “K.A.R. 47-9-1 (c)(45).”

(61) “Subchapter B or K of this chapter” shall be replaced by “K.A.R. 47-9-4 or K.A.R. 47-9-1.”

(62) “§§ 816.61 through 816.68 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(16) through (21).”

(63) “§ 816.67” shall be replaced by “K.A.R. 47-9-1 (c)(20).”

(64) “30 CFR 779.24 through 779.25” shall be replaced by “K.A.R. 47-3-42 (a)(18) through (19).”

(65) “30 CFR 780.25” shall be replaced by “K.A.R. 47-3-42 (a)(31).”

(66) “30 CFR 780.35” shall be replaced by “K.A.R. 47-3-42 (a)(36).”

(67) “§§ 780.25(a)(2), 780.25(a)(3), 780.35(a), 816.71(b), 816.73(c), 816.74(c), and
816.81(c) of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(31) and (36) and K.A.R. 47-9-1 (c)(22), (23), and (25).”

(68) “30 CFR 816.95” shall be replaced by “K.A.R. 47-9-1 (c)(30).”
(69) “§ 816.97 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(31).”

(70) “30 CFR 780.18 through 780.37” shall be replaced by “K.A.R. 47-3-42 (a)(27) through (37).”
(71) “30 CFR 816.111 through 816.116” shall be replaced by “K.A.R. 47-9-1 (c)(39) through (42).”
(72) “30 CFR 816.116” shall be replaced by “K.A.R. 47-9-1 (c)(42).”
(73) “30 CFR 816.59” shall be replaced by “K.A.R. 47-9-1 (c)(15).”
(74) “30 CFR 816.89 through 816.102” shall be replaced by “K.A.R. 47-9-1 (c)(29) through (35).”

(75) “30 CFR 816.13 through 816.15” shall be replaced by “K.A.R. 47-9-1 (c)(2) through (4).”
(76) “§§ 816.41 through 816.43” shall be replaced by “K.A.R. 47-9-1 (c)(6) through (8).”
(77) “§ 779.25 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(19).”
(78) “§§ 816.81–816.84 of this chapter” and “30 CFR 816.81–816.84” shall be replaced by “K.A.R. 47-9-1 (c)(25) through (27).”
(79) “§ 816.49 of this chapter” and “§ 816.49(a)(4)(ii) of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(12).”
(80) “30 CFR 816.79” and “§ 816.79 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(24).”

(81) “30 CFR 816.43 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(8).”
(82) “§ 761.16 of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(6).”
(83) “§ 761.17(d) of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(7).”
(84) “30 CFR 816.71–816.74” and “§§ 816.71 through 816.74 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(22) through (23).”

(85) “30 CFR 816.71(d)” shall be replaced by “K.A.R. 47-9-1 (c)(22).”
(86) “§ 816.150(d)(1) of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(46).”
(87) “§ 816.151(b) of this chapter,” “§ 816.151(c)(2) of this chapter,” “§ 816.151(d)(5) of this chapter,” and “§ 816.151(d)(6) of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(47).”
(88) “§ 816.181 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(49).”
(89) “§ 774.13 of this chapter” and “§ 774.13” shall be replaced by “K.A.R. 47-6-2.”
(90) “Part 823 of this chapter,” “part 823 of this chapter,” and “30 CFR part 823” shall be replaced by “K.A.R. 47-9-1(f).”
(91) “§ 816.100 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(33).”
(92) “30 CFR part 819” shall be replaced by “K.A.R. 47-9-1 (e).”
(93) “Part 827 of this chapter” shall be replaced by “K.A.R. 47-9-1 (g).”
(94) “§ 827.13 of this chapter” shall be replaced by “K.A.R. 47-9-1 (g)(3).”
(95) “30 CFR part 828” shall be replaced by “K.A.R. 47-9-1 (h).”
(96) “30 CFR parts 817 and 828” shall be replaced by “K.A.R. 47-9-1 (d) and (h).”
(97) “§§ 778.11 through 778.14 of this part” shall be replaced by “K.A.R. 47-3-42 (a)(2) through (5).”
(98) “§§ 773.13 and 773.14 of this part” shall be replaced by “K.A.R. 47-3-42 (a)(53) and (54).”
(99) “§ 785.25 of this subchapter” and “§ 785.25 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(45).”

(100) “§ 701.11(d)” shall be replaced by “K.A.R. 47-3-42 (a)(65).”

(101) “§§ 773.26 and 773.27 of this part” shall be replaced by “K.A.R. 47-3-42 (a)(62) and (63).”

(102) “§§ 778.11 and 778.12(c) of this subchapter” shall be replaced by “K.A.R. 47-3-42 (a)(2) and (3).”

(103) “§ 778.15(b) of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(6).”

(104) “30 CFR 816.102 through 816.107” shall be replaced by “K.A.R. 47-9-1 (c)(35) through (38).”

(105) “§ 816.46 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(10).”

(106) “The procedures at 43 CFR 4.1370 through 4.1377 (when OSM is the regulatory authority) or under the State regulatory program equivalent (when a State is the regulatory authority)” shall be replaced by “K.A.R. 47-4-14a.”

(107) “30 CFR 780.12 or 784.12” shall be replaced by “K.A.R. 47-3-42 (a)(22) or K.A.R. 47-10-1 (a)(2)(C).”


**30 CFR 778.9 Certifying and updating existing permit application information.** In this section, “you” means the applicant and “we” or “us” means the regulatory authority.

(a) If you have previously applied for a permit and the required information is already in AVS, then you may update the information as shown in the following table.

<table>
<thead>
<tr>
<th>If . . .</th>
<th>then you . . .</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) All or part of the information already in AVS is accurate and complete.</td>
<td>may certify to us by swearing or affirming, under oath and in writing, that the relevant information in AVS is accurate, complete, and up to date.</td>
</tr>
</tbody>
</table>

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(2) Part of the information in AVS is missing or incorrect. You must submit to us the necessary information or corrections and swear or affirm, under oath and in writing, that the information you submit is accurate and complete.

(3) You can neither certify that the data in AVS is accurate and complete nor make needed corrections. You must include in your permit application the information required under this part.

(b) You must swear or affirm, under oath and in writing, that all information you provide in an application is accurate and complete.

(c) We may establish a central file to house your identity information, rather than place duplicate information in each of your permit application files. We will make the information available to the public upon request.

(d) After we approve an application, but before we issue a permit, you must update, correct, or indicate that no change has occurred in the information previously submitted under this section and §§778.11 through 778.14 of this part. [65 FR 79668, Dec. 19, 2000]

30 CFR 778.11 Providing applicant, operator, and ownership and control information. (a) You, the applicant, must provide in the permit application:

(1) A statement indicating whether you and your operator are corporations, partnerships, sole proprietorships, or other business entities;
(2) Taxpayer identification numbers for you and your operator.

(b) You must provide the name, address, and telephone number for--

(1) The applicant.
(2) Your resident agent who will accept service of process.
(3) Any operator, if different from the applicant.
(4) Person(s) responsible for submitting the Coal Reclamation Fee Report (Form OSM-1) and for remitting the reclamation fee payment to OSM.

(c) For you and your operator, you must provide the information required by paragraph (e) of this section for every--

(1) Officer.
(2) Director.
(3) Person performing a function similar to a director.
(4) Person who owns 10 to 50 percent of the applicant or the operator.
(5) Person who owns or controls the applicant and person who owns or controls the operator. For each owner or controller who does not own or control an entire surface coal mining operation, you may list the portion or aspect of the operation which that person owns or controls.

(d) The natural person with the greatest level of effective control over the entire proposed surface coal mining operation must submit a certification, under oath, that he or she controls the proposed surface coal mining operation.
(e) You must provide the following information for each person listed in paragraphs (c) and (d) of this section--
   (1) The person's name, address, and telephone number.
   (2) The person's position title and relationship to you, including percentage of ownership and location in the organizational structure.
   (3) The date the person began functioning in that position. [65 FR 79668, Dec. 19, 2000]

30 CFR 778.12 Providing permit history information. (a) You, the applicant, must provide a list of all names under which you, your operator, your partners or principal shareholders, and your operator's partners or principal shareholders operate or previously operated a surface coal mining operation in the United States within the five-year period preceding the date of submission of the application.
   (b) For you and your operator, you must provide a list of any pending permit applications for surface coal mining operations filed in the United States. The list must identify each application by its application number and jurisdiction, or by other identifying information when necessary.
   (c) For any surface coal mining operations that you or your operator owned or controlled within the five-year period preceding the date of submission of the application, and for any surface coal mining operation you or your operator own or control on that date, you must provide the--
      (1) Permittee's and operator's name and address;
      (2) Permittee's and operator's taxpayer identification numbers;
      (3) Federal or State permit number and corresponding MSHA number;
      (4) Regulatory authority with jurisdiction over the permit; and
      (5) Permittee's and operator's relationship to the operation, including percentage of ownership and location in the organizational structure. [65 FR 79669, Dec. 19, 2000]

30 CFR 778.13 Providing property interest information. You, the applicant, must provide in the permit application all of the following information for the property to be mined--
   (a) The name and address of--
      (1) Each legal or equitable owner(s) of record of the surface and mineral.
      (2) The holder(s) of record of any leasehold interest.
      (3) Any purchaser(s) of record under a real estate contract.
   (b) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.
   (c) A statement of all interests, options, or pending bids you hold or have made for lands contiguous to the proposed permit area. If you request in writing, we will hold as confidential, under § 773.6(d)(3)(ii) of this chapter, any information you are required to submit under this paragraph which is not on public file under State law.
   (d) The Mine Safety and Health Administration (MSHA) numbers for all structures that require MSHA approval.[65 FR 79669, Dec. 19, 2000]

30 CFR 778.14 Providing violation information. (a) You, the applicant, must state, in your permit application, whether you, your operator, or any subsidiary, affiliate, or entity which you
(1) Had a Federal or State permit for surface coal mining operations suspended or revoked during the five-year period preceding the date of submission of the application; or
(2) Forfeited a performance bond or similar security deposited in lieu of bond in connection with surface coal mining and reclamation operations during the five-year period preceding the date of submission of the application.

(b) For each suspension, revocation, or forfeiture identified under paragraph (a), you must provide a brief explanation of the facts involved, including the--

(1) Permit number.
(2) Date of suspension, revocation, or forfeiture, and, when applicable, the amount of bond or similar security forfeited.
(3) Regulatory authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action.
(4) Current status of the permit, bond, or similar security involved.
(5) Date, location, type, and current status of any administrative or judicial proceedings concerning the suspension, revocation, or forfeiture.

(c) A list of all violation notices you or your operator received for any surface coal mining and reclamation operation during the three-year period preceding the date of submission of the application. In addition you must submit a list of all unabated or uncorrected violation notices incurred in connection with any surface coal mining and reclamation operation that you or your operator own or control on that date. For each violation notice reported, you must include the following information, when applicable--

(1) The permit number and associated MSHA number.
(2) The issue date, identification number, and current status of the violation notice.
(3) The name of the person to whom the violation notice was issued,
(4) The name of the regulatory authority or agency that issued the violation notice.
(5) A brief description of the violation alleged in the notice.
(6) The date, location, type, and current status of any administrative or judicial proceedings concerning the violation notice.
(7) If the abatement period for a violation in a notice of violation issued under § 843.12 of this chapter, or its State regulatory program equivalent, has not expired, certification that the violation is being abated or corrected to the satisfaction of the agency with jurisdiction over the violation.
(8) For all violations not covered by paragraph (c)(7) of this section, the actions taken to abate or correct the violation.[65 FR 79669, Dec. 19, 2000]

30 CFR 778.15 Right-of-entry information. (a) An application shall contain a description of the documents upon which the applicant bases his legal right to enter and begin surface coal mining and reclamation operations in the permit area and shall state whether that right is the subject of pending litigation. The description shall identify the documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(b) Where the private mineral estate to be mined has been severed from the private surface estate, an applicant shall also submit--
(1) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods;
(2) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or
(3) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under applicable State law, the applicant has the legal authority to extract the coal by those methods.

(c) Nothing in this section shall be construed to provide the regulatory authority with the authority to adjudicate property rights disputes.

30 CFR 778.16 Status of unsuitability claims. (a) An application shall contain available information as to whether the proposed permit area is within an area designated as unsuitable for surface coal mining and reclamation operations or is within an area under study for designation in an administrative proceeding under parts 762, 764, and 769 of this chapter.

(b) An application in which the applicant claims the exemption described in § 762.13(c) of this chapter shall contain information supporting the assertion that the applicant made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface coal mining and reclamation operations.

(c) An application that proposes to conduct surface coal mining operations within 100 feet of a public road or within 300 feet of an occupied dwelling must meet the requirements of § 761.14 or § 761.15 of this chapter, respectively.[48 FR 44399, Sept. 28, 1983, as amended at 64 FR 70837, Dec. 17, 1999]

30 CFR 778.17 Permit term. (a) Each application shall state the anticipated or actual starting and termination date of each phase of the surface coal mining and reclamation operation and the anticipated number of acres of land to be affected during each phase of mining over the life of the mine.

(b) If the applicant requires an initial permit term in excess of 5 years in order to obtain necessary financing for equipment and the opening of the operation, the application shall--
(1) Be complete and accurate covering the specified longer term; and
(2) Show that the proposed longer term is reasonably needed to allow the applicant to obtain financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source of financing.

30 CFR 778.18 Insurance. An application shall contain either a certificate of liability insurance or evidence of self-insurance in compliance with § 800.60 of this chapter.

30 CFR 778.21 Proof of publication. A copy of the newspaper advertisements of the application for a permit, significant revision of a permit, or renewal of a permit, or proof of publication of the advertisements which is acceptable to the regulatory authority shall be filed with the regulatory authority and shall be made a part of the application not later than 4 weeks after the last date of publication as required by § 773.6(a)(1) of this chapter.[48 FR 44399, Sept. 28, 1983, as amended at 65 FR 79669, Dec. 19, 2000]
30 CFR 778.22 Facilities or structures used in common. The plans of a facility or structure that is to be shared by two or more separately permitted mining operations may be included in one permit application and referenced in the other applications. In accordance with part 800 of this chapter, each permittee shall bond the facility or structure unless the permittees sharing it agree to another arrangement for assuming their respective responsibilities. If such agreement is reached, then the application shall include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the facility or structure. The agreement shall demonstrate to the satisfaction of the regulatory authority that all responsibilities under this chapter for the facility or structure will be met.

30 CFR 779.4 Responsibilities. (a) It is the responsibility of the applicant to provide, except where specifically exempted in this part, all information required by this part in the application. (b) It is the responsibility of State and Federal government agencies to provide information for applications as specifically required by this part.

30 CFR 779.11 General requirements. Each permit application shall include a description of the existing, premining environmental resources within the proposed permit area and adjacent areas that may be affected or impacted by the proposed surface mining activities. [44 FR 15354, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980]

30 CFR 779.12 General environmental resources information. Each application shall describe and identify—

(a) The lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought; and

(b)(1) The nature of cultural, historic and archeological resources listed or eligible for listing on the National Register of Historic Places and known archeological sites within the proposed permit and adjacent areas. The description shall be based on all available information, including, but not limited to, information from the State Historic Preservation Officer and from local archeological, historical, and cultural preservation agencies.

(2) The regulatory authority may require the applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the National Register of Historic Places, through

(i) Collection of additional information,
(ii) Conduct of field investigations, or

30 CFR 779.18 Climatological information. (a) When requested by the regulatory authority, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(1) The average seasonal precipitation;
(2) The average direction and velocity of prevailing winds; and
(3) Seasonal temperature ranges.
(b) The regulatory authority may request such additional data as deemed necessary to ensure compliance with the requirements of this subchapter. [44 FR 15354, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980]

30 CFR 779.19 Vegetation information. (a) The permit application shall, if required by the regulatory authority, contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(b) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife for those species of fish and wildlife identified under 30 CFR 780.16. [44 FR 15354, Mar. 13, 1979, as amended at 52 FR 47359, Dec. 11, 1987]

30 CFR 779.21 Soil resources information. (a) The applicant shall provide adequate soil survey information of the permit area consisting of the following:

1. A map delineating different soils;
2. Soil identification;
3. Soil description; and
4. Present and potential productivity of existing soils.

(b) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials, and tests required under 30 CFR 816.22.

30 CFR 779.24 Maps: General requirements. The permit application shall include maps showing:

(a) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(b) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(c) The boundaries of all areas proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of size, sequence, and timing of the mining of sub-areas for which it is anticipated that additional permits will be sought;

(d) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(e) The location of surface and sub-surface man-made features within, passing through, or passing over the proposed permit area, including, but not limited to major electric transmission lines, pipelines, and agricultural drainage tile fields;

(f) The location and boundaries of any proposed reference areas for determining the success of revegetation;

(g) The locations of water supply intakes for current users of surface water flowing into, out of, and within a hydrologic area defined by the regulatory authority, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(h) Each public road located in or within 100 feet of the proposed permit area;
(i) The boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit and adjacent areas.

(j) Each cemetery that is located in or within 100 feet of the proposed permit area.

(k) Any land within the proposed permit area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act; and


30 CFR 779.25 Cross sections, maps, and plans. (a) The application shall include cross sections, maps, and plans showing—

(1) Elevations and locations of test borings and core samplings;

(2) Elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application;

(3) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined;

(4) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(5) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit and adjacent areas;

(6) Location and extent of sub-surface water, if encountered, within the proposed permit or adjacent areas;

(7) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within the proposed permit and adjacent areas;

(8) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(9) Location and dimensions of existing areas of spoil, waste, and non-coal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(10) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent area;

(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. [44 FR 15354, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980; 50 FR 16198, Apr. 24, 1985; 59 FR 27937, May 27, 1994]
30 CFR 780.4 Responsibilities. (a) It is the responsibility of the applicant to provide to the regulatory authority all of the information required by this part, except where specifically exempted in this part.

(b) It is the responsibility of State and Federal governmental agencies to provide information to the regulatory authority where specifically required in this part.

30 CFR 780.11 Operation plan: General requirements. Each application shall contain a description of the mining operations proposed to be conducted during the life of the mine within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is necessary for postmining land use as specified in § 816.133):

1. Dams, embankments, and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning, and transportation areas and structures;
4. Spoil, coal processing waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;
5. Mine facilities; and

30 CFR 780.12 Operation plan: Existing structures. (a) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

1. Location;
2. Plans of the structure which describe its current condition;
3. Approximate dates on which construction of the existing structure was begun and completed; and
4. A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of subchapter K (Permanent Program Standards) of this chapter or, if the structure does not meet the performance standards of subchapter K of this chapter, a showing whether the structure meets the performance standards of subchapter B (Interim Program Standards) of this chapter.

(b) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

1. Design specifications for the modification or reconstruction of the structure to meet the design and performance standards of subchapter K of this chapter;
2. A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;
(3) Provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards of subchapter K of this chapter are met; and

(4) A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

30 CFR 780.13  Operation plan: Blasting. (a) Blasting plan. Each application shall contain a blasting plan for the proposed permit area, explaining how the applicant will comply with the requirements of §§ 816.61 through 816.68 of this chapter. This plan shall include, at a minimum, information setting forth the limitations the operator will meet with regard to ground vibration and airblast, the bases for those limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(b) Monitoring system. Each application shall contain a description of any system to be used to monitor compliance with the standards of § 816.67 including the type, capability, and sensitivity of any blast-monitoring equipment and proposed procedures and locations of monitoring.

(c) Blasting near underground mines. Blasting operations within 500 feet of active underground mines require approval of the State and Federal regulatory authorities concerned with the health and safety of underground miners.

30 CFR 780.14  Operation plan: Maps and plans. Each application shall contain maps and plans as follows:

(a) The maps and plans shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under 30 CFR 779.24 through 779.25.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors and facilities to be used;
2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
3. Each area of land for which a performance bond or other equivalent guarantee will be posted under subchapter J of this chapter;
4. Each coal storage, cleaning and loading area;
5. Each topsoil, spoil, coal waste, and non-coal waste storage area;
6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;
7. Each air pollution collection and control facility;
8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;
9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;
10. Each explosive storage and handling facility; and
11. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with 30 CFR 780.25, and fill area for the disposal of excess spoil in accordance 30 CFR 780.35.
(c) Except as provided in §§ 780.25(a)(2), 780.25(a)(3), 780.35(a), 816.71(b), 816.73(c), 816.74(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. [44 FR 15357, Mar. 13, 1979; 44 FR 49685, Aug. 24, 1979, as amended at 45 FR 51550, Aug. 4, 1980; 48 FR 14822, Apr. 5, 1983; 50 FR 16199, Apr. 24, 1985; 56 FR 65635, Dec. 17, 1991]

30 CFR 780.15 Air pollution control plan. (a) For all surface mining activities with projected production rates exceeding 1,000,000 tons of coal per year and located west of the 100th meridian west longitude, the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices proposed under paragraph (a)(2) of this section to comply with Federal and State air quality standards; and

(2) A plan for fugitive dust control practices as required under 30 CFR 816.95.

(b) For all other surface mining activities the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the regulatory authority, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under paragraph (b)(2) of this section to comply with applicable Federal and State air quality standards; and

(2) A plan for fugitive dust control practices, as required under 30 CFR 816.95.

30 CFR 780.16 Fish and wildlife information. (a) Resource information. Each application shall include fish and wildlife resource information for the permit area and adjacent area.

(1) The scope and level of detail for such information shall be determined by the regulatory authority in consultation with State and Federal agencies with responsibilities for fish and wildlife and shall be sufficient to design the protection and enhancement plan required under paragraph (b) of this section.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:

(i) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), or those species or habitats protected by similar State statutes;

(ii) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(iii) Other species or habitats identified through agency consultation as requiring special protection under State or Federal law.

(b) Protection and enhancement plan. Each application shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and
reclamation operations and how enhancement of these resources will be achieved where practicable. This description shall—

(1) Be consistent with the requirements of § 816.97 of this chapter;

(2) Apply, at a minimum, to species and habitats identified under paragraph (a) of this section; and

(3) Include—

(i) Protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(ii) Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. Where the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(c) Fish and Wildlife Service review. Upon request, the regulatory authority shall provide the resource information required under paragraph (a) of this section and the protection and enhancement plan required under paragraph (b) of this section to the U.S. Department of the Interior, Fish and Wildlife Service Regional or Field Office for their review. This information shall be provided within 10 days of receipt of the request from the Service. [52 FR 47359, Dec. 11, 1987]

30 CFR 780.18 Reclamation plan: General requirements. (a) Each application shall contain a plan for reclamation of the lands within the proposed permit area, showing how the applicant will comply with section 515 of the Act, subchapter K of this chapter, and the environmental protection performance standards of the regulatory program. The plan shall include, at a minimum, all information required under 30 CFR 780.18 through 780.37.

(b) Each plan shall contain the following information for the proposed permit area—

(1) A detailed timetable for the completion of each major step in the reclamation plan;

(2) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under subchapter J of this chapter, with supporting calculations for the estimates;

(3) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 30 CFR 816.102 through 816.107;

(4) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of § 816.22 of this chapter. A demonstration of the suitability of topsoil substitutes or supplements under § 816.22(b) of this chapter shall be based upon analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, and areal extent of the different kinds of soils. The regulatory authority may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of the topsoil substitutes or supplements.

(5) A plan for revegetation as required in 30 CFR 816.111 through 816.116, including, but not limited to, descriptions of the—
(i) Schedule of revegetation;
(ii) Species and amounts per acre of seeds and seedlings to be used;
(iii) Methods to be used in planting and seeding;
(iv) Mulching techniques;
(v) Irrigation, if appropriate, and pest and disease control measures, if any; and
(vi) Measures proposed to be used to determine the success of revegetation as required in 30 CFR 816.116.
(vii) A soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation.

(6) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 30 CFR 816.59;

(7) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 30 CFR 816.89 and 816.102 and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(8) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 30 CFR 816.13 through 816.15; and

(9) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. 7401 et seq.), the Clean Water Act (33 U.S.C. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. [44 FR 15357, Mar. 13, 1979, as amended at 48 FR 22100, May 16, 1983; 48 FR 44779, Sept. 30, 1983]

30 CFR 780.21 Hydrologic information. (a) Sampling and analysis methodology. All water-quality analyses performed to meet the requirements of this section shall be conducted according to the methodology in the 15th edition of "Standard Methods for the Examination of Water and Wastewater," which is incorporated by reference, or the methodology in 40 CFR parts 136 and 434. Water quality sampling performed to meet the requirements of this section shall be conducted according to either methodology listed above when feasible. "Standard Methods for the Examination of Water and Wastewater," is a joint publication of the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation and is available from the American Public Health Association, 1015 15th Street, NW., Washington, DC 20036. This document is also available for inspection at the Office of the Federal Register Information Center, 800 North Capitol Street, NW., suite 700, Washington, DC; at the Office of the OSM Administrative Record, U.S. Department of the Interior, Room 5315, 1100 L Street, NW., Washington, DC; at the OSM Eastern Technical Service Center, U.S. Department of the Interior, Building 10, Parkway Center, Pittsburgh, Pa.; and at the OSM Western Technical Service Center, U.S. Department of the Interior, Brooks Tower, 1020 15th Street, Denver, Colo. This incorporation by reference was approved by the Director of the Federal Register on October 26, 1983. This document is incorporated as it exists on the date of the approval, and a notice of any change in it will be published in the Federal Register.

(b) Baseline information. The application shall include the following baseline hydrologic information, and any additional information required by the regulatory authority.
(1) Ground-water information. The location and ownership for the permit and adjacent areas of existing wells, springs, and other ground-water resources, seasonal quality and quantity of ground water, and usage. Water quality descriptions shall include, at a minimum, total dissolved solids or specific conductance corrected to 25° C, pH, total iron, and total manganese. Ground-water quantity descriptions shall include, at a minimum, approximate rates of discharge or usage and depth to the water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.

(2) Surface-water information. The name, location, ownership, and description of all surface-water bodies such as streams, lakes, and impoundments, the location of any discharge into any surface-water body in the proposed permit and adjacent areas, and information on surface-water quality and quantity sufficient to demonstrate seasonal variation and water usage. Water quality descriptions shall include, at a minimum, baseline information on total suspended solids, total dissolved solids or specific conductance corrected to 25° C, pH, total iron, and total manganese. Baseline acidity and alkalinity information shall be provided if there is a potential for acid drainage from the proposed mining operation. Water quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates.

(3) Supplemental information. If the determination of the probable hydrologic consequences (PHC) required by paragraph (f) of this section indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water supplies, then information supplemental to that required under paragraphs (b) (1) and (2) of this section shall be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

(c) Baseline cumulative impact area information. (1) Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining on surface- and ground-water systems as required by paragraph (g) of this section shall be provided to the regulatory authority if available from appropriate Federal or State agencies.

(2) If the information is not available from such agencies, then the applicant may gather and submit this information to the regulatory authority as part of the permit application.

(3) The permit shall not be approved until the necessary hydrologic and geologic information is available to the regulatory authority.

(d) Modeling. The use of modeling techniques, interpolation or statistical techniques may be included as part of the permit application, but actual surface- and ground-water information may be required by the regulatory authority for each site even when such techniques are used.

(e) Alternative water source information. If the PHC determination required by paragraph (f) of this section indicates that the proposed mining operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose, then the application shall contain information on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses.
(f) Probable hydrologic consequences determination. (1) The application shall contain a
determination of the probable hydrologic consequences (PHC) of the proposed operation upon
the quality and quantity of surface and ground water under seasonal flow conditions for the
proposed permit and adjacent areas.
(2) The PHC determination shall be based on baseline hydrologic, geologic and other
information collected for the permit application and may include data statistically representative
of the site.
(3) The PHC determination shall include findings on:
(i) Whether adverse impacts may occur to the hydrologic balance;
(ii) Whether acid-forming or toxic-forming materials are present that could result in the
contamination of surface or ground water supplies;
(iii) Whether the proposed operation may proximately result in contamination,
diminution or interruption of an underground or surface source of water within the proposed
permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate
purpose; and
(iv) What impact the proposed operation will have on:
   (A) Sediment yields from the disturbed area;
   (B) acidity, total suspended and dissolved solids, and other important water quality
parameters of local impact;
   (C) flooding or streamflow alteration;
   (D) ground water and surface water availability; and
   (E) other characteristics as required by the regulatory authority.
(4) An application for a permit revision shall be reviewed by the regulatory authority to
determine whether a new or updated PHC determination shall be required.

(g) Cumulative hydrologic impact assessment. (1) The regulatory authority shall provide
an assessment of the probable cumulative hydrologic impacts (CHIA) of the proposed operation
and all anticipated mining upon surface- and ground-water systems in the cumulative impact
area. The CHIA shall be sufficient to determine, for purposes of permit approval, whether the
proposed operation has been designed to prevent material damage to the hydrologic balance
outside the permit area. The regulatory authority may allow the applicant to submit data and
analyses relevant to the CHIA with the permit application.
(2) An application for a permit revision shall be reviewed by the regulatory authority to
determine whether a new or updated CHIA shall be required.

(h) Hydrologic reclamation plan. The application shall include a plan, with maps and
descriptions, indicating how the relevant requirements of part 816, including §§ 816.41 to
816.43, will be met. The plan shall be specific to the local hydrologic conditions. It shall contain
the steps to be taken during mining and reclamation through bond release to minimize
disturbances to the hydrologic balance within the permit and adjacent areas; to prevent material
damage outside the permit area; to meet applicable Federal and State water quality laws and
regulations; and to protect the rights of present water users. The plan shall include the measures
to be taken to: Avoid acid or toxic drainage; prevent, to the extent possible using the best
technology currently available, additional contributions of suspended solids to streamflow;
provide water-treatment facilities when needed; control drainage; restore approximate premining
recharge capacity and protect or replace rights of present water users. The plan shall specifically
address and potential adverse hydrologic consequences identified in the PHC determination prepared under paragraph (f) of this section and shall include preventive and remedial measures.

   (i) Ground-water monitoring plan. (1) The application shall include a ground-water monitoring plan based upon the PHC determination required under paragraph (f) of this section and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in paragraph (h) of this section. It shall identify the quantity and quality parameters to be monitored, sampling frequency, and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25° C, pH, total iron, total manganese, and water levels shall be monitored and data submitted to the regulatory authority at least every 3 months for each monitoring location. The regulatory authority may require additional monitoring.

   (2) If an applicant can demonstrate by the use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the regulatory authority.

   (j) Surface-water monitoring plan. (1) The application shall include a surface-water monitoring plan based upon the PHC determination required under paragraph (f) of this section and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmined land uses and to the objectives for protection of the hydrologic balance as set forth in paragraph (h) of this section as well as the effluent limitations found at 40 CFR part 434.

   (2) The plan shall identify the surface-water quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance.

   (i) At all monitoring locations in the surface-water bodies such as streams, lakes, and impoundments, that are potentially impacted or into which water will be discharged and at upstream monitoring locations the total dissolved solids or specific conductance corrected to 25° C, total suspended solids, pH, total iron, total manganese, and flow shall be monitored.

   (ii) For point-source discharges, monitoring shall be conducted in accordance with 40 CFR parts 122, 123 and 434 and as required by the National Pollutant Discharge Elimination System permitting authority.

   (3) The monitoring reports shall be submitted to the regulatory authority every 3 months. The regulatory authority may require additional monitoring. [48 FR 43985, Sept. 26, 1983, as amended at 53 FR 36400, Sept. 19, 1988]

30 CFR 780.22 Geologic information. (a) General. Each application shall include geologic information in sufficient detail to assist in determining--

   (1) The probable hydrologic consequences of the operation upon the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface- and ground-water monitoring is necessary;
(2) All potentially acid- or toxic-forming strata down to and including the stratum immediately below the lowest coal seam to be mined; and

(3) Whether reclamation as required by this chapter can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(b) Geologic information shall include, at a minimum the following:

(1) A description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. The description shall include the areal and structural geology of the permit and adjacent areas, and other parameters which influence the required reclamation and the occurrence, availability, movement, quantity, and quality of potentially impacted surface and ground waters. It shall be based on-
   (i) The cross sections, maps and plans required by § 779.25 of this chapter;
   (ii) The information obtained under paragraphs (b)(2) and (c) of this section; and
   (iii) Geologic literature and practices.

(2) Analyses of samples collected from test borings; drill cores; or fresh, unweathered, uncontaminated samples from rock outcrops from the permit area, down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest seam to be mined which may be adversely impacted by mining. The analyses shall result in the following:
   (i) Logs showing the lithologic characteristics including physical properties and thickness of each stratum and location of ground water where occurring;
   (ii) Chemical analyses identifying those strata that may contain acid- or toxic-forming or alkalinity-producing materials and to determine their content except that the regulatory authority may find that the analysis for alkalinity-producing materials is unnecessary; and
   (iii) Chemical analyses of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the regulatory authority may find that the analysis of pyritic sulfur content is unnecessary.

(c) If determined to be necessary to protect the hydrologic balance or to meet the performance standards of this chapter, the regulatory authority may require the collection, analysis, and description of geologic information in addition to that required by paragraph (b) of this section.

(d) An applicant may request the regulatory authority to waive in whole or in part the requirements of paragraph (b)(2) of this section. The waiver may be granted only if the regulatory authority finds in writing that the collection and analysis of such data is unnecessary because other equivalent information is available to the regulatory authority in a satisfactory form. [48 FR 43987, Sept. 26, 1983]

30 CFR 780.23  Reclamation plan: Land use information. (a) The plan shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(1) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within 5 years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be
described. In the case of previously mined land, the use of the land prior to any mining shall also be described to the extent such information is available.

(2) A narrative of land capability and productivity, which analyzes the land-use description under paragraph (a) of this section in conjunction with other environmental resources information. The narrative shall provide analyses of:

(i) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the proposed permit area; and

(ii) The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, State agricultural universities, or appropriate State natural resource or agricultural agencies.

(b) Each plan shall contain a detailed description of the proposed use, following reclamation, of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use of existing land use policies and plans. This description shall explain:

(1) How the proposed post mining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use; and

(2) Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under 30 CFR 816.133.

(3) The consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable State and local land use plans and programs.

(c) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the State and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation. [59 FR 27937, May 27, 1994]

30 CFR 780.25  Reclamation plan: Siltation structures, impoundments, banks, dams, and embankments. (a) General. Each application shall include a general plan and a detailed design plan for each proposed siltation structure, 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;

(ii) Contain a description, map, and cross section of the structure and its location;

(iii) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

(iv) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred; and
(v) Contain a certification statement which includes a schedule setting forth the dates that any detailed design plans for structures that are not submitted with the general plan will be submitted to the regulatory authority. The regulatory authority shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs," Technical Release No. 60 (TR-60) shall comply with the requirements of this section for structures that meet or exceed the size of other criteria of the Mine Safety and Health Administration (MSHA). The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, order No. PB 87-157509/AS. Copies can be inspected at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol Street, Washington, DC or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Each detailed design plan for a structure that meets or exceeds the size or other criteria of MSHA, § 77.216(a) of this chapter shall:

(i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture;

(ii) Include any geotechnical investigation, design, and construction requirements for the structure;

(iii) Describe the operation and maintenance requirements for each structure; and

(iv) Describe the timetable and plans to remove each structure, if appropriate.

(3) Each detailed design plan for structures not included in paragraph (a)(2) of this section 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 §§ 816.81-816.84 of this chapter shall be certified by a qualified, registered, professional engineer;

(ii) Include any design and construction requirements for the structure, including any required geotechnical information;

(iii) Describe the operation and maintenance requirements for each structure; and

(iv) Describe the timetable and plans to remove each structure, if appropriate.

(b) Siltation structures. Siltation structures shall be designed in compliance with the requirements of § 816.46 of this chapter.

(c) Permanent and temporary impoundments. (1) Permanent and temporary impoundments shall be designed to comply with the requirements of § 816.49 of this chapter.

(2) Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration shall comply with the requirements of §§ 77.216-1 and 77.216-2 of this title. The plan required to be submitted to the District Manager of MSHA under § 77.216 of this title shall be submitted to the regulatory authority as part of the permit application in accordance with paragraph (a) of this section.
(3) For impoundments not included in paragraph (a)(2) of this section, the regulatory authority may establish through the State program approval process, engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in §816.49(a)(4)(ii) of this chapter.

(d) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 30 CFR 816.81–816.84.

(e) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 30 CFR 816.81–816.84. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(1) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(f) If the structure meets the Class B or C criteria for dams in TR-60 or meets the size or other criteria of §77.216(a) of this chapter, each plan under paragraphs (b), (c), and (e) of this section shall include a stability analysis of the structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.


30 CFR 780.27 Reclamation plan: Surface mining near underground mining. For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 30 CFR 816.79.

30 CFR 780.29 Diversions. Each application shall contain descriptions, including maps and cross sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 30 CFR 816.43 of this chapter. [44 FR 15357, Mar. 13, 1979, as amended at 48 FR 43987, Sept. 26, 1983]
30 CFR 780.31 Protection of publicly owned parks and historic places. (a) For any publicly owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used—
   (1) To prevent adverse impacts, or
   (2) If a person has valid existing rights, as determined under § 761.16 of this chapter, or if joint agency approval is to be obtained under § 761.17(d) of this chapter, to minimize adverse impacts.

   (b) The regulatory authority may require the applicant to protect historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation. [52 FR 4262, Feb. 10, 1987; 64 FR 70838, Dec. 17, 1999]

30 CFR 780.33 Relocation or use of public roads. Each application shall describe, with appropriate maps and cross-sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under § 761.14 of this chapter, the applicant seeks to have the regulatory authority approve—
   (a) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or
   (b) Relocating a public road. [44 FR 15357, Mar. 13, 1979, as amended at 64 FR 70838, Dec. 17, 1999]

30 CFR 780.35 Disposal of excess spoil. (a) Each application shall contain descriptions, including appropriate maps and cross section drawings, of the proposed disposal site and design of the spoil disposal structures according to 30 CFR 816.71–816.74. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the site and structures.
   (b) Except for the disposal of excess spoil on pre existing benches, each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:
      (1) The character of bedrock and any adverse geologic conditions in the disposal area,
      (2) A survey identifying all springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the disposal site;
      (3) A survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations;
      (4) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and
      (5) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.
   (c) If, under 30 CFR 816.71(d), rock-toe buttresses or key-way cuts are required, the application shall include the following:
(1) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(2) Engineering specifications utilized to design the rock-toe buttress or key-way cuts which shall be determined in accordance with paragraph (b)(5) of this section. [44 FR 15357, Mar. 13, 1979, as amended at 48 FR 44780, Sept. 30, 1983; 56 FR 65635, Dec. 17, 1991]

30 CFR 780.37 Road systems. (a) Plans and drawings. Each applicant for a surface coal mining and reclamation permit shall submit plans and drawings for each road, as defined in §701.5 of this chapter, to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall—

(1) Include a map, appropriate cross sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings, and drainage structures;

(2) Contain the drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream, as necessary for approval of the road by the regulatory authority in accordance with §816.150(d)(1) of this chapter;

(3) Contain the drawings and specifications for each proposed ford of perennial or intermittent streams that is used as a temporary route, as necessary for approval of the ford by the regulatory authority in accordance with §816.151(c)(2) of this chapter;

(4) Contain a description of measures to be taken to obtain approval of the regulatory authority for alteration or relocation of a natural stream channel under §816.151(d)(5) of this chapter;

(5) Contain the drawings and specifications for each low-water crossing of perennial or intermittent stream channels so that the regulatory authority can maximize the protection of the stream in accordance with §816.151(d)(6) of this chapter; and

(6) Describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use, and the schedule for this removal and reclamation.

(b) Primary road certification. The plans and drawings for each primary road shall 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 certify the design of primary roads a qualified registered professional land surveyor, with experience in the design and construction of roads, as meeting the requirements of this chapter; current, prudent engineering practices; and any design criteria established by the regulatory authority.

(c) Standard design plans. The regulatory authority may establish engineering design standards for primary roads through the State program approval process, in lieu of engineering tests, to establish compliance with the minimum static safety factor of 1.3 for all embankments specified in §816.151(b) of this chapter. [53 FR 45211, Nov. 8, 1988]

30 CFR 780.38 Support facilities. Each applicant for a surface coal mining and reclamation permit shall submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with § 816.181 of this chapter for each facility. [53 FR 45211, Nov. 8, 1988]
30 CFR 785.13 Experimental practices mining. (a) Experimental practices provide a variance from environmental protection performance standards of the Act, of subchapter K of this chapter, and the regulatory program for experimental or research purposes, or to allow an alternative postmining land use, and may be undertaken if they are approved by the regulatory authority and the Director and if they are incorporated in a permit or permit revision issued in accordance with the requirements of subchapter G of this chapter.

(b) An application for an experimental practice shall contain descriptions, maps, plans, and data which show--

(1) The nature of the experimental practice, including a description of the performance standards for which variances are requested, the duration of the experimental practice, and any special monitoring which will be conducted;

(2) How use of the experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreation facilities) on an experimental basis;

(3) That the experimental practice--

(i) Is potentially more, or at least as, environmentally protective, during and after mining operations, as would otherwise be required by standards promulgated under subchapter K of this chapter; and

(ii) Will not reduce the protection afforded public health and safety below that provided by the requirements of subchapter K of this chapter; and

(4) That the applicant will conduct monitoring of the effects of the experimental practice. The monitoring program shall ensure the collection, analysis, and reporting of reliable data that are sufficient to enable the regulatory authority and the Director to--

(i) Evaluate the effectiveness of the experimental practice; and

(ii) Identify, at the earliest possible time, potential risk to the environment and public health and safety which may be caused by the experimental practice during and after mining.

(c) Applications for experimental practices shall comply with the public notice requirements of § 773.6 of this chapter.

(d) No application for an experimental practice under this section shall be approved until the regulatory authority first finds in writing and the Director then concurs that--

(1) The experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities) on an experimental basis;

(2) The experimental practice is potentially more, or at least as, environmentally protective, during and after mining operations, as would otherwise be required by standards promulgated under subchapter K of this chapter;

(3) The mining operations approved for a particular land-use or other purpose are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice; and

(4) The experimental practice does not reduce the protection afforded public health and safety below that provided by standards promulgated under subchapter K of this chapter.

(e) Experimental practices granting variances from the special environmental protection performance standards of sections 515 and 516 of the Act applicable to prime farmlands shall be approved only after consultation with the U.S. Department of Agriculture, Soil Conservation Service.
(f) Each person undertaking an experimental practice shall conduct the periodic monitoring, recording and reporting program set forth in the application, and shall satisfy such additional requirements as the regulatory authority or the Director may impose to ensure protection of the public health and safety and the environment.

(g) Each experimental practice shall be reviewed by the regulatory authority at a frequency set forth in the approved permit, but no less frequently than every 2½ years. After review, the regulatory authority may require such reasonable modifications of the experimental practice as are necessary to ensure that the activities fully protect the environment and the public health and safety. Copies of the decision of the regulatory authority shall be sent to the permittee and shall be subject to the provisions for administrative and judicial review of part 775 of this chapter.

(h) Revisions or modifications to an experimental practice shall be processed in accordance with the requirements of § 774.13 of this chapter and approved by the regulatory authority. Any revisions which propose significant alterations in the experimental practice shall, at a minimum, be subject to notice, hearing, and public participation requirements of § 773.6 of this chapter and concurrence by the Director. Revisions that do not propose significant alterations in the experimental practice shall not require concurrence by the Director. [48 FR 9484, Mar. 4, 1983, as amended at 65 FR 79669, Dec. 19, 2000]

30 CFR 785.17  Prime farmland.  (a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmlands historically used for cropland. This section does not apply to:

(1) Lands on which surface coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977; or

(2) Lands on which surface coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977; or

(3) Lands included in any existing surface coal mining operations for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

(i) Such lands are part of a single continuous surface coal mining operation begun under a permit issued before August 3, 1977; and

(ii) The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract, or lease but not including an option to buy, lease, or contract; and

(iii) The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be part of a single continuous surface coal mining operation) begun under a permit issued prior to August 3, 1977.

(4) For purposes of this section:

(i) “Renewal” of a permit shall mean a decision by the regulatory authority to extend the time by which the permittee may complete mining within the boundaries of the original permit, and “revision” of the permit shall mean a decision by the regulatory authority to allow changes in the method of mining operations within the original permit area, or the decision of the regulatory authority to allow incidental boundary changes to the original permit;

(ii) A pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad, or powerline or similar crossing;

(iii) A single continuous surface coal mining operation is presumed to consist only of a single continuous mining pit under a permit issued prior to August 3, 1977, but may include non-
contiguous parcels if the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the non-contiguous parcels were part of a single permitted operation. For the purposes of this paragraph, clear and convincing evidence includes, but is not limited to, contracts, leases, deeds or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one surface coal mining operation.

(b) Application contents—Reconnaissance inspection. (1) All permit applications, whether or not prime farmland is present, shall include the results of a reconnaissance inspection of the proposed permit area to indicate whether prime farmland exists. The regulatory authority in consultation with the U.S. Soil Conservation Service shall determine the nature and extent of the required reconnaissance inspection.

(2) If the reconnaissance inspection establishes that no land within the proposed permit area is prime farmland historically used for cropland, the applicant shall submit a statement that no prime farmland is present. The statement shall identify the basis upon which such a conclusion was reached.

(3) If the reconnaissance inspection indicates that land within the proposed permit area may be prime farmland historically used for cropland, the applicant shall determine if a soil survey exists for those lands and whether soil mapping units in the permit area have been designated as prime farmland. If no soil survey exists, the applicant shall have a soil survey made of the lands within the permit area which the reconnaissance inspection indicates could be prime farmland. Soil surveys of the detail used by the U.S. Soil Conservation Service for operational conservation planning shall be used to identify and locate prime farmland soils.

(i) If the soil survey indicates that no prime farmland soils are present within the proposed permit area, paragraph (b)(2) of this section shall apply.

(ii) If the soil survey indicates that prime farmland soils are present within the proposed permit area, paragraph (c) of this section shall apply.

(c) Application contents—Prime farmland. All permit applications for areas in which prime farmland has been identified within the proposed permit area shall include the following:


(i) U.S. Department of Agriculture Handbooks 436 and 18 are incorporated by reference as they exist on the date of adoption of this section. Notices of changes made to these publications will be periodically published by OSM in the Federal Register. The handbooks are on file and available for inspection at the OSM Central Office, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC, at each OSM Technical Center and Field Office, and at the central office of the applicable State regulatory authority, if any. Copies of these documents are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock Nos. 001-000-02597-0 and 001-000-00688-6, respectively. In addition, these documents are available for inspection at the national, State, and
area offices of the Soil Conservation Service, U.S. Department of Agriculture, and at the Federal Register library, 800 North Capitol Street, NW., suite 700, Washington, DC. Incorporation by reference provisions were approved by the Director of the Federal Register on June 29, 1981.

(ii) The soil survey shall include a description of soil mapping units and a representative soil profile as determined by the U.S. Soil Conservation Service, including, but not limited to, soil-horizon depths, pH, and the range of soil densities for each prime farmland soil unit within the permit area. Other representative soil-profile descriptions from the locality, prepared according to the standards of the National Cooperative Soil Survey, may be used if their use is approved by the State Conservationist, U.S. Soil Conservation Service. The regulatory authority may request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technological capability to restore the prime farmland within the permit area to the soil-reconstruction standards of Part 823 of this chapter.

(2) A plan for soil reconstruction, replacement, and stabilization for the purpose of establishing the technological capability of the mine operator to comply with the requirements of part 823 of this chapter.

(3) Scientific data, such as agricultural-school studies, for areas with comparable soils, climate, and management that demonstrate that the proposed method of reclamation, including the use of soil mixtures or substitutes, if any, will achieve, within a reasonable time, levels of yield equivalent to, or higher than, those of nonmined prime farmland in the surrounding area.

(4) The productivity prior to mining, including the average yield of food, fiber, forage, or wood products obtained under a high level of management.

(d) Consultation with Secretary of Agriculture. (1) The Secretary of Agriculture has responsibilities with respect to prime farmland soils and has assigned the prime farmland responsibilities arising under the Act to the Chief of the U.S. Soil Conservation Service. The U.S. Soil Conservation Service shall carry out consultation and review through the State Conservationist located in each State.

(2) The State Conservationist shall provide to the regulatory authority a list of prime farmland soils, their location, physical and chemical characteristics, crop yields, and associated data necessary to support adequate prime farmland soil descriptions.

(3) The State Conservationist shall assist the regulatory authority in describing the nature and extent of the reconnaissance inspection required in paragraph (b)(1) of this section.

(4) Before any permit is issued for areas that include prime farmland, the regulatory authority shall consult with the State Conservationist. The State Conservationist shall provide for the review of, and comment on, the proposed method of soil reconstruction in the plan submitted under paragraph (c) of this section. If the State Conservationist considers those methods to be inadequate, he or she shall suggest revisions to the regulatory authority which result in more complete and adequate reconstruction.

(e) Issuance of permit. A permit for the mining and reclamation of prime farmland may be granted by the regulatory authority, if it first finds, in writing, upon the basis of a complete application, that--

(1) The approved proposed postmining land use of these prime farmlands will be cropland;
(2) The permit incorporates as specific conditions the contents of the plan submitted under paragraph (c) of this section, after consideration of any revisions to that plan suggested by the State Conservationist under paragraph (d)(4) of this section;

(3) The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management; and

(4) The proposed operations will be conducted in compliance with the requirements of 30 CFR part 823 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the regulatory program.

(5) The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit area must be obtained. [44 FR 15370, Mar. 13, 1979, as amended at 46 FR 47722, Sept. 29, 1981; 48 FR 21462, May 12, 1983; 53 FR 40839, Oct. 18, 1988]

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**30 CFR 785.18 Variances for delay in contemporaneous reclamation requirement in combined surface and underground mining activities.** (a) Scope. This section shall apply to any person or persons conducting or intending to conduct combined surface and underground mining activities where a variance is requested from the contemporaneous reclamation requirements of §816.100 of this chapter.

(b) Application contents for variances. Any person desiring a variance under this section shall file with the regulatory authority complete applications for both the surface mining activities and underground mining activities which are to be combined. The reclamation and operation plans for these permits shall contain appropriate narratives, maps, and plans, which--

1. Show why the proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the coal;

2. Show how multiple future disturbances of surface lands or waters will be avoided;

3. Identify the specific surface areas for which a variance is sought and the sections of the Act, this chapter, and the regulatory program from which a variance is being sought;

4. Show how the activities will comply with §816.79 of this chapter and other applicable requirements of the regulatory program;

5. Show why the variance sought is necessary for the implementation of the proposed underground mining activities;

6. Provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of surface mining activities is delayed; and

7. Show how offsite storage of spoil will be conducted to comply with the requirements of the Act, §§816.71 through 816.74 of this chapter, and the regulatory program.

(c) Issuance of permit. A permit incorporating a variance under this section may be issued by the regulatory authority if it first finds, in writing, upon the basis of a complete application filed in accordance with this section, that--
(1) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining activities;

(2) The proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple future disturbances of surface land or waters;

(3) The applicant has satisfactorily demonstrated that the applications for the surface mining activities and underground mining activities conform to the requirements of the regulatory program and that all other permits necessary for the underground mining activities have been issued by the appropriate authority;

(4) The surface area of surface mining activities proposed for the variance has been shown by the applicant to be necessary for implementing the proposed underground mining activities;

(5) No substantial adverse environmental damage, either onsite or offsite, will result from the delay in completion of reclamation otherwise required by section 515(b)(16) of the Act, part 816 of this chapter, and the regulatory program;

(6) The operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of § 816.79 of this chapter and the regulatory program;

(7) Provisions for offsite storage of spoil will comply with the requirements of section 515(b)(22) of the Act, §§ 816.71 through 816.74 of this chapter, and the regulatory program;

(8) Liability under the performance bond required to be filed by the applicant with the regulatory authority pursuant to subchapter J of this chapter and the regulatory program will be for the duration of the underground mining activities and until all requirements of subchapter J and the regulatory program have been complied with; and

(9) The permit for the surface mining activities contains specific conditions—

(i) Delineating the particular surface areas for which a variance is authorized;

(ii) Identifying the applicable provisions of section 515(b) of the Act, part 816 of this chapter, and the regulatory program; and

(iii) Providing a detailed schedule for compliance with the provisions of this section.

(d) Review of permits containing variances. Variances granted by permits issued under this section shall be reviewed by the regulatory authority no later than 3 years from the dates of issuance of the permit and any permit renewals. [48 FR 24651, June 1, 1983]

30 CFR 785.20 Augering. (a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing augering operations.

(b) Any application for a permit for operations covered by this section shall contain, in the mining and reclamation plan, a description of the augering methods to be used and the measures to be used to comply with 30 CFR part 819.

(c) No permit shall be issued for any operations covered by this section unless the regulatory authority finds, in writing, that in addition to meeting all other applicable requirements of this subchapter, the operation will be conducted in compliance with 30 CFR part 819.

30 CFR 785.21 Coal preparation plants not located within the permit area of a mine. (a) This section applies to any person who operates or intends to operate a coal preparation plant in connection with a coal mine but outside the permit area for a specific mine. Any person who
operates such a preparation plant shall obtain a permit from the regulatory authority in accordance with the requirements of this section.

(b) Any application for a permit for operations covered by this section shall contain an operation and reclamation plan which specifies plans, including descriptions, maps, and cross sections, of the construction, operation, maintenance, and removal of the preparation plant and support facilities operated incident thereto or resulting therefrom. The plan shall demonstrate that those operations will be conducted in compliance with part 827 of this chapter.

(c) No permit shall be issued for any operation covered by this section, unless the regulatory authority finds in writing that, in addition to meeting all other applicable requirements of this subchapter, the operations will be conducted in compliance with the requirements of part 827 of this chapter.

(d)(1) Except as provided in paragraph (d)(2) of this section, any person who operates a coal preparation plant beyond May 10, 1986, that was not subject to this chapter before July 6, 1984, shall have applied for a permit no later than November 11, 1985.

(2)(i) State programs that have a statutory or regulatory bar precluding issuance of permits to facilities covered by paragraph (d)(1) of this section shall notify OSMRE not later than November 7, 1985, and shall establish a schedule for actions necessary to allow the permitting of such facilities as soon as practicable. Not later than December 9, 1985, this schedule shall be submitted to OSMRE for approval.

(ii) Any person who operates a coal preparation plant that was not subject to this chapter before July 6, 1984, in a state which submits a schedule in accordance with paragraph (d)(2)(i) of this section shall apply for a permit in accordance with the schedule approved by OSMRE.

(e) Notwithstanding § 773.4 of this chapter and except as prohibited by § 761.11 of this chapter, any person operating a coal preparation plant that was not subject to this chapter before July 6, 1984, may continue to operate without a permit until May 10, 1986, and may continue to operate beyond that date if:

(1) A permit application has been timely filed under paragraph (d)(1) of this section or under a State imposed schedule specified in paragraph (d)(2) of this section,

(2) The regulatory authority has yet to either issue or deny the permit, and


30 CFR 785.22 **In situ processing activities.** (a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing in situ processing activities.

(b) Any application for a permit for operations covered by this section shall be made according to all requirements of this subchapter applicable to underground mining activities. In addition, the mining and reclamation operations plan for operations involving in situ processing activities shall contain information establishing how those operations will be conducted in compliance with the requirements of 30 CFR part 828, including--

(1) Delineation of proposed holes and wells and production zone for approval of the regulatory authority;

(2) Specifications of drill holes and casings proposed to be used;
(3) A plan for treatment, confinement or disposal of all acid-forming, toxic-forming or radioactive gases, solids, or liquids constituting a fire, health, safety or environmental hazard caused by the mining and recovery process; and

(4) Plans for monitoring surface and ground water and air quality, as required by the regulatory authority.

(c) No permit shall be issued for operations covered by this section, unless the regulatory authority first finds, in writing, upon the basis of a complete application made in accordance with paragraph (b) of this section, that the operation will be conducted in compliance with all requirements of this subchapter relating to underground mining activities, and 30 CFR parts 817 and 828.

30 CFR 785.25 Lands eligible for remining. (a) This section contains permitting requirements to implement § 773.13. Any person who submits a permit application to conduct a surface coal mining operation on lands eligible for remining must comply with this section.

(b) Any application for a permit under this section shall be made according to all requirements of this subchapter applicable to surface coal mining and reclamation operations. In addition, the application shall--

(1) To the extent not otherwise addressed in the permit application, identify potential environmental and safety problems related to prior mining activity at the site and that could be reasonably anticipated to occur. This identification shall be based on a due diligence investigation which shall include visual observations at the site, a record review of past mining at the site, and environmental sampling tailored to current site conditions.

(2) With regard to potential environmental and safety problems referred to in paragraph (b)(1) of this section, describe the mitigative measures that will be taken to ensure that the applicable reclamation requirements of the regulatory program can be met.

(c) The requirements of this section shall not apply after September 30, 2004. [60 FR 58491, Nov. 27, 1995, as amended at 65 FR 79669, Dec. 19, 2000]

30 CFR 773.6 Public participation in permit processing. (a) Filing and public notice. (1) Upon submission of an administratively complete application, an applicant for a permit, significant revision of a permit under § 774.13, or renewal of a permit under § 774.15, shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least once a week for four consecutive weeks. A copy of the advertisement as it will appear in the newspaper shall be submitted to the regulatory authority. The advertisement shall contain, at a minimum, the following:

(i) The name and business address of the applicant.

(ii) A map or description which clearly shows or describes the precise location and boundaries of the proposed permit area and is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location. If a map is used, it shall indicate the north direction.

(iii) The location where a copy of the application is available for public inspection.

(iv) The name and address of the regulatory authority where written comments, objections, or requests for informal conferences on the application may be submitted under paragraphs (b) and (c) of this section.
(v) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with § 761.14 of this chapter; a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing.

(vi) If the application includes a request for an experimental practice under § 785.13, a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.

(2) The applicant shall make an application for a permit, significant revision under § 774.13, or renewal of a permit under § 774.15 available for the public to inspect and copy by filing a full copy of the application with the recorder at the courthouse of the county where the mining is proposed to occur, or an accessible public office approved by the regulatory authority. This copy of the application need not include confidential information exempt from disclosure under paragraph (d) of this section. The application required by this paragraph shall be filed by the first date of newspaper advertisement of the application. The applicant shall file any changes to the application with the public office at the same time the change is submitted to the regulatory authority.

(3) Upon receipt of an administratively complete application for a permit, a significant revision to a permit under § 774.13, or a renewal of a permit under § 774.15, the regulatory authority shall issue written notification indicating the applicant's intention to mine the described tract of land, the application number or other identifier, the location where the copy of the application may be inspected, and the location where comments on the application may be submitted. The notification shall be sent to:

(i) Local governmental agencies with jurisdiction over or an interest in the area of the proposed surface coal mining and reclamation operation, including but not limited to planning agencies, sewage and water treatment authorities, water companies; and

(ii) All Federal or State governmental agencies with authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and which are part of the permit coordinating process developed in accordance with section 503(a)(6) or section 504(h) of the Act, or § 773.5; or those agencies with an interest in the proposed operation, including the U.S. Department of Agriculture Soil Conservation Service district office, the local U.S. Army Corps of Engineers district engineer, the National Park Service, State and Federal fish and wildlife agencies, and the historic preservation officer.

(b) Comments and objections on permit applications. (1) Within a reasonable time established by the regulatory authority, written comments or objections on an application for a permit, significant revision to a permit under § 774.13, or renewal of a permit under § 774.15 may be submitted to the regulatory authority by public entities notified under paragraph (a)(3) of this section with respect to the effects of the proposed mining operations on the environment within their areas of responsibility.

(2) Written objections to an application for a permit, significant revision to a permit under § 774.13, or renewal of a permit under § 774.15 may be submitted to the regulatory authority by any person having an interest which is or may be adversely affected by the decision on the application, or by an officer or head of any Federal, State, or local government agency or authority, within 30 days after the last publication of the newspaper notice required by paragraph (a) of this section.
(3) The regulatory authority shall upon receipt of such written comments or objections—
   (i) Transmit a copy of the comments or objections to the applicants; and
   (ii) File a copy for public inspection at the same public office where the application is
   filed.

(c) Informal conferences. (1) Any person having an interest which is or may be adversely
   affected by the decision on the application, or an officer or a head of a Federal, State, or local
   government agency, may request in writing that the regulatory authority hold an informal
   conference on the application for a permit, significant revision to a permit under § 774.13, or
   renewal of a permit under § 774.15. The request shall--
   (i) Briefly summarize the issues to be raised by the requestor at the conference;
   (ii) State whether the requestor desires to have the conference conducted in the locality of
   the proposed operation; and
   (iii) Be filed with the regulatory authority no later than 30 days after the last publication
   of the newspaper advertisement required under paragraph (a) of this section.

(2) Except as provided in paragraph (c)(3) of this section, if an informal conference is
   requested in accordance with paragraph (c)(1) of this section, the regulatory authority shall hold
   an informal conference within a reasonable time following the receipt of the request. The
   informal conference shall be conducted as follows:
   (i) If requested under paragraph (c)(1)(ii) of this section, it shall be held in the locality of
   the proposed surface coal mining and reclamation operation.
   (ii) The date, time, and location of the informal conference shall be sent to the applicant
   and other parties to the conference and advertised by the regulatory authority in a newspaper of
   general circulation in the locality of the proposed surface coal mining and reclamation operation
   at least 2 weeks before the scheduled conference.
   (iii) If requested in writing by a conference requestor at a reasonable time before the
   conference, the regulatory authority may arrange with the applicant to grant parties to the
   conference access to the proposed permit area and, to the extent that the applicant has the right to
   grant access to it, to the adjacent area prior to the established date of the conference for the
   purpose of gathering information relevant to the conference.
   (iv) The requirements of section 5 of the Administrative Procedure Act, as amended (5
   U.S.C. 554), shall not apply to the conduct of the informal conference. The conference shall be
   conducted by a representative of the regulatory authority, who may accept oral or written
   statements and any other relevant information from any party to the conference. An electronic or
   stenographic record shall be made of the conference, unless waived by all the parties. The record
   shall be maintained and shall be accessible to the parties of the conference until final release of
   the applicant's performance bond or other equivalent guarantee pursuant to subchapter J of this
   chapter.

(3) If all parties requesting the informal conference withdraw their request before the
   conference is held, the informal conference may be canceled.

(4) Informal conference held in accordance with this section may be used by the
   regulatory authority as the public hearing required under § 761.12(d) of this chapter on proposed
   relocation or closing of public roads.

(d) Public availability of permit applications—(1) General availability. Except as
   provided in paragraph (d)(2) or (d)(3) of this section, all applications for permits; revisions;
renewals; and transfers, assignments or sales of permit rights on file with the regulatory authority shall be available, at reasonable times, for public inspection and copying.

(2) **Limited availability.** Except as provided in paragraph (d)(3)(i) of this section, information pertaining to coal seams, test borings, core samplings, or soil samples in an application shall be made available to any person with an interest which is or may be adversely affected. Information subject to this paragraph shall be made available to the public when such information is required to be on public file pursuant to State law.

(3) **Confidentiality.** The regulatory authority shall provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to ensure confidentiality of qualified confidential information, which shall be clearly identified by the applicant and submitted separately from the remainder of the application. Confidential information is limited to–

(i) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment;

(ii) Information required under section 508 of the Act that is not on public file pursuant to State law and that the applicant has requested in writing to be held confidential;


**30 CFR 773.7 Review of permit applications.** (a) The regulatory authority shall review the application for a permit, revision, or renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time set by the regulatory authority, either granting, requiring modification of, or denying the application. If an informal conference is held under § 773.13(c), the decision shall be made within 60 days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under paragraph (b)(2) of this section.

(b) The applicant for a permit or revision of a permit shall have the burden of establishing that his application is in compliance with all the requirements of the regulatory program. [48 FR 44391, Sept. 28, 1983, as amended at 65 FR 79663, Dec. 19, 2000]

**30 CFR 773.8 General provisions for review of permit application information and entry of information into AVS.** (a) Based on an administratively complete application, we, the regulatory authority, must undertake the reviews required under §§ 773.9 through 773.11 of this part.

(b) We will enter into AVS–

(1) The ownership and control information you submit under §§ 778.11 and 778.12(c) of this subchapter.

(2) The information you submit under § 778.14 of this subchapter pertaining to violations which are unabated or uncorrected after the abatement or correction period has expired.
(c) We must update the information referred to in paragraph (b) of this section in AVS upon our verification of any additional information submitted or discovered during our permit application review. [65 FR 79663, Dec. 19, 2000]

30 CFR 773.9  Review of applicant, operator, and ownership and control information. (a) We, the regulatory authority, will rely upon the applicant, operator, and ownership and control information that you, the applicant, submit under § 778.11 of this subchapter, information from AVS, and any other available information, to review your and your operator's business structure and ownership or control relationships.

(b) We must conduct the review required under paragraph (a) of this section before making a permit eligibility determination under § 773.12 of this part. [65 FR 79663, Dec. 19, 2000]

30 CFR 773.10  Review of permit history. (a) We, the regulatory authority, will rely upon the permit history information you, the applicant, submit under § 778.12 of this subchapter, information from AVS, and any other available information to review your and your operator's permit histories. We must conduct this review before making a permit eligibility determination under § 773.12 of this part.

(b) We will also determine if you, your operator, or any of your controllers disclosed under §§ 778.11(c)(5) and 778.11(d) of this subchapter have previous mining experience.

(c) If you, your operator, your controllers, or your operator's controllers do not have any previous mining experience, we may conduct additional reviews under § 774.11(f) of this subchapter. The purpose of this review will be to determine if someone else with mining experience controls the mining operation and was not disclosed under § 778.11(c)(5) of this subchapter. [65 FR 79663, Dec. 19, 2000]

30 CFR 773.11  Review of compliance history. (a) We, the regulatory authority, will rely upon the violation information supplied by you, the applicant, under § 778.14 of this subchapter, a report from AVS, and any other available information to review histories of compliance with the Act or the applicable State regulatory program, and any other applicable air or water quality laws, for–

(1) You;
(2) Your operator;
(3) Operations you own or control; and
(4) Operations your operator owns or controls.

(b) We must conduct the review required under paragraph (a) of this section before making a permit eligibility determination under § 773.12 of this part. [65 FR 79663, Dec. 19, 2000]

30 CFR 773.12  Permit eligibility determination. Based on the reviews required under §§ 773.9 through 773.11 of this part, we, the regulatory authority, will determine whether you, the applicant, are eligible for a permit under section 510(c) of the Act.

(a) Except as provided in §§ 773.13 and 773.14 of this part, you are not eligible for a permit if we find that any surface coal mining operation that–

(1) You directly own or control has an unabated or uncorrected violation;
(2) You or your operator indirectly own or control, regardless of when the ownership or control began, has an unabated or uncorrected violation cited on or after November 2, 1988; or

(3) You or your operator indirectly own or control has an unabated or uncorrected violation, regardless of the date the violation was cited, and your ownership or control was established on or after November 2, 1988.

(b) You are eligible to receive a permit under section 510(c) of the Act if any surface coal mining operation you or your operator indirectly own or control has an unabated or uncorrected violation and both the violation and your assumption of ownership or control occurred before November 2, 1988. However, you are not eligible to receive a permit if there was an established legal basis, independent of authority under section 510(c) of the Act, to deny the permit at the time you or your operator assumed indirect ownership or control or at the time the violation was cited, whichever is earlier.

(c) We will not issue you a permit if you or your operator are permanently ineligible to receive a permit under § 774.11(c) of this subchapter.

(d) After we approve your permit under § 773.15 of this part, we will not issue the permit until you comply with the information update and certification requirement of § 778.9(d) of this subchapter. After you complete that requirement, we will again request a compliance history report from AVS to determine if there are any unabated or uncorrected violations which affect your permit eligibility under paragraphs (a) and (b) of this section. We will request this report no more than five business days before permit issuance under § 773.19 of this part.

(e) If you are ineligible for a permit under this section, we will send you written notification of our decision. The notice will tell you why you are ineligible and include notice of your appeal rights under part 775 of this subchapter and 43 CFR 4.1360 through 4.1369. [65 FR 79663, Dec. 19, 2000]

30 CFR 773.13 Unanticipated events or conditions at remining sites. (a) You, the applicant, are eligible for a permit under § 773.12 if an unabated violation—

(1) Occurred after October 24, 1992; and

(2) Resulted from an unanticipated event or condition at a surface coal mining and reclamation operation on lands that are eligible for remining under a permit that was—

(i) Issued before September 30, 2004, including subsequent renewals; and

(ii) Held by the person applying for the new permit.

(b) For permits issued under § 785.25 of this subchapter, an event or condition is presumed to be unanticipated for the purpose of this section if it—

(1) Arose after permit issuance;

(2) Was related to prior mining; and

(3) Was not identified in the permit application. [65 FR 79663, Dec. 19, 2000]

30 CFR 773.14 Eligibility for provisionally issued permits. (a) This section applies to you if you are an applicant who owns or controls a surface coal mining and reclamation operation with—

(1) A notice of violation issued under § 843.12 of this chapter or the State regulatory program equivalent for which the abatement period has not yet expired; or

(2) A violation that is unabated or uncorrected beyond the abatement or correction period.
(b) We, the regulatory authority, may find you eligible for a provisionally issued permit if you demonstrate that one or more of the following circumstances exists with respect to all violations listed in paragraph (a) of this section--

(1) For violations meeting the criteria of paragraph (a)(1) of this section, you certify that the violation is being abated to the satisfaction of the regulatory authority with jurisdiction over the violation, and we have no evidence to the contrary.

(2) As applicable, you, your operator, and operations that you or your operator own or control are in compliance with the terms of any abatement plan (or, for delinquent fees or penalties, a payment schedule) approved by the agency with jurisdiction over the violation.

(3) You are pursuing a good faith--
   (i) Challenge to all pertinent ownership or control listings or findings under §§ 773.25 through 773.27 of this part; or
   (ii) Administrative or judicial appeal of all pertinent ownership or control listings or findings, unless there is an initial judicial decision affirming the listing or finding and that decision remains in force.

(4) The violation is the subject of a good faith administrative or judicial appeal contesting the validity of the violation, unless there is an initial judicial decision affirming the violation and that decision remains in force.

(c) We will consider a provisionally issued permit to be improvidently issued, and we must immediately initiate procedures under §§ 773.22 and 773.23 of this part to suspend or rescind that permit, if--

(1) Violations included in paragraph (b)(1) of this section are not abated within the specified abatement period;

(2) You, your operator, or operations that you or your operator own or control do not comply with the terms of an abatement plan or payment schedule mentioned in paragraph (b)(2) of this section;

(3) In the absence of a request for judicial review, the disposition of a challenge and any subsequent administrative review referenced in paragraph (b)(3) or (4) of this section affirms the validity of the violation or the ownership or control listing or finding; or

(4) The initial judicial review decision referenced in paragraph (b)(3)(ii) or (4) of this section affirms the validity of the violation or the ownership or control listing or finding. [65 FR 79663, Dec. 19, 2000]

30 CFR 773.15  Written findings for permit application approval. No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the regulatory authority finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

(a) The application is accurate and complete and the applicant has complied with all requirements of the Act and the regulatory program.

(b) The applicant has demonstrated that reclamation as required by the Act and the regulatory program can be accomplished under the reclamation plan contained in the permit application.

(c) The proposed permit area is--
(1) Not within an area under study or administrative proceedings under a petition, filed pursuant to parts 764 and 769 of this chapter, to have an area designated as unsuitable for surface coal mining operations, unless the applicant demonstrates that before January 4, 1977, he has made substantial legal and financial commitments in relation to the operation covered by the permit application; or

(2) Not within an area designated as unsuitable for surface coal mining operations under parts 762 and 764 or 769 of this chapter or within an area subject to the prohibitions of § 761.11 of this chapter.

(d) For mining operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the regulatory authority the documentation required under § 778.15(b) of this chapter.

(e) The regulatory authority has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(f) The applicant has demonstrated that any existing structure will comply with § 701.11(d), and the applicable performance standards of subchapter B or K of this chapter.

(g) The applicant has paid all reclamation fees from previous and existing operations as required by subchapter R of this chapter.

(h) The applicant has satisfied the applicable requirements of part 785 of this chapter.

(i) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of § 816.111(d) or § 817.111(d).

(j) The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(k) The regulatory authority has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the regulatory authority has determined that no additional protection measures are necessary.

(l) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of § 816.106 or § 817.106 of this chapter, the site of the operation is a previously mined area as defined in § 701.5 of this chapter.

(m) For permits to be issued under § 785.25 of this chapter, the permit application must contain:

(i) Lands eligible for remining;

(ii) An identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and

(iii) Mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of the regulatory program can be accomplished.

(n) The applicant is eligible to receive a permit, based on the reviews under §§ 773.7 through 773.14 of this part. [48 FR 44391, Sept. 28, 1983, as amended at 65 FR 79663, Dec. 19, 2000]

**30 CFR 773.19 Permit issuance and right of renewal.** (a) **Decision.** If the application is approved, the permit shall be issued upon submittal of a performance bond in accordance with subchapter J. If the application is disapproved, specific reasons therefore shall be set forth in the notification required by paragraph (b) of this section.

(b) **Notification.** The regulatory authority shall issue written notification of the decision to the following persons and entities:

1. The applicant, each person who files comments or objections to the permit application, and each party to an informal conference.
2. The local governmental officials in the local political subdivision in which the land to be affected is located within 10 days after the issuance of a permit, including a description of the location of the land.
3. If the regulatory authority is a State agency, the local OSM office.

(c) **Permit term.** Each permit shall be issued for a fixed term of 5 years or less, unless the requirements of § 778.17 of this chapter are met.

(d) **Right of renewal.** Permit application approval shall apply to those lands that are specifically designated as the permit area on the maps submitted with the application and for which the application is complete and accurate. Any valid permit issued in accordance with paragraph (a) of this section shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit, in accordance with § 774.15.

(e) **Initiation of operations.** (1) A permit shall terminate if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within 3 years of the issuance of the permit.

2. The regulatory authority may grant a reasonable extension of time for commencement of these operations, upon receipt of a written statement showing that such an extension of time is necessary, if–

   (i) Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

   (ii) There are conditions beyond the control and without the fault or negligence of the permittee.

3. With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.
(4) Extensions of time granted by the regulatory authority under this paragraph shall be specifically set forth in the permit, and notice of the extension shall be made public by the regulatory authority.

30 CFR 773.21 Initial review and finding requirements for improvidently issued permits.  
(a) If we, the regulatory authority, have reason to believe that we improvidently issued a permit to you, the permittee, we must review the circumstances under which the permit was issued. We will make a preliminary finding that your permit was improvidently issued if, under the permit eligibility criteria of the applicable regulations implementing section 510(c) of the Act in effect at the time of permit issuance, your permit should not have been issued because you or your operator owned or controlled a surface coal mining and reclamation operation with an unabated or uncorrected violation.  
(b) We will make a finding under paragraph (a) of this section only if you or your operator--(1) Continue to own or control the operation with the unabated or uncorrected violation;  
(2) The violation remains unabated or uncorrected; and  
(3) The violation would cause you to be ineligible under the permit eligibility criteria in our current regulations.  
(c) When we make a preliminary finding under paragraph (a) of this section, we must--(1) Serve you with a written notice of the preliminary finding; and  
(2) Post the notice at our office closest to the permit area and on the AVS Office Internet home page (Internet address: http://www.avs.osmre.gov).  
(d) Within 30 days of receiving a notice under paragraph (c) of this section, you may challenge the preliminary finding by providing us with evidence as to why the permit was not improvidently issued under the criteria in paragraphs (a) and (b) of this section.  
(e) The provisions of §§ 773.25 through 773.27 of this part apply when a challenge under paragraph (d) of this section concerns a preliminary finding under paragraphs (a) and (b)(1) of this section that you or your operator currently own or control, or owned or controlled, a surface coal mining operation.  [65 FR 79665, Dec. 19, 2000]

30 CFR 773.22 Notice requirements for improvidently issued permits.  (a) We, the regulatory authority, must serve you, the permittee, with a written notice of proposed suspension or rescission, together with a statement of the reasons for the proposed suspension of rescission, if--  
(1) After considering any evidence submitted under § 773.21(d) of this part, we find that a permit was improvidently issued under the criteria in paragraphs (a) and (b) of § 773.21 of this part; or  
(2) Your permit was provisionally issued under § 773.14(b) of this part and one or more of the conditions in § 773.14(c)(1) through (4) exists.  
(2) If we propose to suspend your permit, we will provide 60 days notice.  
(c) If we propose to rescind your permit, we will provide 120 days notice.  
(d) We will also post the notice at our office closest to the permit area and on the AVS Office Internet home page (Internet address: http://www.avs.osmre.gov).
(e) If you wish to appeal the notice, you must exhaust administrative remedies under the procedures at 43 CFR 4.1370 through 4.1377 (when OSM is the regulatory authority) or under the State regulatory program equivalent (when a State is the regulatory authority).

(f) After we serve you with a notice of proposed suspension or rescission under this section, we will take action under § 773.23 of this part.

(g) The regulations for service at § 843.14 of this chapter, or the State regulatory program equivalent, will govern service under this section.

(h) The times specified in paragraphs (b) and (c) of this section will apply unless you obtain temporary relief under the procedures at 43 CFR 4.1376 or the State regulatory program equivalent. [65 FR 79665, Dec. 19, 2000]

30 CFR 773.23 Suspension or rescission requirements for improvidently issued permits. (a) Except as provided in paragraph (b) of this section, we, the regulatory authority, must suspend or rescind your permit upon expiration of the time specified in § 773.22(b) or (c) of this part unless you submit evidence and we find that--

  (1) The violation has been abated or corrected to the satisfaction of the agency with jurisdiction over the violation;
  (2) You or your operator no longer own or control the relevant operation;
  (3) Our finding for suspension or rescission was in error;
  (4) The violation is the subject of a good faith administrative or judicial appeal (unless there is an initial judicial decision affirming the violation, and that decision remains in force);
  (5) The violation is the subject of an abatement plan or payment schedule that is being met to the satisfaction of the agency with jurisdiction over the violation; or
  (6) You are pursuing a good faith challenge or administrative or judicial appeal of the relevant ownership or control listing or finding (unless there is an initial judicial decision affirming the listing or finding, and that decision remains in force).

(b) If you have requested administrative review of a notice of proposed suspension or rescission under § 773.22(e) of this part, we will not suspend or rescind your permit unless and until the Office of Hearings and Appeals or its State counterpart affirms our finding that your permit was improvidently issued.

(c) When we suspend or rescind your permit under this section, we must--

  (1) Issue you a written notice requiring you to cease all surface coal mining operations under the permit; and
  (2) Post the notice at our office closest to the permit area and on the AVS Office Internet home page (Internet address: http://www.avs.osmre.gov).

(d) If we suspend or rescind your permit under this section, you may request administrative review of the notice under the procedures at 43 CFR 4.1370 through 4.1377 (when OSM is the regulatory authority) or under the State regulatory program equivalent (when a State is the regulatory authority). Alternatively, you may seek judicial review of the notice. [65 FR 79665, Dec. 19, 2000]

30 CFR 773.25 Who may challenge ownership or control listings and findings. You may challenge a listing or finding of ownership or control using the provisions under §§ 773.26 and 773.27 of this part if you are--
(a) Listed in a permit application or in AVS as an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof;
(b) Found to be an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof, under §§ 773.21 or 774.11(f) of this subchapter; or
(c) An applicant or permittee affected by an ownership or control listing or finding. [65 FR 79666, Dec. 19, 2000]

30 CFR 773.26 How to challenge an ownership or control listing or finding. This section applies to you if you challenge an ownership or control listing or finding.
(a) To challenge an ownership or control listing or finding, you must submit a written explanation of the basis for the challenge, along with any evidence or explanatory materials you wish to provide under § 773.27(b) of this part, to the regulatory authority, as identified in the following table.

<table>
<thead>
<tr>
<th>If the challenge concerns a . . .</th>
<th>Then you must submit a written explanation to . . .</th>
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</thead>
<tbody>
<tr>
<td>(1) Pending Federal permit application or Federally issued permit.</td>
<td>OSM.</td>
</tr>
<tr>
<td>(2) Pending State permit application or State-issued permit.</td>
<td>the State regulatory authority with jurisdiction over the application or permit.</td>
</tr>
</tbody>
</table>

(b) The provisions of this section and of §§ 773.27 and 773.28 of this part apply only to challenges to ownership or control listings or findings. You may not use these provisions to challenge your liability or responsibility under any other provision of the Act or its implementing regulations.
(c) When the challenge concerns a violation under the jurisdiction of a different regulatory authority, the regulatory authority with jurisdiction over the permit application or permit must consult the regulatory authority with jurisdiction over the violation and the AVS Office to obtain additional information.
(d) A regulatory authority responsible for deciding a challenge under paragraph (a) of this section may request an investigation by the AVS Office. [65 FR 79666, Dec. 19, 2000]

30 CFR 773.27 Burden of proof for ownership or control challenges. This section applies to you if you challenge an ownership or control listing or finding.
(a) When you challenge a listing or finding of ownership or control of a surface coal mining operation, you must prove by a preponderance of the evidence that you either--
   (1) Do not own or control the entire operation or relevant portion or aspect thereof; or
(2) Did not own or control the entire operation or relevant portion or aspect thereof during the relevant time period.

(b) In meeting your burden of proof, you must present reliable, credible, and substantial evidence and any explanatory materials to the regulatory authority. The materials presented in connection with your challenge will become part of the permit file, an investigation file, or another public file. If you request, we will hold as confidential any information you submit under this paragraph which is not required to be made available to the public under § 842.16 of this chapter (when OSM is the regulatory authority) or under § 840.14 of this chapter (when a State is the regulatory authority).

(c) Materials you may submit in response to the requirements of paragraph (b) of this section include, but are not limited to--

1. Notarized affidavits containing specific facts concerning the duties that you performed for the relevant operation, the beginning and ending dates of your ownership or control of the operation, and the nature and details of any transaction creating or severing your ownership or control of the operation.

2. Certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records.

3. Certified copies of documents filed with or issued by any State, municipal, or Federal governmental agency.

4. An opinion of counsel, when supported by--

   i. Evidentiary materials;

   ii. A statement by counsel that he or she is qualified to render the opinion; and

   iii. A statement that counsel has personally and diligently investigated the facts of the matter. [65 FR 79666, Dec. 19, 2000]

30 CFR 773.28  Written agency decision on challenges to ownership or control listings or findings. (a) Within 60 days of receipt of your challenge under § 773.26(a) of this part, we, the regulatory authority identified under § 773.26(a) of this part, will review and investigate the evidence and explanatory materials you submit and any other reasonably available information bearing on your challenge and issue a written decision. Our decision must state whether you own or control the relevant surface coal mining operation, or owned or controlled the operation, during the relevant time period.

(b) We will promptly provide you with a copy of our decision by either--

1. Certified mail, return receipt requested; or

2. Any means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure, or its State regulatory program counterparts.

(c) Service of the decision on you is complete upon delivery and is not incomplete if you refuse to accept delivery.

(d) We will post all decisions made under this section on AVS and on the AVS Office Internet home page (Internet address: http://www.avs.osmre.gov).

(e) Any person who receives a written decision under this section, and who wishes to appeal that decision, must exhaust administrative remedies under the procedures at 43 CFR 4.1380 through 4.1387 or, when a State is the regulatory authority, the State regulatory program counterparts, before seeking judicial review.
(f) Following our written decision or any decision by a reviewing administrative or judicial tribunal, we must review the information in AVS to determine if it is consistent with the decision. If it is not, we must promptly revise the information in AVS to reflect the decision. [65 FR 79666, Dec. 19, 2000]

**30 CFR 701.11 Applicability.** (d) The requirements of subchapter K of this chapter shall be effective and shall apply to each surface coal mining and reclamation operation for which the surface coal mining operation is required to obtain a permit under the Act, on the earliest date upon which the Act and this chapter require a permit to be obtained, except as provided in paragraph (e) of this section.

(e)(1) Each structure used in connection with or to facilitate a coal exploration or surface coal mining and reclamation operation shall comply with the performance standards and the design requirements of subchapter K of this chapter, except that –

(i) An existing structure which meets the performance standards of subchapter K of this chapter but does not meet the design requirements of subchapter K of this chapter may be exempted from meeting those design requirements by the regulatory authority. The regulatory authority may grant this exemption only as part of the permit application process after obtaining the information required by 30 CFR 780.12 or 784.12 and after making the findings required in 30 CFR 773.15;

(ii) If the performance standard of subchapter B of this chapter is at least as stringent as the comparable performance standard of subchapter K of this chapter, an existing structure which meets the performance standards of subchapter B of this chapter may be exempted by the regulatory authority from meeting the design requirements of subchapter K of this chapter. The regulatory authority may grant this exemption only as part of the permit application process after obtaining the information required by 30 CFR 780.12 or 784.12 and after making the findings required in 30 CFR 773.15;

(iii) An existing structure which meets a performance standard of subchapter B of this chapter which is less stringent than the comparable performance standards of subchapter K of this chapter or which does not meet a performance standard of subchapter K of this chapter, for which there was no equivalent performance standards in subchapter B of this chapter, shall be modified or reconstructed to meet the performance and design standard of subchapter K of this chapter pursuant to a compliance plan approved by the regulatory authority only as part of the permit application as required in 30 CFR 780.12 or 784.12 and according to the findings required by 30 CFR 773.15;

(iv) An existing structure which does not meet the performance standards of subchapter B of this chapter and which the applicant proposes to use in connection with or to facilitate the coal exploration or surface coal mining and reclamation operation shall be modified or reconstructed to meet the performance and design standards of subchapter K prior to issuance of the permit.

(2) The exemptions provided in paragraphs (e)(1)(i) and (e)(1)(ii) of this section shall not apply to –

(i) The requirements for existing and new coal mine waste disposal facilities; and

(ii) The requirements to restore the approximate original contour of the land.
47-4-14a. Administrative hearing procedure. (a) Appeals and applications. This article and articles 5, 6, and 15 shall govern the procedure used in all administrative hearings resulting from the following actions:

1. Petitions for review of proposed civil penalty assessments issued by the secretary;
2. Applications for review of notices of violation and orders of cessation or modification, vacation or termination of notices of violation, and orders of cessation;
3. Applications for review of the secretary's decision to disapprove, suspend, or revoke a permit;
4. Applications for temporary relief;
5. Applications for review of alleged discriminatory acts;
6. Petitions for award of costs and expenses;
7. Appeals from initial orders or decisions of presiding officers; and
8. All other appeals and review procedures authorized by the act.

(b) Definition. As used in these regulations, the following definition shall apply:

“Party” means either of the following:

1. The person to whom an order, notice of violation, civil penalty assessment, suspension of permit, revocation of permit, or petition for award of costs and expenses is specifically directed; or
2. A person named or allowed to intervene as a party to a state agency proceeding or allowed to intervene as a party in a proceeding.

(c) Rules of procedure.

1. Hearing location. Hearings shall be held in the location designated by the presiding officer, giving due consideration to the convenience of the parties and their representatives and witnesses, except as otherwise provided by the state act.
2. Document filing. All documents that are to be filed in a proceeding governed by this article shall be filed with the office of administrative hearings, a division of the Kansas department of administration, in Topeka, Kansas.
3. Proof of service. A person who has initiated a proceeding under this regulation shall file a proof of service in the form of a registered receipt if by certified or registered mail, or acknowledgement by the party served or verified return when service is made personally. A certificate of service shall be contained in all other documents filed by a party.
4. Filing date. The effective filing date of a notice of appeal or petition for review shall be the date of receipt by the administrative appeals section if filed personally, or the postmark date if filed by mail. The burden of establishing the date of mailing shall be on the person filing the document.
5. Document information. All documents shall be captioned with the following information:

   (A) The name of the party;
   (B) The name of the facility, mine, or site to which the document pertains; and
   (C) If appropriate, the following information:
      (i) The number of the notice, order, or other agency decision or action to which the appeal pertains;
      (ii) The case number assigned to the original agency action; and
(iii) any other identifying information, including permit number.

(6) Service.
   (A) Copies of documents that initiate a proceeding shall be served upon all parties by
       registered or certified mail, return receipt requested.
   (B) Copies of all subsequent documents shall be served personally or by first-class mail.
   (C) Service of all documents shall be complete at the time of personal service, or, if by
       mail, upon receipt.
   (D) If an attorney has entered an appearance on behalf of a party, thereafter service shall
       be made upon the attorney.

(7) Intervention. Any person may petition for leave to intervene in a proceeding. Each
petition shall set out the interest of the petitioner and the manner in which the petitioner's interest
is or could be affected.
   (A) The presiding officer shall grant intervention if the petitioner fulfills these
       requirements:
           (i) Had a statutory right to initiate the proceeding into which the petitioner seeks
               intervention; or
           (ii) has an interest that is or could be adversely affected by the outcome of the
               proceeding.
   (B) If paragraphs (c)(7)(A)(i) and (c)(7)(A)(ii) of this regulation are not applicable, the
       presiding officer shall consider the following to determine if intervention is appropriate:
           (i) The nature of the issues;
           (ii) the adequacy of the representation of petitioner's interest provided by the existing
               parties;
           (iii) the ability of the petitioner to present relevant evidence and argument; and
           (iv) the effect of intervention on the agency's implementation of its statutory duties.
   (C) Each person granted leave to intervene shall participate as a party.
   (D) The presiding officer shall determine the extent and terms of limited participation by
       an intervenor.

(8) Voluntary dismissal. Any party who initiated a proceeding may withdraw it by
moving to dismiss. The presiding officer may grant such a motion.

(9) Pleadings, motions, briefs; service. At appropriate stages of the proceeding, each
party shall be given full opportunity to file pleadings, motions, and objections.
   (A) Each pleading and motion shall be submitted in writing and shall state concisely the
       supporting grounds.
   (B) Each party shall have 15 days from the date of service of the pleading in which to
       file a response, unless otherwise ordered by the presiding officer.
   (C) Failure to make a timely motion or response shall be construed as a waiver of
       objection.
   (D) Each motion shall be ruled upon expeditiously.
   (E) At appropriate stages, each party shall be given full opportunity to file briefs, proposed
       findings of fact and conclusions of law, and proposed initial and final orders.
   (F) Each document filed pursuant to this subsection shall be served on all parties by mail
       or any other means prescribed in this regulation.

(10) Consolidation. When pending proceedings involve a common question of fact or
law, the proceedings shall be consolidated pursuant to a motion by a party or the presiding
officer.
(11) Waiver of hearing. Any person entitled to a hearing may waive this right in writing. Any person required to file a responsive pleading who fails to do so by the required time may be deemed to have waived the person's right to a hearing. Unless all parties who are entitled to a hearing waive these rights or are deemed to have waived these rights, a hearing shall be held.

(d) Formal hearings. If a statute provides for a hearing in accordance with these regulations, the hearing shall be governed by this subsection.

(1) Participation and representation.
(A) Each party shall participate in the hearing in person or, if the party is a corporation or other artificial person, by a duly authorized representative.
(B) Whether or not participating in person, any party may be represented at the party's own expense by counsel or, if permitted by law, other representative.
(C) Each corporation or other artificial person shall participate by counsel.

(2) Presiding officer.
(A) An administrative hearing officer from the office of administrative hearings shall be the presiding officer.
(B) Each person serving or designated to serve alone or with others as presiding officer shall be subject to disqualification for administrative bias, prejudice, or interest.
(C) Any party may petition for the disqualification of a presiding officer promptly after receipt of notice indicating that the person will preside or promptly upon discovering facts establishing grounds for disqualification, whichever is later.
(D) Each presiding officer whose disqualification is requested shall determine whether or not to grant the petition, stating facts and reasons for the determination. If the presiding officer fails to grant a petition for disqualification, the petitioning party may file an affidavit of personal bias or disqualification with substantiating facts, and the matter of disqualification shall be determined by the secretary.
(E) If a substitute is required for a presiding officer who is disqualified or becomes unavailable for any reason, each action taken by a duly appointed substitute for a disqualified or unavailable presiding officer shall be as effective as if taken by the disqualified or unavailable presiding officer.

(3) Prehearing conference; notice. The presiding officer designated to conduct the hearing may conduct a prehearing conference. If the conference is conducted, the presiding officer for the prehearing conference shall set the time and place of the conference and give reasonable notice to all parties and to all persons who have filed written petitions to intervene in the matter.

(4) Prehearing conference. The prehearing conference notice shall include the following:
(A) The names and mailing addresses of all parties and other persons to whom notice is being given by the presiding officer;
(B) the name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the state agency;
(C) the official file or other reference number, the name of the proceeding, and a general description of the subject matter;
(D) a statement of the time, place, and nature of the prehearing conference;
(E) a statement of the legal authority and jurisdiction under which the prehearing conference and hearing are to be held;
(F) the name, official title, mailing address, and telephone number of the presiding officer for the prehearing conference;

(G) a statement that any party who fails to attend or participate in a prehearing conference, hearing, or other stage of an adjudicative proceeding shall be held in default; and

(H) a notice that may include any other matters that the presiding officer considers desirable to expedite the proceedings.

(5) Prehearing conference procedure; prehearing order.

(A) The presiding officer may conduct all or part of the prehearing conference by telephone or other electronic means if each participant in the conference has an opportunity to participate in the entire proceeding while it is taking place.

(B) The presiding officer shall conduct the prehearing conference, as shall be appropriate, to deal with matters including the following:

(i) Exploration of settlement possibilities;

(ii) preparation of stipulations;

(iii) clarification of issues;

(iv) rulings on identity and limitation of the number of witnesses;

(v) objections to proffers of evidence;

(vi) determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone or other electronic means will be used as a substitute for proceedings in person;

(vii) order of presentation of evidence and cross-examination;

(viii) rulings regarding issuance of subpoenas;

(ix) discovery orders and protective orders; and

(x) any other matters that will promote the orderly and prompt conduct of the hearing.

(C) The presiding officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

(D) If a prehearing conference is not held, the presiding officer for the hearing shall issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

(6) Notice of administrative hearing.

(A) The time and place of the hearing shall be set by the presiding officer. Reasonable written notice at least 10 days before the hearing shall be given to all parties and to all persons who have filed written petitions to intervene in the matter. Service of notices shall be made in accordance with paragraph (d)(18) of this regulation.

(B) The notice shall include a copy of any prehearing order rendered in the matter.

(C) To the extent not included in the prehearing order accompanying it, the notice shall include the following:

(i) The names and mailing addresses of all parties and other persons to whom notice is being given by the presiding officer;

(ii) the name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the state agency;

(iii) the official file or other reference number, the name of the proceeding, and a general description of the subject matter;

(iv) the time, place, and nature of the hearing;

(v) the legal authority and jurisdiction under which the hearing is to be held;

(vi) the name, official title, mailing address, and telephone number of the presiding officer;
(vii) the issues involved and, to the extent known to the presiding officer, the matters asserted by the parties; and
(viii) a statement that any party who fails to attend or participate in a prehearing conference, hearing, or other stage of an adjudicative proceeding shall be held in default.

(D) The notice may include any other matters that the presiding officer considers desirable to expedite the proceedings.

(E) The presiding officer shall cause notice to be given to any other person entitled to notice under any other provisions of law who has not been given notice under paragraph (d)(6)(A) of this regulation, as follows:

(i) Notice under this subsection shall be given in the manner specified by these regulations or, if no such manner is specified, in a manner determined by the office of administrative hearings, a division of the Kansas department of administration.

(ii) If any person other than the agency is directed to give notice under this subsection, the agency shall require that the person furnish proof of service.

(iii) Notice under this subsection may include all types of information provided in paragraphs (d)(6)(A) through (D) of this regulation or may consist of a brief statement indicating the subject matter, parties, time, place where the hearing will be held, locations where the general public may meet for hearings that are conducted electronically, nature of the hearing, manner in which copies of the notice to the parties may be inspected and copied, and the name and telephone number of the presiding officer.

(iv) Notice of the hearing shall be posted by the department at the surface mining section office and, where practicable, shall be published in a newspaper of general circulation in the area of the mine at least seven days before the hearing.

(7) Default.

(A) If a party fails to attend or participate in a prehearing conference, hearing, or other adjudicative proceeding, the presiding officer may serve all parties with written notice of the proposed default order, including the grounds for default.

(B) Within seven days after service of a proposed default order, the party against whom the order was issued may file a written motion requesting that the proposed default order be vacated and stating the grounds relied upon. During this period, the presiding officer may adjourn the proceedings or conduct them without the participation of the defaulting party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings.

(C) The proposed default order shall become effective seven days after service, unless vacated by the presiding officer.

(D) Once a default order becomes effective, the presiding officer may conduct any proceedings necessary to complete the adjudication and determine all issues in the adjudication, including those affecting the defaulting party without the defaulting party's participation. In lieu of determining the issues affecting the defaulting party, the presiding officer may dismiss the party's application for an adjudicative proceeding, unless otherwise prohibited by law.

(8) Certification of interlocutory ruling. On the presiding officer's or a party's motion, a ruling may be certified to the secretary if that ruling presents a controlling question of law and if immediate appeal would materially advance the ultimate disposition of the case.

(9) Summary judgment. Any party may move for summary decision, in whole or in part, after a proceeding has begun.
(A) The moving party shall verify each allegation of fact with at least one supporting affidavit, unless reliance is upon depositions, answers to interrogatories, admissions, or documents produced upon request to verify each allegation.

(B) The presiding officer shall grant such a motion for summary judgment if the record, including pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows both of the following:
   (i) There is no disputed issue as to any material fact.
   (ii) The moving party is entitled to a summary decision as a matter of law.

(C) If a complete summary decision is not granted and an evidentiary hearing is necessary, the presiding officer shall, if practicable, perform the following:
   (i) Examine all relevant evidence and documents in the record;
   (ii) ascertain what material facts are controverted in good faith;
   (iii) issue an order specifying those facts that are not substantially controverted; and
   (iv) direct any further proceedings that the presiding officer determines are necessary.

(10) Proceedings. The presiding officer shall meet the following requirements:
   (A) Shall regulate the proceedings;
   (B) shall afford to each party the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, to the extent necessary for full disclosure of all relevant facts and issues, except as restricted by a limited grant of intervention or by the prehearing order;
   (C) may, and when required by statute shall, give nonparties an opportunity to present oral or written statements. When the presiding officer proposes to consider a statement by a nonparty, the following shall apply:
      (i) Each party shall have an opportunity to challenge or rebut the statement; and
      (ii) any party may, by motion, require the statement to be given under oath or confirmation;
   (D) may conduct all or part of the hearing by telephone or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding;
   (E) shall cause the hearing to be recorded at the state agency's expense. The state agency shall not be required, at its expense, to prepare a transcript, unless required to do so by any other provision of law. Any party, at the party's expense and subject to any reasonable conditions that the state agency may establish, may cause a person other than the state agency to prepare a transcript from the state agency's record, or cause additional recordings to be made during the hearing; and
   (F) may close parts of the hearing from public observation only when a provision of the law expressly authorizes closure.

(11) Proposed findings of fact and conclusions of law. The presiding officer shall allow the parties to submit proposed findings of fact and conclusions of law with a supporting brief at a time set forth by the presiding officer.

(12) Evidence; official notice.
   (A) A presiding officer shall not be bound by the statutory rules of evidence, but shall give the parties reasonable opportunity to be heard and to present evidence, and the presiding officer shall act reasonably without partiality. The presiding officer shall give effect to the rules of privilege recognized by law. Evidence shall not be excluded solely because it is hearsay.
   (B) All testimony of parties and witnesses shall be made under oath or affirmation, and the presiding officer shall have the power to administer an oath or affirmation for that purpose.
(C) Statements presented by nonparties in accordance with paragraph (d)(10)(C) of this regulation shall be received as evidence.

(D) Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party.

(E) Documentary evidence shall be received in the form of a copy or excerpt. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

(F) Official notice shall be taken of the following:
   (i) Any matter that could be judicially noticed in the courts of this state;
   (ii) the record of other proceedings before the state agency;
   (iii) technical or scientific matters within the state agency's specialized knowledge; and
   (iv) codes of standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Each party shall be notified before or during the hearing, or before the issuance of any initial or final order that is based in whole or in part on matters or material noticed, of the specific matters or material noticed and the source, including any staff memoranda and data. Each party shall be afforded an opportunity to contest and rebut the matters or material so noticed.

(13) Orders, initial and final.

(A) If the presiding officer is the agency head, the presiding officer shall render a final order.

(B) If the presiding officer is not the agency head, the presiding officer shall render an initial order, which shall become a final order unless reviewed in accordance with paragraph (d)(14) of this regulation.

(C) Each final order or initial order shall include, separately stated, findings of fact, conclusions of law, and policy reasons for the decision if the order is an exercise of the state agency's discretion, for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration, administrative review, or other administrative relief. Each initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order.

(D) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding.

(E) If a substitute presiding officer is appointed, the substitute presiding officer shall use any existing record and may conduct any further proceedings appropriate in the interests of justice.

(F) The presiding officer shall allow the parties to a proceeding to have an opportunity to submit proposed findings of fact and conclusions of law together with a supporting brief at a time designated by the presiding officer.

(G) A final order or initial order pursuant to this regulation shall be rendered in writing and served within 30 days after conclusion of the hearing or after submission of proposed findings in accordance with paragraph (d)(13)(F) of this regulation, unless this period is waived or extended with the written consent of all parties or for good cause shown.
(H) The presiding officer shall cause copies of the order to be served on each party and, if the order is an initial order, the agency head in the manner prescribed by paragraph (d)(18) of this regulation.

(14) Review of initial order; exceptions to reviewability.

(A) Upon the secretary's or secretary's designee's own motion, any initial order may be reviewed by the secretary or secretary's designee, unless paragraph (d)(14)(A)(i) or (ii) applies. If any party petitions for review of an initial order or if the law requires the review of an initial order by the secretary or secretary's designee, unless either of the following paragraphs applies:

(i) A provision of law precludes or limits review of the initial order; or
(ii) the secretary or secretary's designee determines to review some but not all issues, or not to exercise any review, or delegates the authority to review the initial order to one or more persons, unless this delegation is expressly prohibited by law, or authorizes one or more persons to review the initial order, subject to further review by the secretary or secretary's designee.

(B) A petition for review of an initial order shall be filed with the secretary or secretary's designee, or with any person designated for this purpose by regulation of the department, within 15 days after service of the initial order. If the secretary or secretary's designee on that individual's own motion decides to review an initial order, written notice of that individual's intention to review the initial order shall be given by the secretary or designee within 15 days after the initial order is issued. If the secretary or secretary's designee determines not to review an initial order in response to a petition for review, within 20 days after the filing of the petition for review, an order stating that review will not be exercised shall be served on each party by the secretary or designee.

(C) The petition for review shall state its basis. If the secretary or secretary's designee on that individual's own motion gives notice of its intent to review an initial order, the issues intended for review shall be specified by that individual.

(D) In reviewing an initial order, all the decision-making power that the secretary or secretary's designee would have had to render a final order had the secretary presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the secretary or secretary's designee upon notice to all parties.

(E) Each party shall be afforded an opportunity to present briefs and an opportunity to present oral argument by the secretary or designee.

(F) A final order disposing of the proceeding shall be rendered by the secretary or designee, or the matter shall be remanded by the secretary or designee for further proceedings with instructions to the presiding officer who rendered the initial order. When a matter is remanded, any temporary relief that is authorized and appropriate shall be ordered by the secretary or designee.

(G) A final order or an order remanding the matter for further proceedings shall be rendered in writing and served within 30 days after receipt of briefs and oral argument, unless that period is waived or extended with written consent of all parties or for good cause shown.

(H) A final order or an order remanding the matter for further proceedings under this article shall identify any difference between this order and the initial order and shall include, or incorporate by express reference to the initial order, all the matters required by paragraph (d)(13)(C) of this regulation.

(I) Copies of the final order or order remanding the matter for further proceedings shall be caused to be served on each party by the secretary or designee in the manner prescribed by paragraph (d)(18) of this regulation.
(15) Stay. A party may submit to the presiding officer or secretary or secretary's
designee a petition for stay of effectiveness of an initial or final order until the time at which a
petition for judicial review would no longer be timely, unless otherwise provided by statute or
stated in the initial or final order. Action may be taken on the petition for stay by the presiding
officer or by the secretary or designee, either before or after the effective date of the initial or
final order.

(16) Reconsideration.
(A) Each party, within 15 days after service of a final order, may file a petition for
reconsideration with the secretary or secretary's designee, stating the specific grounds upon
which relief is requested. The filing of the petition shall not be a prerequisite for seeking
administrative or judicial review.
(B) A written order denying the petition, granting the petition and dissolving or
modifying the final order, or granting the petition and setting the matter for further proceedings
shall be rendered by the secretary. The petition may be granted, in whole or in part, only if the
secretary states, in the written order, findings of fact, conclusions of law, and policy reasons for
the decision if it is an exercise of the secretary's discretion, to justify the order. The petition shall
be deemed to have been denied if the secretary does not dispose of the petition within 20 days
after the filing of the petition.
(C) Each order under these regulations shall be served on the parties in the manner
prescribed by paragraph (d)(18) of this regulation.

(17) Orders, when effective.
(A) Unless a later date is stated in a final order or a stay is granted, each final order shall
be effective upon service.
(B) Unless a later date in an initial order or a stay is granted, an initial order shall
become effective and shall become the final order under these circumstances:
(i) When the initial order is served, if administrative review is unavailable;
(ii) when the secretary serves an order stating, after a petition for review has been filed,
that review will not be exercised; or
(iii) when, 30 days after service of the initial order, no party has filed a petition for
review by the secretary, the secretary has not given written notice of its intent to exercise review,
and review by the secretary is not otherwise required by law.

(18) Service of order. Service of an order or notice shall be made upon the party and the
party's attorney of record, if any, by delivering a copy of the order or notice to the person to be
served or by mailing a copy of the order or notice to the person at the person's last known
address. Delivering a copy of the order or notice shall mean handing the order or notice to the
person or leaving the order or notice at the person's principal place of business or residence and
with a person of suitable age and discretion who works or resides there. Service shall be
presumed if the presiding officer, or a person directed to make service by the presiding officer,
makes a written certificate of service. Service by mail shall be complete upon mailing.
Whenever a party has the right or is required to perform some act or file a petition within a
prescribed period after service of a notice or order and the notice or order is served by mail, three
days shall be added to the prescribed period.

(19) Record.
(A) An official record of each formal hearing shall be maintained by the department.
(B) The record shall consist of only these items:
(i) The notices of all proceedings;
(ii) any prehearing order;
(iii) any motions, pleadings, briefs, petitions, requests, and intermediate rulings;
(iv) all evidence received or considered;
(v) a statement of matters officially noticed;
(vi) proffers of proof and objections and rulings on the proffers;
(vii) proposed findings, requested orders, and exceptions;
(viii) the record prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding;
(ix) any final order, initial order, or order on reconsideration; and
(x) staff memoranda or data submitted to the presiding officer.

(C) Except to the extent that these regulations or another statute provides otherwise, the department's record, excluding matters under paragraph (d)(19)(B)(x) of this regulation, shall constitute the exclusive basis for the department's action in formal hearings and for judicial review of the department's action. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-407, and 49-416a; effective Feb. 11, 1991; amended May 2, 1997; amended December 1, 2006.)
K.A.R. 47-5-5a. Civil penalties: adoption by reference. (a) Subject to the provisions of subsection (c), the following federal regulations, as in effect on July 1, 2001, are adopted by reference, except as otherwise indicated:

1. How assessments are made, 30 CFR 845.11;
2. when penalty will be assessed, 30 CFR 845.12;
3. point system for penalties, 30 CFR 845.13;
4. determination of amount of penalty, 30 CFR 845.14, except that the table shall be replaced by the following table:

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(5) assessment of separate violations for each day, 30 CFR 845.15, except that the statement “a civil penalty of not less than $825 shall be assessed for each day during which such failure to abate continues” shall be replaced by “a civil penalty of not less than $750 shall be assessed for each day during which such failure to abate continues”;
(6) waiver of use of formula to determine civil penalty, 30 CFR 845.16;
(7) procedures for assessment of civil penalties, 30 CFR 845.17;
(8) procedures for assessment conference, 30 CFR 845.18. However, the following sentence shall be deleted: “The assessment conference shall not be governed by section 554 of title 5 of the United States Code, regarding requirements for formal adjudicatory hearings”;
(9) request for hearing, 30 CFR 845.19. However, subsection (b) shall be replaced by the following text: “(b) The department shall hold all funds submitted under paragraph (a) of this section in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in K.A.R. 47-5-16”;
(10) when an individual civil penalty may be assessed, 30 CFR 846.12;
(11) amount of individual civil penalty, 30 CFR 846.14;
(12) procedure for assessment of individual civil penalty, 30 CFR 846.17; and
(13) payment of penalty, 30 CFR 846.18. However, subsection (d) shall be replaced by the following text:
“(d)(1) Delinquent payment. Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty shall be subject to interest at the rate established quarterly by the U.S. department of the treasury for use in applying late charges on later payments to the federal government, pursuant to the treasury financial manual 6-8020.20. The treasury current value of funds rate is published by the fiscal service in the notices section of the federal register. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties may result in one or more of the following actions, which are not exclusive:
“(i) Initiation of litigation;
“(ii) reporting to the internal revenue service;
“(iii) reporting to state agencies responsible for taxation;
“(iv) reporting to credit bureaus; or
“(v) referral to collection agencies.
“(2) If a penalty debt is greater than 91 days overdue, a six percent per annum penalty shall begin to accrue on the amount owed for fees and shall run until the date of payment. This penalty is in addition to the interest described in this regulation.
“(3) For all delinquent penalties and interest, the debtor shall be required to pay a processing and handling charge that shall be based on the following components:
“(i) For debts referred to a collection agency, the amount charged to the department by the collection agency;
“(ii) for debts processed and handled by the surface mining section, a standard amount set annually by the department based upon similar charges by collection agencies for debt collection;
“(iii) for debts referred to the office of legal services, Kansas department of health and environment, but paid before litigation, the estimated average cost to prepare the case for litigation at the time of payment;
“(iv) for debts referred to the office of legal services, Kansas department of health and environment, and litigated, the estimated cost to prepare and litigate a debt case at the time of payment;
“(v) if not otherwise provided for, all other administrative expenses associated with
collection, including billing, recording payments, and follow-up actions; and

“(vi) no prejudgment interest accrues on any processing and handling charges.”

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1) “Act” shall be replaced by “state act.”
(2) “Director” and “director or his designee” shall be replaced by “secretary of health and environment or secretary’s designee.” However, in 30 CFR 816.12, the phrase “director” shall remain unchanged.
(3) “Secretary” shall be replaced by “secretary of health and environment.”
(4) “Section 521(a) of the act” shall be replaced by “K.S.A. 49-405 (m)(2), and amendments thereto.”
(5) “Section 525(c) of the act” shall be replaced by “K.S.A. 49-416a (c), and amendments thereto.”
(6) “Section 526 of the act” and “section 526(c) of the act” shall be replaced by “K.S.A. 49-422a, and amendments thereto.”
(7) “Section 518(e), 518(f), 521(a)(4), or 521(c) of the act” shall be replaced by “K.S.A. 49-405c (e), 49-405c (f), 49-405 (m)(3), or 49-405 (m)(4), and amendments thereto.”
(8) “Office,” “State or field office,” and “office of hearings and appeals” shall be replaced by “department.”
(9) “Sections 518, 521(a)(4), and 525 of the act” shall be replaced by “K.S.A. 49-405c, 49-405 (m)(3), and 49-416a, and amendments thereto.”
(10) “30 CFR 845.20” shall be replaced by “K.A.R. 47-5-16.”
(12) “30 CFR 843.16” shall be replaced by “K.A.R. 47-4-14a.”
(13) “Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (Phone: 703-235-3800)” shall be replaced by “Office of administrative hearings, a division of the Kansas department of administration.”
(14) “30 CFR 845.12, 845.13, 845.14, 845.15 and 845.16” shall be replaced by “K.A.R. 47-5-5a (a)(2), (3), (4), (5), and (6).”
(15) “30 CFR 816.11” shall be replaced by “K.A.R. 47-9-1 (c)(1).”
(16) “30 CFR 845.17(b)” shall be replaced by “K.A.R. 47-5-5a (a)(7).”
(18) “30 CFR 845.12 (b)” shall be replaced by “K.A.R. 47-5-5a (a)(2).”
(19) “Section 518(a) of the act” shall be replaced by “K.S.A. 49-405c (a).”
(20) “§ 846.12” shall be replaced by “K.A.R. 47-5-5a (a)(10).”
(c) Review of proposed assessments of civil penalties. If a request for hearing is made pursuant to paragraph (a)(9) of this regulation, the procedures set forth in K.A.R. 47-4-14a and the following shall apply.
(1) Time for filing petition.
(A)(i) A petition for review of a proposed assessment of a civil penalty shall be filed within 30 days of receipt of the proposed assessment; or
(ii) If a timely request for a conference has been made pursuant to paragraph (a)(8) of this regulation, a petition for review shall be filed within 15 days after service of notice by the presiding officer that the conference is completed.

(B) No extension of time shall be granted for filing a petition for review of a proposed assessment of a civil penalty as required by paragraph (c)(1)(A)(i) or (A)(ii). If a petition for review is not filed within the time period provided in paragraph (c)(1)(A)(i) or (A)(ii), the appropriateness of the amount of the penalty, and the fact of the violation if there is no proceeding pending under K.S.A. 49-416a (a), and amendments thereto, to review the notice of violation or cessation order involved, shall be admitted; the petition shall be dismissed; and the civil penalty assessed shall become a final order of the secretary.

(2) Contents of petition; payment required.

(A) The petition shall include the following:

(i) A short and plain statement indicating the reasons why either the amount of the penalty or the fact of the violation is being contested;

(ii) if the amount of penalty is being contested based upon a misapplication of the civil penalty formula, a statement indicating how the civil penalty formula contained in subsection (a), adopting by reference 30 CFR Part 845 and 846, was misapplied, along with a proposed civil penalty utilizing the civil penalty formula;

(iii) the identification by number of each violation being contested;

(iv) the identifying number of the cashier's check, certified check, bank draft, personal check, or bank money order accompanying the petition; and

(v) a request for a hearing.

(B) The petition shall be accompanied by these items:

(i) Full payment of the proposed assessment in the form of a cashier's check, certified check, bank draft, personal check, or bank money order made payable to the Kansas department of health and environment, to be placed in an escrow account pending final determination of the assessment; and

(ii) on the face of the payment, an identification by number of the violations for which payment is being tendered.

(C) As required by K.S.A. 49-405c (c) and amendments thereto, failure to make timely payment of the proposed assessment in full shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(D) No extension of time shall be granted for full payment of the proposed assessment. If payment is not made within the time period provided in paragraph (c)(1)(A)(i) or (A)(ii), the appropriateness of the amount of the penalty, the fact of the violation, and, if there is no review proceeding, the notice of violation or cessation order involved shall be deemed admitted; the petition shall be dismissed; and the civil penalty assessed shall become a final order of the secretary.

(3) Answer. The department shall have 30 days from receipt of a copy of the petition within which to file an answer.

(4) Review of waiver determination.

(A) Within 10 days of the filing of a petition, the petitioner may move the presiding officer to review the granting or denial of a waiver of the civil penalty formula pursuant to paragraph (a)(6) of this regulation.
(B) The motion shall contain a statement indicating all alleged facts relevant to the granting or denial of a waiver.

(C) Review shall be limited to the written determination of the presiding officer granting or denying the waiver, the motion, and responses to the motion. The standard of review shall be abuse of discretion.

(D) If the presiding officer finds that the secretary abused the secretary’s discretion in granting or denying the waiver, the presiding officer shall hold a hearing on the petition for review of the proposed assessment and make a determination pursuant to paragraph (c)(7) of this regulation.

(5) Burden of proof in civil penalty proceedings. In civil penalty proceedings, the department shall have the burden of going forward to establish a prima facie case as to the fact of the violation, the amount of the civil penalty, and the ultimate burden of persuasion as to the amount of the civil penalty. The person who petitioned for review shall have the ultimate burden of persuasion as to the fact of the violation.

(6) Summary disposition.

(A) In a civil penalty proceeding in which the person against whom the proposed civil penalty is assessed fails to comply on time with any prehearing order of a presiding officer, the presiding officer shall issue an order to show cause for the following conditions:
   (i) That person should not be deemed to have waived the person's right to a hearing; and
   (ii) the proceedings should not be dismissed and the assessment should become final.

(B) If the order to show cause is not satisfied as required, the presiding officer shall order the proceedings summarily dismissed and issue a final order.

(C) If the person against whom the proposed civil penalty is assessed fails to appear at a hearing, that person shall be deemed to have waived the person's right to a hearing, and the presiding officer may assume, for purposes of the assessment, the following:
   (i) The occurrence of each violation listed in the notice of violation or order; and
   (ii) the truth of any facts alleged in the notice or order.

(D) In order to issue an initial order assessing the appropriate penalty when the person against whom the proposed civil penalty is assessed fails to appear at the hearing, a presiding officer shall either conduct an ex parte hearing or require the department to furnish proposed findings of fact and conclusions of law.

(E) Nothing in this article shall be construed to deprive the person against whom the penalty is assessed of the person's opportunity to have the department prove the violations charged in open hearing with confrontation and cross-examination of witnesses, except when that person fails to comply with a prehearing order or fails to appear at the scheduled hearing.

(7) Initial order of the presiding officer.

(A) The presiding officer shall incorporate, in the presiding officer's decision concerning the civil penalty, findings of fact on each of the four criteria set forth in paragraph (a)(3) and conclusions of law.

(B)(i) If the presiding officer finds that a violation occurred or that the fact of violation is uncontested, the presiding officer shall establish the amount of the penalty, but in so doing, the presiding officer shall adhere to the point system and conversion table contained in 30 CFR 845.13 and 845.14 adopted by reference in paragraphs (a)(3) and (4), except that the presiding
officer may waive the use of the point system if the presiding officer determines that a waiver would further abatement of violations of the state act. However, the presiding officer shall not waive the use of the point system and reduce the proposed assessment on the basis of an argument that a reduction in the proposed assessment could be used to abate other violations of the act.

(ii) If the presiding officer finds that no violation occurred, the presiding officer shall issue an order that the proposed assessment be returned to the petitioner.

(C) If the presiding officer finds that no violation occurred or reduces the amount of the civil penalty, the presiding officer shall order the department to remit the appropriate amount to the petitioner who made the payment, within 30 days of the department’s receipt of the order. If a timely petition for review of the presiding officer’s decision is filed with the secretary, no amount shall be remitted to the petitioner until a final determination has been made.

(D) If the presiding officer increases the amount of the civil penalty above that of the proposed assessment, the presiding officer shall order payment of the appropriate amount within 15 days after the order increasing the civil penalty is mailed.

(8) Appeals.

(A) Any party may petition the secretary to review and reconsider the initial order of a presiding officer concerning an assessment pursuant to K.A.R. 47-4-14a (d)(14) and (16), respectively.

(B) Any party may appeal the final order of the secretary pursuant to the Kansas judicial review act, K.S.A. 77-601 et seq., and amendments thereto. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-405c, 49-416a; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended December 1, 2006.)

30 CFR 845.11 How assessments are made. The Office shall review each notice of violation and cessation order in accordance with the assessment procedures described in 30 CFR 845.12, 845.13, 845.14, 845.15, and 845.16 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

30 CFR 845.12 When penalty will be assessed. (a) The Office shall assess a penalty for each cessation order.

(b) The Office shall assess a penalty for each notice of violation, if the violation is assigned 31 points or more under the point system described in 30 CFR 845.13.

(c) The Office may assess a penalty for each notice of violation assigned 30 points or less under the point system described in 30 CFR 845.13. In determining whether to assess a penalty, the Office shall consider the factors listed in 30 CFR 845.13(b).

30 CFR 845.13 Point system for penalties. (a) The Office shall use the point system described in this section to determine the amount of the penalty and, in the case of notices of violation, whether a mandatory penalty should be assessed as provided in 30 CFR 845.12(b).

(b) Points shall be assigned as follows:

(1) History of previous violations. The Office shall assign up to 30 points based on the history of previous violations. One point shall be assigned for each past violation contained in a notice of violation. Five points shall be assigned for each violation (but not a condition or
practice) contained in a cessation order. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular coal exploration or surface coal mining operation. Points shall be assigned as follows:

(i) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one year.

(ii) No violation for which the notice or order has been vacated shall be counted; and

(iii) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) Seriousness. The Office shall assign up to 30 points based on the seriousness of the violation, as follows:

(i) Probability of occurrence. The Office shall assign up to 15 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

<table>
<thead>
<tr>
<th>Probability of Occurrence</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>0</td>
</tr>
<tr>
<td>Insignificant</td>
<td>1-4</td>
</tr>
<tr>
<td>Unlikely</td>
<td>5-9</td>
</tr>
<tr>
<td>Likely</td>
<td>10-14</td>
</tr>
<tr>
<td>Occurred</td>
<td>15</td>
</tr>
</tbody>
</table>

(ii) Extent of potential or actual damage. The Office shall assign up to 15 points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

(A) If the damage or impact which the violated standard is designed to prevent would remain within the coal exploration or permit area, the Office shall assign zero to seven points, depending on the duration and extent of the damage or impact.

(B) If the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration or permit area, the Office shall assign eight to fifteen points, depending on the duration and extent of the damage or impact.

(iii) Alternative. In the case of a violation of an administrative requirement, such as a requirement to keep records, the Office shall, in lieu of paragraphs (b)(2) (i) and (ii), assign up to 15 points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) Negligence. (i) The Office shall assign up to 25 points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:
(A) A violation which occurs through no negligence shall be assigned no penalty points for negligence;
(B) A violation which is caused by negligence shall be assigned 12 points or less, depending on the degree of negligence;
(C) A violation which occurs through a greater degree of fault than negligence shall be assigned 13 to 25 points, depending on the degree of fault.

(ii) In determining the degree of negligence involved in a violation and the number of points to be assigned, the following definitions apply:
(A) *No negligence* means an inadvertent violation which was unavoidable by the exercise of reasonable care.
(B) *Negligence* means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act or this Chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care.
(C) *A greater degree of fault than negligence* means reckless, knowing, or intentional conduct.

(iii) In calculating points to be assigned for negligence, the acts of all persons working on the coal exploration or surface coal mining and reclamation site shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage.

(4) Good faith in attempting to achieve compliance.

(i) The Office shall add points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows:

<table>
<thead>
<tr>
<th>Degree of good faith</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rapid compliance</td>
<td>-1 to -10.</td>
</tr>
<tr>
<td>Normal compliance</td>
<td>0.</td>
</tr>
</tbody>
</table>

(ii) The following definitions shall apply under paragraph (b)(4)(i) of this section:
(A) Rapid compliance means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.
(B) Normal compliance means the person to whom the notice or order was issued abated the violation within the time given for abatement.

(iii) If the consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abated.
**30 CFR 845.14 Determination of amount of penalty.** The Office shall determine the amount of any civil penalty by converting the total number of points assigned under 30 CFR 845.13 to a dollar amount, according to the following schedule: (See schedule contained in K.A.R. 47-5-5a(a)(4) for Kansas’ schedule.)

**30 CFR 845.15 Assessment of separate violations for each day.** (a) The Office may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the Office shall consider the factors listed in 30 CFR 845.13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days and which is assigned more than 70 points under § 845.13(b), the Office shall assess a penalty for a minimum of two separate days.

(b) In addition to the civil penalty provided for in paragraph (a), whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to section 521(a) of the Act, a civil penalty of not less than $825 shall be assessed for each day during which such failure to abate continues, except that:

(1)(i) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under section 525(c) of the Act, after a determination that the person to whom the notice or order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the Office of Hearings and Appeals issues a final order with respect to the violation in question; and

(ii) If the person to whom the notice or order was issued initiates review proceedings under section 526 of the Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to section 526(c) of the Act, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court;

(2) Such penalty for the failure to abate the violation shall not be assessed for more than 30 days for each such violation. If the permittee has not abated the violation within the 30-day period, the Office shall take appropriate action pursuant to section 518(e), 518(f), 521(a)(4), or 521(c) of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate. [47 FR 35640, Aug. 16, 1982, as amended at 62 FR 63277, Nov. 28, 1997]

**30 CFR 845.16 Waiver of use of formula to determine civil penalty.** (a) The Director, upon his own initiative or upon written request received within 15 days of issuance of a notice of violation or a cessation order, may waive the use of the formula contained in 30 CFR 845.13 to set the civil penalty, if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the Director shall not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the Act, this chapter, any applicable program, or any condition of any permit or exploration approval. The basis for every waiver shall be fully explained and documented in the records of the case.
(b) If the Director waives the use of the formula, he or she shall use the criteria set forth in 30 CFR 845.13(b) to determine the appropriate penalty. When the Director has elected to waive the use of the formula, he or she shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

30 CFR 845.17 Procedures for assessment of civil penalties. (a) Within 15 days of service of a notice or order, the person to whom it was issued may submit written information about the violation to the Office and to the inspector who issued the notice of violation or cessation order. The Office shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) The Office shall serve a copy of the proposed assessment and of the work sheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, or by any alternative means consistent with the rules governing service of a summons or complaint under rule 4 of the Federal Rules of Civil Procedure, within 30 days of the issuance of the notice or order.

(1) If a copy of the proposed assessment and work sheet or the certified mail is tendered at the address of that person required under 30 CFR 816.11, or at any address at which that person is in fact located, and he or she refuses to accept delivery of or to collect such documents, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

(2) Failure by the Office to serve any proposed assessment within 30 days shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed--
   (i) Proves actual prejudice as a result of the delay; and,
   (ii) Makes a timely objection to the delay. An objection shall be timely only if made in the normal course of administrative review.

(c) Unless a conference has been requested, the Office shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The Office shall serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in paragraph (b), within 30 days after the date the violation is abated. [47 FR 35640, Aug. 16, 1982, as amended at 56 FR 28446, June 20, 1991]

30 CFR 845.18 Procedures for assessment conference. (a) The Office shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within 30 days from the date the proposed assessment or reassessment is received.

(b)(1) The Office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by section 554 of title 5 of the United States Code, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date the conference request is received or the end of the abatement period, whichever is later: Provided, That a failure by the Office to hold such conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.
(2) The Office shall post notice of the time and place of the conference at the State or field office closest to the mine at least 5 days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The conference officer shall consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer shall either:
   (i) Settle the issues, in which case a settlement agreement shall be prepared and signed by the conference officer on behalf of the Office and by the person assessed; or
   (ii) Affirm, raise, lower, or vacate the penalty.

(4) An increase or reduction of a proposed civil penalty assessment of more than 25 percent and more than $500 shall not be final and binding on the Secretary, until approved by the Director or his or her designee.

(c) The conference officer shall promptly serve the person assessed with a notice of his or her action in the manner provided in 30 CFR 845.17(b) and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

(d)(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by the Office within 30 days after the date of signing, the Office may enforce the agreement or rescind it and proceed according to paragraph (b)(3)(ii) within 30 days from the date of the rescission.

(e) The conference officer may terminate the conference when he or she determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

(f) At formal review proceedings under sections 518, 521(a)(4), and 525 of the Act, no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness. [47 FR 35640, Aug. 16, 1982, as amended at 53 FR 3675, Feb. 8, 1988; 56 FR 10063, Mar. 8, 1991]

30 CFR 845.19 Request for hearing. (a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Office of Hearings and Appeals (to be held in escrow as provided in paragraph (b) of this section) within 30 days from receipt of the proposed assessment or reassessment or 30 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under 30 CFR 843.16.

(b) The Office of Hearings and Appeals shall transfer all funds submitted under paragraph (a) of this section to the Office, which shall hold them in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in 30 CFR 845.20. [47 FR 35640, Aug. 16, 1982, as amended at 56 FR 10063, Mar. 8, 1991]
30 CFR 846.12 When an individual civil penalty may be assessed. (a) Except as provided in paragraph (b) of this section, the Office may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.

(b) The Office shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the Office to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days.

30 CFR 846.14 Amount of individual civil penalty. (a) In determining the amount of an individual civil penalty assessed under §. 846.12, the Office shall consider the criteria specified in section 518(a) of the Act, including:

(1) The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operation;

(2) The seriousness of the violation, failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and

(3) The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.

(b) The penalty shall not exceed $5,500 for each violation. Each day of a continuing violation may be deemed a separate violation and the Office may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the Secretary, until abatement or compliance is achieved. [53 FR 3675, Feb. 8, 1988, as amended at 62 FR 63277, Nov. 28, 1997]

30 CFR 846.17 Procedure for assessment of individual civil penalty. (a) Notice. The Office shall serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

(b) Final order and opportunity for review. The notice of proposed individual civil penalty assessment shall become a final order of the Secretary 30 days after service upon the individual unless:

(1) The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (Phone: 703-235-3800), in accordance with 43 CFR 4.1300 et seq.; or

(2) The Office and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.

(c) Service. For purposes of this section, service shall be performed on the individual to be assessed an individual civil penalty, by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice of proposed assessment.
and included information or of the certified mail and shall not be deemed incomplete because of refusal to accept. [53 FR 3675, Feb. 8, 1988, as amended at 56 FR 28446, June 20, 1991]

**30 CFR 846.18 Payment of penalty.** (a) No abatement or appeal. If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty shall be due upon issuance of the final order.

(b) Appeal. If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with 43 CFR 4.1300 et seq., the penalty shall be due upon issuance of a final administrative order affirming, increasing or decreasing the proposed penalty.

(c) Abatement agreement. Where the Office and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the Office stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

**K.A.R. 47-5-16. Civil penalties; final assessment and payment of civil penalty.** (a) If any person to whom a notice of violation or cessation order is issued fails to request a hearing, the proposed assessment shall become a final order of the secretary. The assessment contained in the final order shall be due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the secretary, the proposed civil penalty assessment shall be held in escrow until completion of the review. Otherwise, subject to subsection (c) of this regulation, the escrowed funds shall be transferred to the department in payment of the civil penalty, and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed civil penalty under these regulations, all or part of the escrowed amount shall be refunded to the person assessed within 30 days of receipt of the order and shall include any interest that has accrued from the date of payment into escrow to the date of the refund.

(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the department within 15 days after the order is mailed to that person. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405c; effective May 1, 1984; amended May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997.)
K.A.R. 47-6-1. Permit review. (a) Each permit issued and outstanding during the term of the permit shall be reviewed by the secretary or secretary's designee not later than the middle of that term. Reasonable revision or modification of the permit provisions may be ordered at any time to ensure compliance with the laws and regulations. A copy of the order and the written findings shall be sent to the operator. The order shall be subject to K.S.A. 49-407 (d) and K.S.A. 49-422a, and amendments thereto.

(b) Each permit authorizing one or more variances that is issued in accordance with K.A.R. 47-3-42 (a)(41) shall be reviewed no later than three years from the date of issuance.

(c) Each permit authorizing one or more experimental practices that is issued in accordance with K.A.R. 47-3-42 (a)(39) shall be reviewed as specified in the permit or at least every two and a half years from the date of issuance as required by the department, in accordance with K.A.R. 47-3-42 (a)(39).

(d) After the review required by this regulation or at any time, the reasonable revision of any permit may be required by the secretary, by order, in accordance with K.A.R. 47-6-2 to ensure compliance with the state act and the regulatory program.

(e) Each order of the department requiring revision of a permit shall be based upon written findings and shall be subject to the provisions of administrative and judicial review in K.S.A. 49-407 (d), K.S.A. 49-416a, K.S.A. 49-422a, and amendments thereto, and article 4 of these regulations. A copy of each order shall be sent to the permittee.

(f) Any permit may be suspended or revoked in accordance with articles 5 and 15 of these regulations. (Authorized by K.S.A. 49-405 and 49-410; implementing K.S.A. 49-406 and 49-410; effective May 1, 1980; amended Feb. 11, 1991; amended May 2, 1997; amended December 1, 2006.)

K.A.R. 47-6-2. Permit revision. (a) Each application made by an operator to revise an existing permit shall be submitted at least 60 days before the date on which the operator desires to have the approval of the secretary.

(b) If the application for permit revision contains significant alterations or departures from the method of mining or reclamation operations covered by the original permit, the permittee shall meet all the application requirements, which shall include all requests from the secretary or secretary's designee for relevant information. Whether or not a significant alteration or departure is involved shall be determined by the secretary or the secretary’s designee on a case-by-case basis upon review, unless a determination is requested in writing by the operator upon or before filing the application. On receiving this request, the operator shall be advised by the secretary or secretary's designee if a significant alteration or departure is involved for the purpose of submitting an application.

(c) Each application for permit revision shall be accompanied by a map, if a map is required, that meets the general map requirements of these regulations. The proposed revision shall be described in detail and supported by the technical data necessary to establish the impact and consequences of the proposed revision on the surface coal mining and reclamation operation, the environment, and public health and safety. Additional information may be requested when necessary to make an evaluation of the impact.
(d) No application for a permit revision shall be approved unless the applicant demonstrates and the regulatory authority finds that all of the following conditions are met:

(1) The reclamation required by the state act and the regulatory program can be accomplished.

(2) The applicable requirements under K.A.R. 47-3-42 (a)(55) pertinent to the revision are met.

(3) The application for revision meets all requirements of the state act and the regulatory program.

(e) Each extension to the area covered by the permit, except incidental boundary revisions, shall be made through an application for a new permit. (Authorized by K.S.A. 49-405, 49-410; implementing K.S.A. 49-406, 49-410; effective May 1, 1980; amended Feb. 11, 1991; amended May 2, 1997; amended December 1, 2006.)

K.A.R. 47-6-3. Permit renewals; adoption by reference. (a) The section titled permit renewals, 30 CFR 774.15, as in effect on July 1, 2001, is hereby adopted by reference, except as otherwise indicated in this regulation. Subsection (c)(3) of 30 CFR 774.15 shall be deleted.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1) “Subchapter J of this chapter” shall be replaced by “article 8 of these regulations.”

(2) “Act” shall be replaced by “state act.”

(3) “Part 775 of this chapter” shall be replaced by “K.S.A. 49-407 (d), K.S.A. 49-416a, K.S.A. 49-422a, and amendments thereto, and article 4 of these regulations.”

(4) “§ 774.13” shall be replaced by “K.A.R. 47-6-2.”

(5) “§ 800.60 of this chapter” shall be replaced by “K.A.R. 47-8-9 (a)(15).”

(6) “§ 778.21 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(10).”

(7) “§§ 773.6 and 773.19(b) of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(46) and (57).”


30 CFR 774.15 Permit renewals. (a) General. A valid permit, issued pursuant to an approved regulatory program, shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(b) Application requirements and procedures. (1) An application for renewal of a permit shall be filed with the regulatory authority at least 120 days before expiration of the existing permit term.

(2) An application for renewal of a permit shall be in the form required by the regulatory authority and shall include at a minimum--

(i) The name and address of the permittee, the term of the renewal requested, and the permit number or other identifier;
(ii) Evidence that a liability insurance policy or adequate self-insurance under § 800.60 of this chapter will be provided by the applicant for the proposed period of renewal;

(iii) Evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested, as well as any additional bond required by the regulatory authorities pursuant to subchapter J of this chapter;

(iv) A copy of the proposed newspaper notice and proof of publication of same, as required by § 778.21 of this chapter; and

(v) Additional revised or updated information required by the regulatory authority.

(3) Applications for renewal shall be subject to the requirements of public notification and public participation contained in §§ 773.6 and 773.19(b) of this chapter.

(4) If an application for renewal includes any proposed revisions to the permit, such revisions shall be identified and subject to the requirements of § 774.13.

(c) Approval process--(1) Criteria for approval. The regulatory authority shall approve a complete and accurate application for permit renewal, unless it finds, in writing that--

(i) The terms and conditions of the existing permit are not being satisfactorily met;

(ii) The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards of the Act and the regulatory program;

(iii) The requested renewal substantially jeopardizes the operator's continuing ability to comply with the Act and the regulatory program on existing permit areas;

(iv) The operator has not provided evidence of having liability insurance or self-insurance as required in § 800.60 of this chapter;

(v) The operator has not provided evidence that any performance bond required to be in effect for the operation will continue in full force and effect for the proposed period of renewal, as well as any additional bond the regulatory authority might require pursuant to subchapter J of this chapter; or

(vi) Additional revised or updated information required by the regulatory authority has not been provided by the applicant.

(2) Burden of proof. In the determination of whether to approve or deny a renewal of a permit, the burden of proof shall be on the opponents of renewal.

(3) Alluvial valley floor variance. If the surface coal mining and reclamation operation authorized by the original permit was not subject to the standards contained in sections 510(b)(5) (A) and (B) of the Act and § 785.19 of this chapter, because the permittee complied with the exceptions in the proviso to section 510(b)(5) of the Act, the portion of the application for renewal of the permit that addresses new land areas previously identified in the reclamation plan for the original permit shall not be subject to the standards contained in sections 510(b)(5) (A) and (B) of the Act and § 785.19 of this chapter.

(d) Renewal term. Any permit renewal shall be for a term not to exceed the period of the original permit established under § 773.19.

(e) Notice of decision. The regulatory authority shall send copies of its decision to the applicant, to each person who filed comments or objections on the renewal, to each party to any informal conference held on the permit renewal, and to OSM if OSM is not the regulatory authority.
(f) Administrative and judicial review. Any person having an interest which is or may be adversely affected by the decision of the regulatory authority shall have the right to administrative and judicial review set forth in part 775 of this chapter. [48 FR 44395, Sept. 28, 1983, as amended at 65 FR 79668, Dec. 19, 2000]

K.A.R. 47-6-4. Permit transfers, assignments, and sales; adoption by reference. (a) Each application for a new permit required for a person succeeding by transfer, sale, or assignment of rights granted under a permit shall be filed with the secretary not later than 30 days after that succession is approved by the secretary.

(b) Transfer, assignment, or sale of permit rights, 30 CFR 774.17, as in effect on July 1, 2001, is adopted by reference, except as otherwise indicated in this regulation.

(c) The following phrases shall be replaced with the phrases specified in this subsection wherever the phrases appear in the federal regulations adopted by reference in this regulation:

1. “This subchapter” shall be replaced by “these regulations.”
2. “Part 778 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(1) through (11).”
3. “Subchapter J of this chapter” shall be replaced by “article 8 of these regulations.”
4. “Act” shall be replaced by “state act.”
5. “§ 773.12 and 773.15 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(52) and (55).” (Authorized by K.S.A. 49-405; implementing K.S.A. 49-410; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended December 1, 2006.)

30 CFR 774.17 Transfer, assignment, or sale of permit rights. (a) General. No transfer, assignment, or sale of rights granted by a permit shall be made without the prior written approval of the regulatory authority.

(b) Application requirements. An applicant for approval of the transfer, assignment, or sale of permit rights shall--

1. Provide the regulatory authority with an application for approval of the proposed transfer, assignment, or sale including--
   (i) The name and address of the existing permittee and permit number or other identifier;
   (ii) A brief description of the proposed action requiring approval; and
   (iii) The legal, financial, compliance, and related information required by part 778 of this chapter for the applicant for approval of the transfer, assignment, or sale of permit rights.

2. Advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the permittee, the permit number or other identifier, the geographic location of the permit, and the address to which written comments may be sent;

3. Obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations, as required under subchapter J of this chapter.

(c) Public participation. Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the regulatory authority within a time specified by the regulatory authority.

(d) Criteria for approval. The regulatory authority may allow a permittee to transfer, assign, or sell permit rights to a successor, if it finds in writing that the successor--
(1) Is eligible to receive a permit in accordance with §§ 773.12 and 773.15 of this chapter;
(2) Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee, as required by subchapter J of this chapter; and
(3) Meets any other requirements specified by the regulatory authority.

(e) Notification. (1) The regulatory authority shall notify the permittee, the successor, commenters, and OSM, if OSM is not the regulatory authority, of its findings.
   (2) The successor shall immediately provide notice to the regulatory authority of the consummation of the transfer, assignment, or sale of permit rights.

(f) Continued operation under existing permit. The successor in interest shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining and reclamation operations in full compliance with the Act, the regulatory program, and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit as provided in this subchapter. [48 FR 44395, Sept. 28, 1983, as amended at 65 FR 79668, Dec. 19, 2000]

K.A.R. 47-6-6. Permit conditions; adoption by reference. (a) The section titled permit conditions, 30 CFR 773.17, as in effect on July 1, 2001, is adopted by reference, except as otherwise indicated in this regulation.

(b) The following phrases shall be replaced with the phrases specified in this subsection wherever the phrases appear in the federal regulation adopted by reference in this regulation:
   (1) “Subchapter J of this chapter” shall be replaced by “article 8 of these regulations.”
   (2) “Act” shall be replaced by “state act.”
   (3) “Parts 840 and 842” shall be replaced by “K.A.R. 47-15-1a.”
   (4) “§ 701.11(d) and subchapter B or K of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(65) and either K.A.R. 47-9-4 or K.A.R. 47-9-1.”
   (5) “Subchapter R of this chapter” and “that subchapter” shall be replaced by “the office of surface mining reclamation and enforcement.”
   (6) “§§ 842.13 and 840.12 of this chapter” shall be replaced by “K.A.R. 47-15-1 a(a)(4).”


30 CFR 773.17 Permit conditions. Each permit issued by the regulatory authority shall be subject to the following conditions:

(a) The permittee shall conduct surface coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to subchapter J of this chapter.

(b) The permittee shall conduct all surface coal mining and reclamation operations only as described in the approved application, except to the extent that the regulatory authority otherwise directs in the permit.

(c) The permittee shall comply with the terms and conditions of the permit, all applicable performance standards of the Act, and the requirements of the regulatory program.
(d) Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee shall allow the authorized representatives of the Secretary and the State regulatory authority to--

   (1) Have the right of entry provided for in §§ 842.13 and 840.12 of this chapter; and
   (2) Be accompanied by private persons for the purpose of conducting an inspection in accordance with parts 840 and 842, when the inspection is in response to an alleged violation reported to the regulatory authority by the private person.

(e) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition or the permit, including, but not limited to--

   (1) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;
   (2) Immediate implementation of measures necessary to comply; and
   (3) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

(f) As applicable, the permittee shall comply with § 701.11(d) and subchapter B or K of this chapter for compliance, modification, or abandonment of existing structures.

(g) The operator shall pay all reclamation fees required by subchapter R of this chapter for coal produced under the permit for sale, transfer or use, in the manner required by that subchapter. [48 FR 44391, Sept. 28, 1983, as amended at 49 FR 27499, July 5, 1984; 54 FR 8991, Mar. 2, 1989; 62 FR 19459, Apr. 21, 1997; 65 FR 79663, Dec. 19, 2000]

K.A.R. 47-6-7. Permit suspension or revocation. (a) A proceeding to suspend or revoke a permit shall begin with a show cause order issued by the secretary to the permittee. The show cause order shall set forth the following:

   (1) a list of the unwarranted or willful violations that contribute to a pattern of violations;
   (2) a copy of each order or notice containing one or more of the violations listed;
   (3) the basis for determining the existence of a pattern of violations; and
   (4) the recommendation that the permit be suspended or revoked and the length and terms of the recommended suspension.

(b) Answer. The permittee shall have 30 days after receipt of the order within which to file an answer.

(c) Contents of answer. The permittee's answer to a show cause order shall set forth the following:

   (1) the reasons, in detail, why a pattern of violations does not exist or has not existed, including each reason for contesting the following:
      (A) the fact of any violation alleged by the department;
      (B) the willfulness of any violation; or
      (C) whether or not any violation was caused by the unwarranted failure of the permittee.
   (2) each mitigating factor the permittee believes exists in determining the terms of the revocation or the length and terms of the suspension;
   (3) any other alleged relevant facts; and
   (4) whether or not a hearing on the show cause order is desired.

(d) Burden of proof in suspension or revocation proceedings. In proceedings to suspend or revoke a permit, the department shall have the burden of going forward to establish a prima
facie case for suspension or revocation of the permit. The permittee shall have the ultimate burden of persuasion that the permit should not be suspended or revoked.

(e) Procedure. Except as provided for in this regulation, the procedure set forth in K.A.R. 47-4-14a(d) shall be followed.

(f) Decision by the presiding officer.

(1) After determining that a pattern of violations exists or has existed, the presiding officer shall order the permit either suspended or revoked. It shall not be required that the presiding officer find that all the violations listed in the show cause order occurred in order to establish a pattern. However, the presiding officer shall find that sufficient violations occurred in order to establish a pattern.

(2) The minimum suspension period imposed shall be three working days, except when the presiding officer finds that this would result in manifest injustice and would not further the purposes of the act. The presiding officer may impose preconditions to lifting the suspension.

(3) The decision of the presiding officer shall be issued within 20 days of the following:
(A) after the closing date of the hearing record; or
(B) after receipt of the answer, if no hearing is requested by any party and the presiding officer determines that no hearing is necessary.

(4) At any stage of a suspension or revocation proceeding, the parties may enter into a settlement, subject to the approval of the presiding officer.

(g) Summary judgment. When the permittee fails to appear at a hearing, these conditions apply:

(1) the permittee shall be deemed to have waived his right to a hearing;
(2) the presiding officer may make these assumptions for purposes of the proceeding:
   (A) each violation listed in the order occurred;
   (B) each violation was willfully or negligently caused by the permittee; and
   (C) a pattern of violations exists.
(3) the presiding officer shall either conduct an ex-parte hearing or require the department to furnish proposed findings of fact and conclusions of law in order to issue an initial decision.

(h) Appeals.

(1) Any party may appeal the initial order by filing a notice of appeal with the secretary within 15 days after receipt of the order.

(2) Except as provided for in this regulation, this appeal shall follow the procedure in K.A.R. 47-4-14a(d)(14). The secretary shall act immediately to issue an expedited briefing schedule. The decision of the secretary shall be issued within 60 days after the date the record is closed by the secretary or, the date the answer is filed.

(3) Any further appeal from the secretary’s final order shall be taken pursuant to the Kansas judicial review act, K.S.A. 77-601 et seq. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-406; effective Feb. 11, 1991; amended May 2, 1997.)

K.A.R. 47-6-8. Termination of jurisdiction; adoption by reference. (a) The section titled applicability, 30 CFR 700.11, as in effect on July 1, 2001, is adopted by reference, except as otherwise indicated in this regulation, and subsections (a)(1), (a)(5), and (b) of 30 CFR 700.11
shall be deleted.

(b) The following phrases shall be replaced with the phrases specified in this subsection wherever the phrases appear in the federal regulation adopted by reference in this regulation:

(1) “The State or Federal program counterpart to part 800 of this chapter” shall be replaced by “article 8 of these regulations.”

(2) “This chapter” shall be replaced by “these regulations.”

(3) “Subchapter B of this chapter” shall be replaced by “K.A.R. 47-9-4.”

(4) “Part 707 of this chapter” shall be replaced by “K.A.R. 47-6-9.”

(5) “Part 702 of this chapter” shall be replaced by “K.A.R. 47-6-10.” (Authorized by and implementing K.S.A. 49-405; effective Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended December 1, 2006.)

30 CFR 700.11 Applicability. (a) Except as provided in paragraph (b) of this section, this chapter applies to all coal exploration and surface coal mining and reclamation operations, except:

(1) The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him or her. Noncommercial use does not include the extraction of coal by one unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;

(2) The extraction of 250 tons of coal or less by a person conducting a surface coal mining and reclamation operation. A person who intends to remove more than 250 tons is not exempted;

(3) The extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction in accordance with part 707 of this chapter;

(4) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 ½ percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale in accordance with part 702 of this chapter.

(5) Coal exploration on lands subject to the requirement of 43 CFR parts 3480-3487.

(b) This chapter does not apply to the extraction of coal for commercial purposes where the surface coal mining and reclamation operation, together with any related operations, has or will have an affected area of two acres or less. For purposes of this paragraph:

(1) Where a segment of a road is used for access or coal haulage by more than one surface coal mining operation, the entire segment shall be included in the affected area of each of those operations; provided, that two or more operations which are deemed related pursuant to paragraph (b)(2) of this section shall be considered as one operation for purposes of this paragraph.

(2) Except as provided in paragraph (b)(3) of this section, surface coal mining operations shall be deemed related if they occur within twelve months of each other, are physically related, and are under common ownership or control.

(i) Operations shall be deemed physically related if drainage from both operations flows into the same watershed at or before a point within five aerial miles of either operation.

(ii) Operations shall be deemed under common ownership or control if they are owned or controlled, directly or indirectly, by or on behalf of:

(A) The same person;
(B) Two or more persons, one of whom controls, is under common control with, or is controlled by the other; or

(C) Members of the same family and their relatives, unless it is established that there is no direct or indirect business relationship between or among them;

(iii) For purposes of this paragraph, control means: ownership of 50 percent or more of the voting shares of, or general partnership in, an entity; any relationship which gives one person the ability in fact or law to direct what the other does; or any relationship which gives one person express or implied authority to determine the manner in which coal at different sites will be mined, handled, sold or disposed of.

(3) Notwithstanding the provisions of paragraph (b)(2) of this section, the regulatory authority may determine, in accordance with the procedures applicable to requests for determination of exemption pursuant to paragraph (c) of this section, that two or more surface coal mining operations shall not be deemed related if, considering the history and circumstances relating to the coal, its location, the operations at the sites in question, all related operations and all persons mentioned in paragraph (b)(2)(ii) of this section, the regulatory authority concludes in writing that the operations are not of the type which the Act was intended to regulate and that there is no intention on the part of such operations or persons to evade the requirements of the Act or the applicable regulatory program.

(4) The exemption provided by paragraph (b) of this section applies only to operations with an affected area of less than two acres where coal is being extracted for commercial purposes and to surface coal mining operations within that affected area incidental to such operations.

(c) The regulatory authority may on its own initiative and shall, within a reasonable time of a request from any person who intends to conduct surface coal mining operations, make a written determination whether the operation is exempt under this section. The regulatory authority shall give reasonable notice of the request to interested persons. Prior to the time a determination is made, any person may submit, and the regulatory authority shall consider, any written information relevant to the determination. A person requesting that an operation be declared exempt shall have the burden of establishing the exemption. If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemption and relied upon the determination shall not be cited for violations which occurred prior to the date of the reversal.

(d)(1) A regulatory authority may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, when:

(i) The regulatory authority determines in writing that under the initial program, all requirements imposed under subchapter B of this chapter have been successfully completed; or

(ii) The regulatory authority determines in writing that under the permanent program, all requirements imposed under the applicable regulatory program have been successfully completed or, where a performance bond was required, the regulatory authority has made a final decision in accordance with the State or Federal program counterpart to part 800 of this chapter to release the performance bond fully.

(2) Following a termination under paragraph (d)(1) of this section, the regulatory authority shall reassert jurisdiction under the regulatory program over a site if it is demonstrated that the bond release or written determination referred to in paragraph (d)(1) of this section was

Effective Date Note: At 52 FR 21229, June 4, 1987, paragraph (b) of § 700.11 was suspended insofar as it excepts from the applicability of 30 CFR chapter VII:

(1) Any surface coal mining operations commencing on or after June 6, 1987; and
(2) Any surface coal mining operations conducted on or after November 8, 1987.

K.A.R. 47-6-9. Exemption for coal extraction incident to government- financed highway or other construction; adoption by reference. Exemption for coal extraction incident to government-financed highway or other construction; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2001, are adopted by reference, except as otherwise specified in this regulation:

(1) Responsibility, 30 CFR 707.4;
(2) definitions, 30 CFR 707.5;
(3) applicability, 30 CFR 707.11, except that the phrase “Federal or Federal lands" shall be deleted; and
(4) information to be maintained on site, 30 CFR 707.12.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1) “Act" shall be replaced by “state act."
(2) “This chapter" shall be replaced by “these regulations."
(3) “30 CFR 707.12" shall be replaced by “K.A.R. 47-6-9 (a)(4).”
(4) “Title IV" shall be replaced by “K.S.A. 49-428 and amendments thereto.”

(Authorized by and implementing K.S.A. 49-405; effective Feb. 11, 1991; amended May 2, 1997; amended December 1, 2006.)

30 CFR 707.4 Responsibility. (a) The regulatory authority is responsible for enforcing the requirements of this part.

(b) Any person conducting coal extraction as an incidental part of government-financed construction is responsible for possessing, on the site of the extraction operation, the documentation required by 30 CFR 707.12.

30 CFR 707.5 Definitions. As used in this part, the following terms have the specified meaning:

Extraction of coal as an incidental part means the extraction of coal which is necessary to enable the construction to be accomplished. For purposes of this part, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of the Act and this chapter.

Government financing agency means a Federal, State, county, municipal, or local unit of government, or a department, bureau, agency or office of the unit which, directly or through another unit of government, finances construction.
Government-financed construction means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Title IV of the Act. Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments does not qualify as government-financed construction. [44 FR 15322, Mar. 13, 1979, as amended at 64 FR 7482, Feb. 12, 1999]

30 CFR 707.11 Applicability. (a) Coal extraction which is an incidental part of government-financed construction is exempt from the Act and this chapter.

(b) Any person who conducts or intends to conduct coal extraction which does not satisfy paragraph (a) of this section shall not proceed until a permit has been obtained from the regulatory authority under a State, Federal or Federal lands program.

30 CFR 707.12 Information to be maintained on site. Any person extracting coal incident to government-financed highway or other construction who extracts more than 250 tons of coal or affects more than two acres shall maintain, on the site of the extraction operation and available for inspection, documents which show--

(a) A description of the construction project;

(b) The exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and

(c) The government agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

K.A.R. 47-6-10. Exemption for coal extraction incidental to the extraction of other minerals; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2001, are adopted by reference, except as otherwise specified in this regulation:

(1) Scope, 30 CFR 702.1;

(2) definitions, 30 CFR 702.5;

(3) application requirements and procedures, 30 CFR 702.11, except that subsection (b) shall be deleted. The text “after April 1, 1990, under a Federal program or on Indian lands, or after the effective date of counterpart provisions in a state program” shall be replaced by “under the state act”;

(4) contents of application for exemption, 30 CFR 702.12;

(5) public availability of information, 30 CFR 702.13;

(6) requirements for exemption, 30 CFR 702.14;

(7) conditions of exemption and right of inspection and entry, 30 CFR 702.15. However, “§ 702.11(b) or” and “for Federal programs and on Indian lands or in accordance with counterpart provisions when included in State programs” shall be deleted;

(8) stockpiling of minerals, 30 CFR 702.16;

(9) revocation and enforcement, 30 CFR 702.17; and

(10) reporting requirements, 30 CFR 702.18.

(b) The following phrases and citations shall be replaced with the phrases and citations
specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1) “Act” shall be replaced by “state act.”
(2) “Section 701(28) of the act” shall be replaced by “K.S.A. 49-431, and amendments thereto.”
(3) “§ 702.18 of this part” and “§ 702.18” shall be replaced by “K.A.R. 47-6-10 (a)(10).”
(4) “§ 702.16” shall be replaced by “K.A.R. 47-6-10 (a)(8).”
(5) “§ 702.12(g)” shall be replaced by “K.A.R. 47-6-10 (a)(4).”
(6) The following text shall be replaced by “K.A.R. 47-4-14a”: “43 CFR 4.1280 when OSM is the regulatory authority or under corresponding State procedures when a State is the regulatory authority” and “43 CFR 4.1280 or under corresponding State procedures.”
(7) “§ 702.11(e)(3)” shall be replaced by “K.A.R. 47-6-10 (a)(3).”
(8) “Secretary” shall be replaced by “secretary, Kansas department of health and environment.”
(9) “§ 702.5 of this part” shall be replaced by “K.A.R. 47-6-10 (a)(2).” (Authorized by and implementing K.S.A. 49-405; effective Feb. 11, 1991; amended May 2, 1997; amended December 1, 2006.)

30 CFR 702.1 Scope. This part implements the exemption contained in section 701(28) of the Act concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 ½ percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale.

30 CFR 702.5 Definitions. As used in this part, the following terms have the meaning specified, except where otherwise indicated:

(a) Cumulative measurement period means the period of time over which both cumulative production and cumulative revenue are measured.
   (1) For purposes of determining the beginning of the cumulative measurement period, subject to regulatory authority approval, the operator must select and consistently use one of the following:
      (i) For mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977, or
      (ii) For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier.
   (2) For annual reporting purposes pursuant to § 702.18 of this part, the end of the period for which cumulative production and revenue is calculated is either
      (i) For mining areas where coal or other minerals were extracted prior to April 1, 1990, March 31, 1990, and every March 31 thereafter; or
      (ii) For mining areas where extraction of coal or other minerals commenced on or after April 1, 1990, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter.
(b) Cumulative production means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by § 702.16.

(c) Cumulative revenue means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

(d) Mining area means an individual excavation site or pit from which coal, other minerals and overburden are removed.

(e) Other minerals means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

30 CFR 702.11 Application requirements and procedures. (a)(1) Any person who plans to commence or continue coal extraction after April 1, 1990, under a Federal program or on Indian lands, or after the effective date of counterpart provisions in a State program, in reliance on the incidental mining exemption shall file a complete application for exemption with the regulatory authority for each mining area.

(2) Following incorporation of an exemption application approval process into a regulatory program, a person may not commence coal extraction based upon the exemption until the regulatory authority approves such application, except as provided in paragraph (e)(3) of this section.

(b) Existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to April 1, 1990, in a State with a Federal program or on Indian lands, or prior to the effective date of counterpart provisions in a State program, may continue mining operations for 60 days after such effective date. Coal extraction may not continue after such 60-day period unless that person files an administratively complete application for exemption with the regulatory authority. If an administratively complete application is filed within 60 days, the person may continue extracting coal in reliance on the exemption beyond the 60-day period until the regulatory authority makes an administrative decision on such application.

(c) Additional information. The regulatory authority shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.

(d) Public comment period. Following publication of the newspaper notice required by § 702.12(g), the regulatory authority shall provide a period of no less than 30 days during which time any person having an interest which is or may be adversely affected by a decision on the application may submit written comments or objections.

(e) Exemption determination. (1) No later than 90 days after filing of an administratively complete application, the regulatory authority shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this part, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

(2) The determination of exemption shall be based upon information contained in the application and any other information available to the regulatory authority at that time.

(3) If the regulatory authority fails to provide an applicant with the determination as specified in paragraph (e)(1) of this section, an applicant who has not begun may commence coal
extraction pending a determination on the application unless the regulatory authority issues an interim finding, together with reasons therefore, that the applicant may not begin coal extraction.

(f) Administrative review. (1) Any adversely affected person may request administrative review of a determination under paragraph (e) of this section within 30 days of the notification of such determination in accordance with procedures established under 43 CFR 4.1280 when OSM is the regulatory authority or under corresponding State procedures when a State is the regulatory authority.

(2) A petition for administrative review filed under 43 CFR 4.1280 or under corresponding State procedures shall not suspend the effect of a determination under paragraph (e) of this section.

30 CFR 707.12 Information to be maintained on site. Any person extracting coal incident to government-financed highway or other construction who extracts more than 250 tons of coal or affects more than two acres shall maintain, on the site of the extraction operation and available for inspection, documents which show--

(a) A description of the construction project;
(b) The exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and
(c) The government agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

30 CFR 702.13 Public availability of information. (a) Except as provided in paragraph (b) of this section, all information submitted to the regulatory authority under this part shall be made immediately available for public inspection and copying at the local offices of the regulatory authority having jurisdiction over the mining operations claiming exemption until at least three years after expiration of the period during which the subject mining area is active.

(b) The regulatory authority may keep information submitted to the regulatory authority under this part confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this part.

(c) Information requested to be held as confidential under paragraph (b) of this section shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

30 CFR 702.14 Requirements for exemption. (a) Activities are exempt from the requirements of the Act if all of the following are satisfied:

(1) The cumulative production of coal extracted from the mining area determined annually as described in this paragraph does not exceed 16 ½ percent of the total cumulative production of coal and other minerals removed during such period for purposes of bona fide sale or reasonable commercial use.
(2) Coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.

(3) The cumulative revenue derived from the coal extracted from the mining area determined annually shall not exceed 50 percent of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

(b) Persons seeking or that have obtained an exemption from the requirements of the Act shall comply with the following:

(1) Each other mineral upon which an exemption under this part is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard.

(2) If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

30 CFR 702.15 Conditions of exemption and right of inspection and entry. A person conducting activities covered by this part shall:

(a) Maintain on-site or at other locations available to authorized representatives of the regulatory authority and the Secretary information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the regulatory authority;

(b) Notify the regulatory authority upon the completion of the mining operation or permanent cessation of all coal extraction activities; and

(c) Conduct operations in accordance with the approved application or when authorized to extract coal under § 702.11(b) or § 702.11(e)(3) prior to submittal or approval of an exemption application, in accordance with the standards of this part for Federal programs and on Indian lands or in accordance with counterpart provisions when included in State programs.

(d) Authorized representatives of the regulatory authority and the Secretary shall have the right to conduct inspections of operations claiming exemption under this part.

(e) Each authorized representative of the regulatory authority and the Secretary conducting an inspection under this part:

(1) Shall have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;

(2) May, at reasonable times and without delay, have access to and copy any records relevant to the exemption; and

(3) Shall have a right to gather physical and photographic evidence to document conditions, practices or violations at a site.
(f) No search warrant shall be required with respect to any activity under paragraphs (d) and (e) of this section, except that a search warrant may be required for entry into a building.

30 CFR 702.16  Stockpiling of minerals. (a) Coal. Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity or use:
   (1) Up to an amount equaling a 12-month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the two preceding years; or
   (2) For a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a 12-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month.

   (b) Other minerals. (1) The regulatory authority shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this part if the operator fails to maintain adequate and verifiable records of the mining area of origin, the disposition of stockpiles or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

   (2) The regulatory authority may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this part if:
      (i) The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and
      (ii) Except as provided in paragraph (b)(3) of this section, the stockpiled other minerals do not exceed a 12-month supply of the mineral required for future sales as approved by the regulatory authority on the basis of the exemption application.

   (3) The regulatory authority may allow an operator to utilize tonnages of stockpiled other minerals beyond the 12-month limit established in paragraph (b)(2) of this section if the operator can demonstrate to the regulatory authority's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

   (4) The regulatory authority may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by paragraphs (b)(2) and (3) of this section based on additional information available to the regulatory authority.

30 CFR 702.17  Revocation and enforcement. (a) Regulatory authority responsibility. The regulatory authority shall conduct an annual compliance review of the mining area, utilizing the annual report submitted pursuant to § 702.18, an on-site inspection and any other information available to the regulatory authority.

   (b) If the regulatory authority has reason to believe that a specific mining area was not exempt under the provisions of this part or counterpart provisions of the State regulatory program at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the regulatory authority shall notify the operator that the exemption may be revoked and the reason(s) therefore. The
exemption will be revoked unless the operator demonstrates to the regulatory authority within 30 days that the mining area in question should continue to be exempt.

(c)(1) If the regulatory authority finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the regulatory authority shall revoke the exemption and immediately notify the operator and interveners. If a decision is made not to revoke an exemption, the regulatory authority shall immediately notify the operator and intervenors.

(2) Any adversely affected person may request administrative review of a decision whether to revoke an exemption within 30 days of the notification of such decision in accordance with procedures established under 43 CFR 4.1280 when OSM is the regulatory authority or under corresponding State procedures when a State is the regulatory authority.

(3) A petition for administrative review filed under 43 CFR 4.1280 or under corresponding State procedures shall not suspend the effect of a decision whether to revoke an exemption.

(d) Direct enforcement. (1) An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of the regulatory program which occurred prior to the revocation of the exemption.

(2) An operator who does not conduct activities in accordance with the terms of an approved exemption and knows or should know such activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of the regulatory program which occur during the period of such activities.

(3) Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of the applicable regulatory program with regard to conditions, areas and activities existing at the time of revocation or denial.

30 CFR 702.18 Reporting requirements. (a)(1) Following approval by the regulatory authority of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a written report annually with the regulatory authority containing the information specified in paragraph (b) of this section.

(2) The report shall be filed no later than 30 days after the end of the 12-month period as determined in accordance with the definition of Cumulative measurement period in §702.5 of this part.

(3) The information in the report shall cover:

(i) Annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding 12-month period, and

(ii) The cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.

(b) For each period and mining area covered by the report, the report shall specify:

(1) The number of tons of extracted coal sold in bona fide sales and total revenue derived from such sales;

(2) The number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of such coal;

(3) The number of tons of coal stockpiled;
(4) The number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from such sales;

(5) The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of such minerals; and

(6) The number of tons of other commercially valuable minerals removed and stockpiled by the operator.

K.A.R. 47-6-11. Post-permit issuance requirements; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2001 are adopted by reference, except as otherwise indicated in these regulations:

(1) Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information, 30 CFR 774.11; and

(2) post-permit issuance information requirements for permittees, 30 CFR 774.12.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted in this regulation:

(1) “Regulatory authority” shall be replaced by “Kansas department of health and environment.”

(2) “Part 843, 846, or 847 of this chapter” shall be replaced by “K.A.R. 47-15-1a, K.A.R. 47-5-5a (a)(10) through (13), and K.A.R. 47-5-17, respectively.”

(3) “Section 510 (c) of the Act” shall be replaced by “K.S.A. 49-407 (b), and amendments thereto.”

(4) “§§ 773.12 (a) and (b) of this subchapter” shall be replaced by “K.A.R. 47-3-42 (a)(52).”

(5) “43 CFR 4.1350 through 4.1356” shall be replaced by “article 4 of these regulations.”

(6) “§ 778.11 (c)(5) of this subchapter,” “§ 778.11 (d) of this subchapter,” “§ 778.11 of this subchapter,” “§ 778.11 (c) or (d) of this subchapter,” and “§ 778.11(e) of this subchapter” shall be replaced by “K.A.R. 47-3-42 (a)(2).”

(7) “§§ 773.25, 773.26 and 773.27 of this subchapter” shall be replaced by “K.A.R. 47-3-42 (a)(61), (62), and (63).”

(8) “§ 843.11” shall be replaced by “K.A.R. 47-15-1a (a)(8).” (Authorized by and implementing K.S.A. 49-405; effective December 1, 2006.)

30 CFR 774.11 Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information. (a) For the purposes of future permit eligibility determinations and enforcement actions, we, the regulatory authority, must enter into AVS the data shown in the following table—

<table>
<thead>
<tr>
<th>We must enter into AVS all . . .</th>
<th>within 30 days after . . .</th>
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(1) Permit records............................................................. the permit is issued or subsequent changes made.
(2) Unabated or uncorrected violations......................... the abatement or correction period for a violation expires.
(3) Changes of ownership or control......................... receiving notice of a change.
(4) Changes in violation status......................................... abatement, correction, or termination of a violation, or a decision from an administrative or judicial tribunal.

(b) If, at any time, we discover that any person owns or controls an operation with an unabated or uncorrected violation, we will determine whether enforcement action is appropriate under part 843, 846 or 847 of this chapter. We must enter the results of each enforcement action, including administrative and judicial decisions, into AVS.

(c) We must serve a preliminary finding of permanent permit ineligibility under section 510(c) of the Act on you, an applicant or operator, if the criteria in paragraphs (c)(1) and (c)(2) are met. In making a finding under this paragraph, we will only consider control relationships and violations which would make, or would have made, you ineligible for a permit under §§ 773.12(a) and (b) of this subchapter. We must make a preliminary finding of permanent permit ineligibility if we find that--

(1) You control or have controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations under section 510(c) of the Act; and
(2) The violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate your intent not to comply with the Act, its implementing regulations, the regulatory program, or your permit.

(d) You may request a hearing on a preliminary finding of permanent permit ineligibility under 43 CFR 4.1350 through 4.1356.

(e) We must enter the results of the finding and any hearing into AVS.

(f) At any time, we may identify any other person who owns or controls an entire operation or any relevant portion or aspect thereof. If we identify such a person, we must--

(1) Issue a written finding to the person and the applicant or permittee describing the nature and extent of ownership or control; and
(2) Enter our finding under paragraph (f)(1) of this section into AVS; and
(3) Require the person to--

(i) Disclose their identity under § 778.11(c)(5) of this subchapter; and
(ii) Certify they are a controller under § 778.11(d) of this subchapter, if appropriate.

(g) A person we identify under paragraph (f)(1) of this section may challenge the finding using the provisions of §§ 773.25, 773.26 and 773.27 of this subchapter. [65 FR 79667, Dec. 19, 2000]

30 CFR 774.12 Post-permit issuance information requirements for permittees, (a) Within 30 days after the issuance of a cessation order under § 843.11 of this chapter, or its State regulatory program equivalent, you, the permittee, must provide or update all the information required under § 778.11 of this subchapter.
(b) You do not have to submit information under paragraph (a) of this section if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect.

(c) Within 60 days of any addition, departure, or change in position of any person identified in § 778.11(c) or (d) of this subchapter, you must provide--
   (1) The information required under § 778.11(e) of this subchapter; and
   (2) The date of any departure. [65 FR 79667, Dec. 19, 2000]
K.A.R. 47-7-2. Coal exploration; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2001, are adopted by reference, except as otherwise indicated in this regulation:

(1) Notice requirements for exploration removing 250 tons of coal or less, 30 CFR 772.11;
(2) permit requirements for exploration removing more than 250 tons of coal or occurring on lands designated as unsuitable for surface coal mining operations, 30 CFR 772.12;
(3) coal exploration compliance duties, 30 CFR 772.13;
(4) commercial use or sale, 30 CFR 772.14; and
(5) public availability of information, 30 CFR 772.15.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation.

(1) “Part 815 of this chapter” shall be replaced by “K.A.R. 47-9-1 (b).”
(2) “Subchapter F of this chapter” shall be replaced by “article 12 of these regulations.”
(3) “Part 775 of this chapter” shall be replaced by “K.S.A. 49-407 (d), K.S.A. 49-416a, K.S.A. 49-422a, and amendments thereto, and article 4 of these regulations.”
(4) “Parts 773 through 785 of this chapter” shall be replaced by “articles 3, 4, 6, and 10 of these regulations, K.S.A. 49-407 (d), K.S.A. 49-416a, and K.S.A. 49-422a, and amendments thereto.”

(5) The phrase “section 518 of the Act, subchapter L of this chapter, and the applicable inspection and enforcement provisions of the regulatory program” shall be replaced by “K.S.A. 49-405c, and amendments thereto, and articles 5 and 15 of these regulations.”

(6) “This part,” “this part, part 815 of this chapter, and the applicable provisions of the regulatory program,” and “this part, part 815 of this chapter, the regulatory program” shall be replaced by “K.A.R. 47-7-2.”

(7) “§ 761.11 of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(2).”
(8) “§ 772.12” shall be replaced by “K.A.R. 47-7-2 (a)(2).”
(9) “§ 772.13” shall be replaced by “K.A.R. 47-7-2 (a)(3).”
(10) “§§ 772.13 and 772.14” shall be replaced by “K.A.R. 47-7-2 (a)(3) and (4).”
(11) “§§ 772.14(b) and 700.11(a)(5)” shall be replaced by “K.A.R. 47-7-2 (a)(4) and K.A.R. 47-6-8.” (Authorized by K.S.A. 49-405; implementing K.S.A. 49-427; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended December 1, 2006.)

30 CFR 772.11 Notice requirements for exploration removing 250 tons of coal or less. (a) Any person who intends to conduct coal exploration operations outside a permit area during which 250 tons or less of coal will be removed, shall, before conducting the exploration, file with the regulatory authority a written notice of intention to explore. Exploration which will take place on lands designated as unsuitable for surface coal mining operations under subchapter F of this chapter, shall be subject to the permitting requirements under § 772.12. Exploration
conducted under a notice of intent shall be subject to the requirements prescribed under § 772.13.

(b) The notice shall include--
(1) The name, address, and telephone number of the person seeking to explore;
(2) The name, address, and telephone number of the person's representative who will be present at, and responsible for, conducting the exploration activities;
(3) A narrative describing the proposed exploration area or a map at a scale of 1:24,000, or greater, showing the proposed area of exploration and the general location of drill holes and trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of surface water, and pipelines;
(4) A statement of the period of intended exploration; and
(5) A description of the method of exploration to be used and the practices that will be followed to protect the environment and to reclaim the area from adverse impacts of the exploration activities in accordance with the applicable requirements of part 815 of this chapter.


30 CFR 772.12 Permit requirements for exploration that will remove more than 250 tons of coal or that will occur on lands designated as unsuitable for surface coal mining operations. (a) Exploration permit. Any person who intends to conduct coal exploration outside a permit area during which more than 250 tons of coal will be removed or which will take place on lands designated as unsuitable for surface mining under subchapter F of this chapter, shall, before conducting the exploration, submit an application and obtain written approval from the regulatory authority in an exploration permit. Such exploration shall be subject to the requirements prescribed under §§ 772.13 and 772.14.

(b) Application information. Each application for an exploration permit shall contain, at a minimum, the following information:
(1) The name, address, and telephone number of the applicant.
(2) The name, address and telephone number of the applicant's representative who will be present at, and responsible for, conducting the exploration activities.
(3) A narrative describing the proposed exploration area.
(4) A narrative description of the methods and equipment to be used to conduct the exploration and reclamation.
(5) An estimated timetable for conducting and completing each phase of the exploration and reclamation.
(6) The estimated amount of coal to be removed and a description of the methods to be used to determine the amount.
(7) A statement of why extraction of more than 250 tons of coal is necessary for exploration.
(8) A description of--
(i) Cultural or historical resources listed on the National Register of Historic Places;
(ii) Cultural or historical resources known to be eligible for listing on the National Register of Historic Places; and
(iii) Known archeological resources located within the proposed exploration area.
(iv) Any other information which the regulatory authority may require regarding known or unknown historic or archeological resources.

(9) A description of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) identified within the proposed exploration area.

(10) A description of the measures to be used to comply with the applicable requirements of part 815 of this chapter.

(11) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored.

(12) A map or maps at a scale of 1:24,000, or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, topographic and drainage features, bodies of surface water, and pipelines; proposed locations of trenches, roads, and other access routes and structures to be constructed; the location of proposed land excavations; the location of exploration holes or other drill holes or underground openings; the location of excavated earth or waste-material disposal areas; and the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(13) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

(14) For any lands listed in § 761.11 of this chapter, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of § 761.11 of this chapter, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of § 761.11 of this chapter.

(c) Public notice and opportunity to comment. Public notice of the application and opportunity to comment shall be provided as follows:

(1) Within such time as the regulatory authority may designate, the applicant shall provide public notice of the filing of an administratively complete application with the regulatory authority in a newspaper of general circulation in the county of the proposed exploration area.

(2) The public notice shall state the name and address of the person seeking approval, the filing date of the application, the address of the regulatory authority where written comments on the application may be submitted, the closing date of the comment period, and a description of the area of exploration.

(3) Any person having an interest which is or may be adversely affected shall have the right to file written comments on the application within reasonable time limits.

(d) Decisions on applications for exploration. (1) The regulatory authority shall act upon an administratively complete application for a coal exploration permit and any written comments within a reasonable period of time. The approval of a coal exploration permit may be based only on a complete and accurate application.
(2) The regulatory authority shall approve a complete and accurate application for a coal exploration permit filed in accordance with this part if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application will--

(i) Be conducted in accordance with this part, part 815 of this chapter, and the applicable provisions of the regulatory program;

(ii) Not jeopardize the continued existence of an endangered or threatened species listed pursuant to section 4 of the Endangered Species Act of 1973, 16 U.S.C. 1533, or result in the destruction or adverse modification of critical habitat of those species;

(iii) Not adversely affect any cultural or historical resources listed on the National Register of Historic Places pursuant to the National Historic Preservation Act, 16 U.S.C. 470 et seq., unless the proposed exploration has been approved by both the regulatory authority and the agency with jurisdiction over the resources to be affected; and

(iv) With respect to exploration activities on any lands protected under § 761.11 of this chapter, minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the regulatory authority must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of § 761.11 of this chapter, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of § 761.11 of this chapter, to comment on whether the finding is appropriate.

(3) Terms of approval issued by the regulatory authority shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with this part, part 815 of this chapter, and the regulatory program.

(e) Notice and hearing. (1) The regulatory authority shall notify the applicant, the appropriate local government officials, and other commenters on the application, in writing, of its decision on the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. Public notice of the decision on each application shall be posted by the regulatory authority at a public office in the vicinity of the proposed exploration operations.

(2) Any person having an interest which is or may be adversely affected by a decision of the regulatory authority pursuant to paragraph (e)(1) of this section shall have the opportunity for administrative and judicial review as set forth in part 775 of this chapter. [48 FR 40634, Sept. 8, 1983, as amended at 52 FR 4262, Feb. 10, 1987; 53 FR 52949, Dec. 29, 1988; 64 FR 70837, Dec. 17, 1999]

30 CFR 772.13 Coal exploration compliance duties. (a) All coal exploration and reclamation activities that substantially disturb the natural land surface shall be conducted in accordance with the coal exploration requirements of this part, part 815 of this chapter, the regulatory program, and any exploration permit term or condition imposed by the regulatory authority.

(b) Any person who conducts any coal exploration in violation of the provisions of this part, part 815 of this chapter, the regulatory program, or any exploration permit term or condition imposed by the regulatory authority shall be subject to the provisions of section 518 of the Act, subchapter L of this chapter, and the applicable inspection and enforcement provisions of the regulatory program.
30 CFR 772.14  Commercial use or sale. (a) Except as provided under §§ 772.14(b) and 700.11(a)(5), any person who intends to commercially use or sell coal extracted during coal exploration operations under an exploration permit, shall first obtain a permit to conduct surface coal mining operations for those operations from the regulatory authority under parts 773 through 785 of this chapter.

(b) With the prior written approval of the regulatory authority, no permit to conduct surface coal mining operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the regulatory authority. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain the following:

(1) The name of the testing firm and the locations at which the coal will be tested.

(2) If the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:

   (i) The specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;

   (ii) The amount of coal necessary for the test and why a lesser amount is not sufficient; and

   (iii) A description of the specific tests that will be conducted.

(3) Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve.

(4) An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a surface coal mining operation. [53 FR 52949, Dec. 29, 1988]

30 CFR 772.15  Public availability of information. (a) Except as provided in paragraph (b) of this section, all information submitted to the regulatory authority under this part shall be made available for public inspection and copying at the local offices of the regulatory authority closest to the exploration area.

(b) The regulatory authority shall keep information confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration.

(c) Information requested to be held as confidential under paragraph (b) of this section shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.
K.A.R. 47-8-9. Bonding procedures: adoption by reference. (a) The following federal regulations, as in effect on July 1, 2001, are adopted by reference, except as otherwise indicated in this regulation:

1. Regulatory authority responsibilities, 30 CFR 800.4, deleting subsection (d);
2. definitions, 30 CFR 800.5, deleting subsection (c);
3. requirement to file a bond, 30 CFR 800.11, deleting subsection (e);
4. form of the performance bond, 30 CFR 800.12, deleting subsection (c);
5. period of liability, 30 CFR 800.13;
6. determination of bond amount, 30 CFR 800.14;
7. adjustment of amount, 30 CFR 800.15;
8. general terms and conditions of bond, 30 CFR 800.16;
9. bonding requirements for underground coal mines and long-term coal-related surface facilities and structures, 30 CFR 800.17;
10. surety bonds, 30 CFR 800.20;
11. collateral bonds, 30 CFR 800.21;
12. replacement of bonds, 30 CFR 800.30;
13. requirement to release performance bonds, 30 CFR 800.40;
14. forfeiture of bonds, 30 CFR 800.50; and
15. terms and conditions for liability insurance, 30 CFR 800.60, deleting subsection (d).

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

1. “Act” shall be replaced by “state act.”
2. “(Under parts 780 and 784 of this chapter)” shall be replaced by “[under K.A.R. 47-3-42 (a)(20) through (38) and K.A.R. 47-10-1].”
3. “This chapter” and “subchapter G of this chapter” shall be replaced by “these regulations.”
4. “This subchapter” shall be replaced by “article 8 of these regulations.”
5. “Section 515 of the act” and “section 515 (b)(10) of the act” shall be replaced by “K.S.A. 49-405a, K.S.A. 49-408 through K.S.A. 49-413, K.S.A. 49-429, and amendments thereto, and the regulations promulgated thereunder.”
6. “Subchapter K of this chapter” shall be replaced by “article 9 of these regulations.”
7. “Section 507 (b)(16) of the act” shall be replaced by “K.S.A. 49-407 (c), and amendments thereto.”
8. “Part 823 of this chapter” shall be replaced by “K.A.R. 47-9-1 (f).”
9. “Section 513 (b) of the act” shall be replaced by “K.S.A. 49-407 (d), and amendments thereto, and the regulations promulgated thereunder.”
10. “Application” shall be replaced by “complete and accurate application.”
11. “§ 800.14” shall be replaced by “K.A.R. 47-8-9 (a)(6).”
12. “§ 800.15” shall be replaced by “K.A.R. 47-8-9 (a)(7).”
13. “§ 800.16(e)(2)” shall be replaced by “K.A.R. 47-8-9 (a)(8).”
(14) “§ 800.40,” “§ 800.40(c)(2),” “§ 800.40(f) and (h),” and “§ 800.40 (a)(2)” shall be replaced by “K.A.R. 47-8-9 (a)(13).”

(15) “§ 800.50” shall be replaced by “K.A.R. 47-8-9 (a)(14).”

(16) “§ 816.133 or § 817.133 of this chapter” and “§§ 816.133(c) and 817.133(c)” shall be replaced by “K.A.R. 47-9-1 (c)(45) or K.A.R. 47-9-1 (d)(43).”

(17) “§ 817.121(c) of this chapter” shall be replaced by “K.A.R. 47-9-1 (d)(39).”

(18) “§ 800.60” shall be replaced by “K.A.R. 47-8-9 (a)(15).”

(19) “§ 800.21(f)” shall be replaced by “K.A.R. 47-8-9 (a)(11).”

(20) “§ 816.132 or § 817.132 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(44) or K.A.R. 47-9-1 (d)(42).”

(21) “§ 800.17(b)(3)” shall be replaced by “K.A.R. 47-8-9 (a)(9).”

(22) “§ 816.116 or § 817.116 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(42) or K.A.R. 47-9-1 (d)(38).”

(23) “§ 800.11(b)” shall be replaced by “K.A.R. 47-8-9 (a)(3).”

(24) “§§ 800.14 and 800.15” shall be replaced by “K.A.R. 47-8-9 (a)(6) and (7).”


30 CFR 800.4 Regulatory authority responsibilities. (a) The regulatory authority shall prescribe and furnish forms for filing performance bonds.

(b) The regulatory authority shall prescribe by regulation terms and conditions for performance bonds and insurance.

(c) The regulatory authority shall determine the amount of the bond for each area to be bonded, in accordance with § 800.14. The regulatory authority shall also adjust the amount as acreage in the permit area is revised, or when other relevant conditions change according to the requirements of § 800.15.

(d) The regulatory authority may accept a self-bond if the permittee meets the requirements of § 800.23 and any additional requirements in the State or Federal program.

(e) The regulatory authority shall release liability under a bond or bonds in accordance with § 800.40.

(f) If the conditions specified in § 800.50 occur, the regulatory authority shall take appropriate action to cause all or part of a bond to be forfeited in accordance with procedures of that section.

(g) The regulatory authority shall require in the permit that adequate bond coverage be in effect at all times. Except as provided in § 800.16(e)(2), operating without a bond is a violation of a condition upon which the permit is issued.

30 CFR 800.5 Definitions. (a) Surety bond means an indemnity agreement in a sum certain payable to the regulatory authority, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in the State where the operation is located.
(b) Collateral bond means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by the deposit with the regulatory authority of one or more of the following:
   (1) A cash account, which shall be the deposit of cash in one or more federally-insured or equivalently protected accounts, payable only to the regulatory authority upon demand, or the deposit of cash directly with the regulatory authority;
   (2) Negotiable bonds of the United States, a State, or a municipality, endorsed to the order of, and placed in the possession of, the regulatory authority;
   (3) Negotiable certificates of deposit, made payable or assigned to the regulatory authority and placed in its possession or held by a federally-insured bank;
   (4) An irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only to the regulatory authority upon presentation;
   (5) A perfected, first-lien security interest in real property in favor of the regulatory authority; or
   (6) Other investment-grade rated securities having a rating of AAA, AA, or A or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of, and placed in the possession of, the regulatory authority.

(c) Self-bond means an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor and made payable to the regulatory authority, with or without separate surety.

30 CFR 800.11 Requirement to file a bond. (a) After a permit application under subchapter G of this chapter has been approved, but before a permit is issued, the applicant shall file with the regulatory authority, on a form prescribed and furnished by the regulatory authority, a bond or bonds for performance made payable to the regulatory authority and conditioned upon the faithful performance of all the requirements of the Act, the regulatory program, the permit, and the reclamation plan.

   (b)(1) The bond or bonds shall cover the entire permit area, or an identified increment of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations during the initial term of the permit.
   (2) As surface coal mining and reclamation operations on succeeding increments are initiated and conducted within the permit area, the permittee shall file with the regulatory authority an additional bond or bonds to cover such increments in accordance with this section.
   (3) The operator shall identify the initial and successive areas or increments for bonding on the permit application map submitted for approval as provided in the application (under parts 780 and 784 of this chapter), and shall specify the bond amount to be provided for each area or increment.
   (4) Independent increments shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the regulatory authority become necessary pursuant to § 800.50.
   (c) An operator shall not disturb any surface areas, succeeding increments, or extend any underground shafts, tunnels or operations prior to acceptance by the regulatory authority of the required performance bond.
(d) The applicant shall file, with the approval of the regulatory authority, a bond or bonds under one of the following schemes to cover the bond amounts for the permit area as determined in accordance with § 800.14:

1. A performance bond or bonds for the entire permit area;
2. A cumulative bond schedule and the performance bond required for full reclamation of the initial area to be disturbed; or
3. An incremental bond schedule and the performance bond required for the first increment in the schedule.

(e) OSM may approve, as part of a State or Federal program, an alternative bonding system, if it will achieve the following objectives and purposes of the bonding program:

1. The alternative must assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time; and
2. The alternative must provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

30 CFR 800.12 Form of the performance bond. The regulatory authority shall prescribe the form of the performance bond. The regulatory authority may allow for:

(a) A surety bond;
(b) A collateral bond;
(c) A self-bond;
(d) A combination of any of these bonding methods.

30 CFR 800.13 Period of liability. (a)(1) Performance bond liability shall be for the duration of the surface coal mining and reclamation operation and for a period which is coincident with the operator's period of extended responsibility for successful revegetation provided in § 816.116 or § 817.116 of this chapter or until achievement of the reclamation requirements of the Act, regulatory programs, and permit, whichever is later.

2. With the approval of regulatory authority, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under §§ 800.14 and 800.15. The scope of work to be guaranteed and the liability assumed under each phase bond shall be specified in detail.

(b) Isolated and clearly defined portions of the permit area requiring extended liability may be separated from the original area and bonded separately with the approval of the regulatory authority. Such areas shall be limited in extent and not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the regulatory authority.

(c) If the regulatory authority approves a long-term, intensive agricultural postmining land use, in accordance with § 816.133 or § 817.133 of this chapter, the applicable 5 or 10 year period of liability shall commence at the date of initial planting for such long-term agricultural use.

(d)(1) The bond liability of the permittee shall include only those actions which he or she is obligated to take under the permit, including completion of the reclamation plan, so that the
land will be capable of supporting the postmining land use approved under § 816.133 or § 817.133 of this chapter.

(2) Implementation of an alternative postmining land use approved under §§ 816.133(c) and 817.133(c) which is beyond the control of the permittee, need not be covered by the bond. Bond liability for prime farmland shall be as specified in § 800.40(c)(2).

30 CFR 800.14 Determination of bond amount. (a) The amount of the bond required for each bonded area shall:

(1) Be determined by the regulatory authority;
(2) Depend upon the requirements of the approved permit and reclamation plan;
(3) Reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential; and
(4) Be based on, but not limited to, the estimated cost submitted by the permit applicant.

(b) The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work has to be performed by the regulatory authority in the event of forfeiture, and in no case shall the total bond initially posted for the entire area under one permit be less than $10,000.

(c) An operator's financial responsibility under § 817.121(c) of this chapter for repairing material damage resulting from subsidence may be satisfied by the liability insurance policy required under § 800.60.

30 CFR 800.15 Adjustment of amount. (a) The amount of the bond or deposit required and the terms of the acceptance of the applicant's bond shall be adjusted by the regulatory authority from time to time as the area requiring bond coverage is increased or decreased or where the cost of future reclamation changes. The regulatory authority may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement.

(b) The regulatory authority shall--

(1) Notify the permittee, the surety, and any person with a property interest in collateral who has requested notification under § 800.21(f) of any proposed adjustment to the bond amount; and
(2) Provide the permittee an opportunity for an informal conference on the adjustment.

(c) A permittee may request reduction of the amount of the performance bond upon submission of evidence to the regulatory authority proving that the permittee's method of operation or other circumstances reduces the estimated cost for the regulatory authority to reclaim the bonded area. Bond adjustments which involve undisturbed land or revision of the cost estimate of reclamation are not considered bond release subject to procedures of § 800.40.

(d) In the event that an approved permit is revised in accordance with subchapter G of this chapter, the regulatory authority shall review the bond for adequacy and, if necessary, shall require adjustment of the bond to conform to the permit as revised.

30 CFR 800.16 General terms and conditions of bond. (a) The performance bond shall be in an amount determined by the regulatory authority as provided in § 800.14.

(b) The performance bond shall be payable to the regulatory authority.
(c) The performance bond shall be conditioned upon faithful performance of all the requirements of the Act, this chapter, the regulatory program, and the approved permit, including completion of the reclamation plan.

(d) The duration of the bond shall be for the time period provided in § 800.13.

(e)(1) The bond shall provide a mechanism for a bank or surety company to give prompt notice to the regulatory authority and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee, or alleging any violations which would result in suspension or revocation of the surety or bank charter or license to do business.

(2) Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the permittee shall be deemed to be without bond coverage and shall promptly notify the regulatory authority. The regulatory authority, upon notification received through procedures of paragraph (e)(1) of this section or from the permittee, shall, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease coal extraction and shall comply with the provisions of § 816.132 or § 817.132 of this chapter and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations shall not resume until the regulatory authority has determined that an acceptable bond has been posted.

30 CFR 800.17  Bonding requirements for underground coal mines and long-term coal-related surface facilities and structures. (a) Responsibilities. The regulatory authority shall require bond coverage, in an amount determined under § 800.14, for long-term surface facilities and structures, and for areas disturbed by surface impacts incident to underground mines, for which a permit is required. Specific reclamation techniques required for underground mines and long-term facilities shall be considered in determining the amount of bond to complete the reclamation.

(b) Long-term period of liability. (1) The period of liability for every bond covering long-term surface disturbances shall commence with the issuance of a permit, except that to the extent that such disturbances will occur on a succeeding increment to be bonded, such liability will commence upon the posting of the bond for that increment before the initial surface disturbance of that increment. The liability period shall extend until all reclamation, restoration, and abatement work under the permit has been completed and the bond is released under the provisions of § 800.40, or until the bond has been replaced or extended in accordance with § 800.17(b)(3).

(2) Long-term surface disturbances shall include long-term coal-related surface facilities and structures, and surface impacts incident to underground coal mining, which disturb an area for a period that exceeds 5 years. Long-term surface disturbances include, but are not limited to: surface features of shafts and slope facilities, coal refuse areas, powerlines, bore-holes, ventilation shafts, preparation plants, machine shops, roads, and loading and treatment facilities.

(3) To achieve continuous bond coverage for long-term surface disturbances, the bond shall be conditioned upon extension, replacement, or payment in full, 30 days prior to the expiration of the bond term.
(4) Continuous bond coverage shall apply throughout the period of extended responsibility for successful revegetation and until the provisions of § 800.40 have been met.

(c) Bond forfeiture. The regulatory authority shall take action to forfeit a bond pursuant to this section, if 30 days prior to bond expiration, the operator has not filed: (1) A performance bond for a new term as required for continuous coverage, or (2) a performance bond providing coverage for the period of liability, including the period of extended responsibility for successful revegetation.

30 CFR 800.20 Surety bonds. (a) A surety bond shall be executed by the operator and a corporate surety licensed to do business in the State where the operation is located.

(b) Surety bonds shall be noncancellable during their terms, except that surety bond coverage for lands not disturbed may be cancelled with the prior consent of the regulatory authority. The regulatory authority shall advise the surety, within 30 days after receipt of a notice to cancel bond, whether the bond may be cancelled on an undisturbed area.

30 CFR 800.21 Collateral bonds. (a) Collateral bonds, except for letters of credit, cash accounts, and real property, shall be subject to the following conditions:

(1) The regulatory authority shall keep custody of collateral deposited by the applicant until authorized for release or replacement as provided in this subchapter.

(2) The regulatory authority shall value collateral at its current market value, not at face value.

(3) The regulatory authority shall require that certificates of deposit be made payable to or assigned to the regulatory authority, both in writing and upon the records of the bank issuing the certificates. If assigned, the regulatory authority shall require the banks issuing these certificates to waive all rights of setoff or liens against those certificates.

(4) The regulatory authority shall not accept an individual certificate of deposit in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(b) Letters of credit shall be subject to the following conditions:

(1) The letter may be issued only by a bank organized or authorized to do business in the United States;

(2) Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the regulatory authority if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date.

(3) The letter of credit shall be payable to the regulatory authority upon demand, in part or in full, upon receipt from the regulatory authority of a notice of forfeiture issued in accordance with § 800.50.

(c) Real property posted as a collateral bond shall meet the following conditions:

(1) The applicant shall grant the regulatory authority a first mortgage, first deed of trust, or perfected first-lien security interest in real property with a right to sell or otherwise dispose of the property in the event of forfeiture under § 800.50.

(2) In order for the regulatory authority to evaluate the adequacy of the real property
offered to satisfy collateral requirements, the applicant shall submit a schedule of the real property which shall be mortgaged or pledged to secure the obligations under the indemnity agreement. The list shall include--

(i) A description of the property;

(ii) The fair market value as determined by an independent appraisal conducted by a certified appraiser; and

(iii) Proof of possession and title to the real property.

(3) The property may include land which is part of the permit area; however, land pledged as collateral for a bond under this section shall not be disturbed under any permit while it is serving as security under this section.

(d) Cash accounts shall be subject to the following conditions:

(1) The regulatory authority may authorize the operator to supplement the bond through the establishment of a cash account in one or more federally-insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the regulatory authority. The total bond including the cash account shall not be less than the amount required under terms of performance bonds including any adjustments, less amounts released in accordance with § 800.40.

(2) Any interest paid on a cash account shall be retained in the account and applied to the bond value of the account unless the regulatory authority has approved the payment of interest to the operator.

(3) Certificates of deposit may be substituted for a cash account with the approval of the regulatory authority.

(4) The regulatory authority shall not accept an individual cash account in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(e)(1) The estimated bond value of all collateral posted as assurance under this section shall be subject to a margin which is the ratio of bond value to market value, as determined by the regulatory authority. The margin shall reflect legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the regulatory authority to complete reclamation.

(2) The bond value of collateral may be evaluated at any time but it shall be evaluated as part of permit renewal and, if necessary, the performance bond amount increased or decreased. In no case shall the bond value of collateral exceed the market value.

(f) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the regulatory authority at the time collateral is offered.

30 CFR 800.30  Replacement of bonds. (a) The regulatory authority may allow a permittee to replace existing bonds with other bonds that provide equivalent coverage.

(b) The regulatory authority shall not release existing performance bonds until the permittee has submitted, and the regulatory authority has approved, acceptable replacement performance bonds. Replacement of a performance bond pursuant to this section shall not
constitute a release of bond under § 800.40.

30 CFR 800.40 **Requirement to release performance bonds.** (a) Bond release application. (1) The permittee may file an application with the regulatory authority for the release of all or part of a performance bond. Applications may be filed only at times or during seasons authorized by the regulatory authority in order to properly evaluate the completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation shall be established in the regulatory program or identified in the mining and reclamation plan required in subchapter G of this chapter and approved by the regulatory authority.

(2) Within 30 days after an application for bond release has been filed with the regulatory authority, the permittee shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and shall contain the permittee's name, permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the permittee's approved reclamation plan, and the name and address of the regulatory authority to which written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to § 800.40 (f) and (h). In addition, as part of any bond release application, the permittee shall submit copies of letters which he or she has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond.

(3) The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

(b) Inspection by regulatory authority. (1) Upon receipt of the bond release application, the regulatory authority shall, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution. The surface owner, agent, or lessee shall be given notice of such inspection and may participate with the regulatory authority in making the bond release inspection. The regulatory authority may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

(2) Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to paragraph (f) of this section, or, within 30 days after a public hearing has been held pursuant to paragraph (f) of this section, the regulatory authority shall notify in writing the permittee, the surety or other persons with an interest in bond collateral who have requested notification under § 800.21(f), and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, of its decision to release or not to release all
or part of the performance bond.

(c) The regulatory authority may release all or part of the bond for the entire permit area or incremental area if the regulatory authority is satisfied that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with the following schedules for reclamation of Phases I, II, and III:

(1) At the completion of Phase I, after the operator completes the backfilling, regrading (which may include the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan, 60 percent of the bond or collateral for the applicable area.

(2) At the completion of Phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the regulatory authority shall retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for operator responsibility in section 515 of the Act for reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section 515(b)(10) of the Act and by subchapter K of this chapter or until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section 507(b)(16) of the Act and part 823 of this chapter. Where a silt dam is to be retained as a permanent impoundment pursuant to subchapter K of this chapter, the Phase II portion of the bond may be released under this paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the regulatory authority.

(3) At the completion of Phase III, after the operator has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in § 816.116 or § 817.116 of this chapter. However, no bond shall be fully released under provisions of this section until reclamation requirements of the Act and the permit are fully met.

(d) If the regulatory authority disapproves the application for release of the bond or portion thereof, the regulatory authority shall notify the permittee, the surety, and any person with an interest in collateral as provided for in § 800.21(f), in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

(e) When any application for total or partial bond release is filed with the regulatory authority, the regulatory authority shall notify the municipality in which the surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any Federal, State, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or
economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond with the regulatory authority within 30 days after the last publication of the notice required by § 800.40(a)(2). If written objections are filed and a hearing is requested, the regulatory authority shall inform all the interested parties of the time and place of the hearing, and shall hold a public hearing within 30 days after receipt of the request for the hearing. The date, time, and location of the public hearing shall be advertised by the regulatory authority in a newspaper of general circulation in the locality for two consecutive weeks. The public hearing shall be held in the locality of the surface coal mining operation from which bond release is sought, at the location of the regulatory authority office, or at the State capital, at the option of the objector.

(g) For the purpose of the hearing under paragraph (f) of this section, the regulatory authority shall have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials, and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made, and a transcript shall be made available on the motion of any party or by order of the regulatory authority.

(h) Without prejudice to the right of an objector or the applicant, the regulatory authority may hold an informal conference as provided in section 513(b) of the Act to resolve such written objections. The regulatory authority shall make a record of the informal conference unless waived by all parties, which shall be accessible to all parties. The regulatory authority shall also furnish all parties of the informal conference with a written finding of the regulatory authority based on the informal conference, and the reasons for said finding. [48 FR 32959, July 19, 1983, as amended at 48 FR 44780, Sept. 30, 1983; 53 FR 998, Jan. 14, 1988; 56 FR 59994, Nov. 26, 1991]

30 CFR 800.50  Forfeiture of bonds. (a) If an operator refuses or is unable to conduct reclamation of an unabated violation, if the terms of the permit are not met, or if the operator defaults on the conditions under which the bond was accepted, the regulatory authority shall take the following action to forfeit all or part of a bond or bonds for any permit area or an increment of a permit area:

(1) Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit all or part of the bond, including the reasons for the forfeiture and the amount to be forfeited. The amount shall be based on the estimated total cost of achieving the reclamation plan requirements.

(2) Advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions may include, but are not limited to--

(i) Agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan, and the regulatory program and a demonstration that such party has the ability to satisfy the conditions; or

(ii) The regulatory authority may allow a surety to complete the reclamation plan, or the portion of the reclamation plan applicable to the bonded phase or increment, if the surety can
demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the regulatory authority may approve partial release authorized under § 800.40, no surety liability shall be released until successful completion of all reclamation under the terms of the permit, including applicable liability periods of § 800.13.

(b) In the event forfeiture of the bond is required by this section, the regulatory authority shall--

(1) Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, or if rights of appeal, if any, have not been exercised within a time established by the regulatory authority, or if such appeal, if taken, is unsuccessful.

(2) Use funds collected from bond forfeiture to complete the reclamation plan, or portion thereof, on the permit area or increment, to which bond coverage applies.

(c) Upon default, the regulatory authority may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Unless specifically limited, as provided in § 800.11(b), bond liability shall extend to the entire permit area under conditions of forfeiture.

(d)(1) In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The regulatory authority may complete, or authorize completion of, reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

(2) In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned by the regulatory authority to the party from whom they were collected. [48 FR 32959, July 19, 1983, as amended at 48 FR 44780, Sept. 30, 1983]

30 CFR 800.60 Terms and conditions for liability insurance. (a) The regulatory authority shall require the applicant to submit as part of its permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which the permit is sought. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the surface coal mining and reclamation operations, including the use of explosives, and who are entitled to compensation under the applicable provisions of State law. Minimum insurance coverage for bodily injury and property damage shall be $300,000 for each occurrence and $500,000 aggregate.

(b) The policy shall be maintained in full force during the life of the permit or any renewal thereof and the liability period necessary to complete all reclamation operations under this Chapter.

(c) The policy shall include a rider requiring that the insurer notify the regulatory authority whenever substantive changes are made in the policy including any termination or failure to renew.

(d) The regulatory authority may accept from the applicant, in lieu of a certificate for a public liability insurance policy, satisfactory evidence from the applicant that it satisfies applicable State self-insurance requirements approved as part of the regulatory program and the
requirements of this section. [48 FR 32959, July 19, 1983, as amended at 54 FR 13823, Apr. 5, 1989]

**K.A.R. 47-8-11. Use of forfeited bond funds.** Funds collected from any bond forfeiture may only be used to perform the following:

(a) complete the reclamation plan on the permit area on which bond was made for the surface mining operation for coal; and

(b) cover associated administrative expenses. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-420; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)
K.A.R. 47-9-1. Adoption by reference. (a) The following portions of the permanent program performance standards – general provisions, 30 CFR Part 810, as in effect on July 1, 2001, are hereby adopted by reference and altered as specified in this subsection:

(1) Objective, 30 CFR 810.2, except that in the first sentence, “Nation” shall be replaced by “state”;
(2) responsibility, 30 CFR 810.4, except that part “a” shall be deleted; and
(3) applicability, 30 CFR 810.11.

(b) The following portions of the permanent program performance standards – coal exploration, 30 CFR Part 815, as in effect on July 1, 2001, are hereby adopted by reference:

(1) Required documents, 30 CFR 815.13; and
(2) performance standards for coal exploration, 30 CFR 815.15.

(c) The following portions of the permanent program standards – surface mining activities, 30 CFR Part 816, as in effect on July 1, 2001, are hereby adopted by reference and altered as specified in this subsection:

(1) Signs and markers, 30 CFR 816.11. A subsection (g) shall be added to 30 CFR 816.11 that reads as follows: “Increment boundary markers. As deemed necessary by the secretary or secretary's designee to ensure the public health and safety, protect the environment, and ascertain increment boundaries, increment boundary markers shall be placed on each portion of a permit area on which a performance bond or other equivalent guarantee was or will be posted as provided by K.S.A. 49-406(h), and amendments thereto”;
(2) casing and sealing of drilled holes: general requirements, 30 CFR 816.13;
(3) casing and sealing of drilled holes: temporary, 30 CFR 816.14;
(4) casing and sealing of drilled holes: permanent, 30 CFR 816.15;
(5) topsoil and subsoil, 30 CFR 816.22. The first paragraph of subsection (d)(1) of 30 CFR 816.22 shall be replaced by the following:

“Absent an approved schedule, topsoil and subsoil materials removed under paragraph (a) of this section shall be redistributed within 120 days following rough backfilling and grading in a manner that complies with the following:”;
(6) hydrologic-balance protection, 30 CFR 816.41;
(7) hydrologic balance: water quality standards and effluent limitations, 30 CFR 816.42;
(8) diversions, 30 CFR 816.43;
(9) hydrologic balance: sediment control measures, 30 CFR 816.45;
(10) hydrologic balance: siltation structures, 30 CFR 816.46;
(11) hydrologic balance: discharge structures, 30 CFR 816.47;
(12) impoundments, 30 CFR 816.49;
(13) postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities, 30 CFR 816.56;
(14) hydrologic balance: stream buffer zones, 30 CFR 816.57;
(15) coal recovery, 30 CFR 816.59;
(16) use of explosives: general requirements, 30 CFR 816.61, except that subsection (c)(1) shall be replaced by the following:
“All blasting operations within the state shall be conducted under the direction of a certified blaster”;

(17) use of explosives: preblasting survey, 30 CFR 816.62;
(18) use of explosives: blasting schedule, 30 CFR 816.64;
(19) use of explosives: blasting signs, warnings, and access control, 30 CFR 816.66;
(20) use of explosives: control of adverse effects, 30 CFR 816.67;
(21) use of explosives: records of blasting operations, 30 CFR 816.68;
(22) disposal of excess spoil: general requirements, 30 CFR 816.71, deleting the phrase “in accordance with § 816.73”;
(23) disposal of excess spoil: preexisting benches, 30 CFR 816.74;
(24) protection of underground mining, 30 CFR 816.79;
(25) coal mine waste: general requirements, 30 CFR 816.81;
(26) coal mine waste: refuse piles, 30 CFR 816.83;
(27) coal mine waste: impounding structures, 30 CFR 816.84;
(28) coal mine waste: burning and burned waste utilization, 30 CFR 816.87;
(29) disposal of noncoal mine waste, 30 CFR 816.89;
(30) stabilization of surface areas, 30 CFR 816.95;
(31) protection of fish, wildlife, and related environmental values, 30 CFR 816.97;
(32) slides and other damage, 30 CFR 816.99;
(33) contemporaneous reclamation, 30 CFR 816.100;
(34) backfilling and grading: time and distance requirements, 30 CFR 816.101. This section shall be replaced by the following text:

“A” Except as provided in paragraph (b) of this section, rough backfilling and grading for surface mining activities shall be completed according to one of the following schedules:

“(i) Contour mining. Within 60 days or 1,500 linear feet following coal removal;
“(ii) area mining. Within 180 days following coal removal, and not more than four spoil ridges behind the active pit being worked, the spoil from the active pit constituting the first ridge; or
“(iii) other surface mining methods. In accordance with the schedule established by the department.

“(B) The time allowed for rough backfilling and grading for the entire permit area or for a specific portion of the permit area may be extended by the department if the permittee demonstrates, in accordance with K.A.R. 47-3-42 (a) (27), adopting by reference 30 CFR 780.18 (b)(3), that additional time is necessary”;

(35) backfilling and grading: general requirements, 30 CFR 816.102, deleting subsections (k)(3)(i) and (ii);
(36) backfilling and grading: thin overburden, 30 CFR 816.104;
(37) backfilling and grading: thick overburden, 30 CFR 816.105;
(38) backfilling and grading: previously mined area, 30 CFR 816.106;
(39) revegetation: general requirements, 30 CFR 816.111;
(40) revegetation: timing, 30 CFR 816.113;
(41) revegetation: mulching and other soil-stabilizing practices, 30 CFR 816.114;
(42) revegetation: standards for success, 30 CFR 816.116. A subsection (i) shall be added to 816.116(c)(4), and a subsection (3) shall be added to 816.116(a):
(A) Subsection (c)(4)(i) shall read as follows: “(i) The regulatory authority may allow 90 days after the issuance of a notice of violation for the repair of any rills or gullies, or both, that may occur. If the rills or gullies, or both, are repaired using normal husbandry practices, approved by the department in consultation with the state conservationist or his designated representative, and the repairs are approved by the department, the period of responsibility shall not be restarted. The normal husbandry practices used to repair gullies shall be approved in advance by the United States department of interior, office of surface mining reclamation and enforcement. If the rills or gullies, or both, are not repaired and approved within 90 days, or if augmented seeding, fertilization, or irrigation was utilized to do the repairs, the regulatory authority will restart the period of liability, effective from the date the repair was completed and approved by the department.”

(B) Subsection (a)(3) shall read as follows: “(3) Data being used for bond release shall be submitted to the department annually. This shall include data for the last augmented seeding, which shall start the extended liability period. The following timetable for submissions shall be followed:

“(i) The planting reports, including soil tests, shall be submitted by March 31 of the year following the year in which the soil tests were performed;
“(ii) the production and ground cover data shall be submitted within 30 days of the date that the production and ground cover were sampled. Ground cover shall include species identification. Raw field data may be submitted at this time to fulfill this requirement. The tabulated results shall then be submitted by March 31 of the following year; and
“(iii) all data shall be clearly identified as to the bond release management area that it represents.”;

(43) cessation of operations: temporary, 30 CFR 816.131;
(44) cessation of operations: permanent, 30 CFR 816.132;
(45) postmining land use, 30 CFR 816.133, deleting subsection (d)(1) and replacing the term “Act” with “state act”;
(46) roads: general, 30 CFR 816.150;
(47) primary roads, 30 CFR 816.151;
(48) utility installations, 30 CFR 816.180;
(49) support facilities, 30 CFR 816.181; and
(50) interpretative rules related to general performance standards, 30 CFR 816.200.

(d) The following portions of the permanent program performance standards – underground mining activities, 30 CFR Part 817, as in effect on July 1, 2001, are hereby adopted by reference and altered as specified in this subsection:

(1) Signs and markers, 30 CFR 817.11. A subsection (g) shall be added to 30 CFR 817.11 that shall read as follows: “Increment boundary markers. Increment boundary markers shall be placed on each portion of a permit area on which a performance bond or other equivalent guarantee was or will be posted as provided by K.S.A. 49-406 (h), and amendments thereto”;
(2) casing and sealing of exposed underground openings: general requirements, 30 CFR 817.13;
(3) casing and sealing of underground openings: temporary, 30 CFR 817.14;
(4) casing and sealing of underground openings: permanent, 30 CFR 817.15;
(5) topsoil and subsoil, 30 CFR 817.22;
(6) hydrologic-balance protection, 30 CFR 817.41;
(7) hydrologic balance: water quality standards and effluent limitations, 30 CFR 817.42;
(8) diversions, 30 CFR 817.43;
(9) hydrologic balance: sediment control measures, 30 CFR 817.45;
(10) hydrologic balance: siltation structures, 30 CFR 817.46;
(11) hydrologic balance: discharge structures, 30 CFR 817.47;
(12) impoundments, 30 CFR 817.49;
(13) postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities, 30 CFR 817.56;
(14) hydrologic balance: stream buffer zone, 30 CFR 817.57;
(15) coal recovery, 30 CFR 817.59;
(16) use of explosives: general requirements, 30 CFR 817.61 except that subsection (c)(1) of 30 CFR 817.61 shall be replaced by the following:
   “All blasting operations within the state shall be conducted under the direction of a certified blaster”;
(17) use of explosives: preblasting survey, 30 CFR 817.62;
(18) use of explosives: general performance standards, 30 CFR 817.64;
(19) use of explosives: blasting signs, warnings, and access control, 30 CFR 817.66;
(20) use of explosives: control of adverse effects, 30 CFR 817.67;
(21) use of explosives: records of blasting operations, 30 CFR 817.68;
(22) disposal of excess spoil: general requirements, 30 CFR 817.71, deleting the phrase “in accordance with § 817.73”;
(23) disposal of excess spoil: preexisting benches, 30 CFR 817.74;
(24) coal mine waste: general requirements, 30 CFR 817.81;
(25) coal mine waste: refuse piles, 30 CFR 817.83;
(26) coal mine waste: impounding structures, 30 CFR 817.84;
(27) coal mine waste: burning and burn waste utilization, 30 CFR 817.87;
(28) disposal of noncoal mine wastes, 30 CFR 817.89;
(29) stabilization of surface areas, 30 CFR 817.95;
(30) protection of fish, wildlife, and related environmental values, 30 CFR 817.97;
(31) slides and other damage, 30 CFR 817.99;
(32) contemporaneous reclamation, 30 CFR 817.100;
(33) backfilling and grading: general requirements, 30 CFR 817.102, deleting subsection (k)(1);
(34) backfilling and grading: previously mined areas, 30 CFR 817.106;
(35) revegetation: general requirements, 30 CFR 817.111;
(36) revegetation: timing, 30 CFR 817.113;
(37) revegetation: mulching and other soil-stabilizing practices, 30 CFR 817.114;
(38) revegetation: standards for success, 30 CFR 817.116. A subsection (3) shall be added to 817.116 (a). Subsection (a)(3) shall read as follows: “(3) Data being used for bond release shall be submitted to the department annually. This shall include data for the last augmented seeding, which shall start the extended liability period. The following timetable for submissions shall be followed:
“(i) The planting reports, including soil tests, shall be submitted by March 31 of the year following the year in which the soil tests were performed;

“(ii) The production and ground cover data shall be submitted within 30 days of the date that the production and ground cover were sampled. Ground cover shall include species identification. Raw field data may be submitted at this time to fulfill this requirement. The tabulated results shall then be submitted by March 31 of the following year; and

“(iii) All data shall be clearly identified as to the bond release management area that it represents.”;

(39) subsidence control, 30 CFR 817.121, except that 30 CFR 817.121 (c)(4)(i)-(iv) shall be deleted;

(40) subsidence control: public notice, 30 CFR 817.122;

(41) cessation of operations: temporary, 30 CFR 817.131;

(42) cessation of operations: permanent, 30 CFR 817.132;

(43) postmining land use, 30 CFR 817.133, deleting subsection (d)(1) and replacing the term “Act” with “state act”;

(44) roads: general, 30 CFR 817.150;

(45) primary roads, 30 CFR 817.151;

(46) utility installations, 30 CFR 817.180;

(47) support facilities, 30 CFR 817.181; and

(48) interpretative rules related to general performance standards, 30 CFR 817.200. The phrase “Office of Surface Mining Reclamation and Enforcement” shall be replaced by “Kansas department of health and environment.”

(e) The following portions of the special permanent program performance standards – auger mining, 30 CFR Part 819, as in effect on July 1, 2001, are hereby adopted by reference:

(1) Auger mining: general, 30 CFR 819.11;

(2) auger mining: coal recovery, 30 CFR 819.13;

(3) auger mining: hydrologic balance, 30 CFR 819.15;

(4) auger mining: subsidence protection, 30 CFR 819.17;

(5) auger mining: backfilling and grading, 30 CFR 819.19; and

(6) auger mining: protection of underground mining, 30 CFR 819.21.

(f) The following portions of the special permanent program performance standards – operations on prime farmland, 30 CFR Part 823, as in effect on July 1, 2001, are hereby adopted by reference and altered as specified in this subsection:

(1) Responsibilities, 30 CFR 823.4;

(2) applicability, 30 CFR 823.11, deleting subsection (a);

(3) soil removal and stockpiling, 30 CFR 823.12;

(4) soil replacement, 30 CFR 823.14; and

(5) revegetation and restoration of soil productivity, 30 CFR 823.15.

(g) The following portions of the permanent program performance standards – coal preparation plants not located within the permit area of a mine, 30 CFR Part 827, as in effect on July 1, 2001, are hereby adopted by reference:

(1) General requirements, 30 CFR 827.11;

(2) coal preparation plants: performance standards, 30 CFR 827.12; and

(h) The following portions of the special permanent program performance standards – in situ processing, 30 CFR Part 828, as in effect on July 1, 2001, are hereby adopted by reference:
   (1) In situ processing: performance standards, 30 CFR 828.11; and
   (2) In situ processing: monitoring, 30 CFR 828.12.
   (i) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:
      (1) “Director” shall be replaced by “secretary.”
      (2) “Subchapter J of this chapter” shall be replaced by “article 8 of these regulations.”
      (3) “Subchapter B of this chapter” shall be replaced by “K.A.R. 47-9-4.”
      (4) “This part” shall be replaced by “K.A.R. 47-9-1.”
      (5) “This chapter,” “subchapter,” and “this section” shall be replaced by “these regulations.”
      (6) “Part 816” and “part 816 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c).”
      (7) “Part 817,” “part 817 of this chapter,” and “30 CFR 817” shall be replaced by “K.A.R. 47-9-1 (d).”
      (8) “Every state program,” “every regulatory program,” and “the applicable regulatory program” shall be replaced by “the regulatory program.”
      (9) “Part 815” shall be replaced by “K.A.R. 47-9-1 (b).”
      (10) “Parts 818 through 828” shall be replaced by “K.A.R. 47-9-1 (e) through (h).”
      (11) “§ 816.95 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(30).”
      (12) “§§ 816.150 (b) through (f), 816.180, and 816.181 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c) (46), (48), and (49).”
      (13) “§ 816.43 of this chapter” and “§ 816.43” shall be replaced by “K.A.R. 47-9-1 (c)(8).”
      (14) “§§ 816.13 through 816.15 of this chapter” and “§§ 816.13 to 816.15” shall be replaced by “K.A.R. 47-9-1 (c)(2) through (4).”
      (15) “§§ 816.41 through 816.49 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(6) through (12).”
      (16) “§§ 816.41(b), 816.41(f), and 816.102(e) of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(6) and (35).”
      (17) “Parts 816 and 817” shall be replaced by “K.A.R. 47-9-1 (c) and (d).”
      (18) “Part 816 or part 817” shall be replaced by “K.A.R. 47-9-1 (c) or (d).”
      (19) “§ 816.57” shall be replaced by “K.A.R. 47-9-1 (c)(14).”
      (20) “§ 816.22,” “§ 816.22 of this chapter,” “§ 816.22 of this part,” “§816.22(e),” “30 CFR 816.22(e)(1)(i),” and “30 CFR 816.22(e)(1)(ii)” shall be replaced by “K.A.R. 47-9-1 (c)(5).”
      (21) “§ 816.41 of this part,” “§ 816.41,” and “§ 816.41(i)” shall be replaced by “K.A.R. 47-9-1 (c)(6).”
      (22) “§ 816.13” shall be replaced by “K.A.R. 47-9-1 (c)(2).”
      (23) “§§ 816.111, 816.113, 816.114, and 816.116 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(39), (40), (41), and (42).”
      (24) “§ 780.21(h) of this chapter,” “§ 780.21(i) of this chapter,” and “§ 780.21(j) of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(28).”
(25) “§§ 773.17(e) and 780.21(h) of this chapter” shall be replaced by “K.A.R. 47-6-6 (a) and K.A.R. 47-3-42 (a)(28).”
(26) “§§ 773.17(e) and 784.14(g) of this chapter” shall be replaced by “K.A.R. 47-6-6 (a) and K.A.R. 47-10-1 (a)(2)(E).”
(27) “§ 774.13 of this chapter” and “30 CFR 774.13” shall be replaced by “K.A.R. 47-6-2.”
(28) “§§ 780.21 and 780.22 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(28) and (29).”
(29) “§ 816.42” shall be replaced by “K.A.R. 47-9-1 (c)(7).”
(30) “§ 816.46” shall be replaced by “K.A.R. 47-9-1 (c)(10).”
(31) “§ 816.111” and “§ 816.111(b)” shall be replaced by “K.A.R. 47-9-1 (c)(39).”
(32) “§ 816.102,” “§§ 816.102(c), (e) through (h), and (j),” “§§ 816.102(a)(2) through (j) of this part,” and “§ 816.102(a) (1) and (2)” shall be replaced by “K.A.R. 47-9-1 (c)(35).”
(33) “§ 780.25 of this chapter,” “§ 780.25(a) of this chapter,” and “§ 780.25(c)(3)” shall be replaced by “K.A.R. 47-3-42 (a)(31).”
(34) “§ 816.49 of this chapter” and “§ 816.49(a)(9)” shall be replaced by “K.A.R. 47-9-1 (c)(12).”
(35) “§§ 816.111 through 816.116 of this chapter” and “§§ 816.111 through 816.116” shall be replaced by “K.A.R. 47-9-1 (c)(39) through (42).”
(36) “§ 816.84 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(27).”
(37) “§ 816.11” and “§ 816.11 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(1).”
(38) “§ 816.64” shall be replaced by “K.A.R. 47-9-1 (c)(18).”
(39) “§ 816.67” and “§ 816.67(e)” shall be replaced by “K.A.R. 47-9-1 (c)(20).”
(40) “§ 816.68(p)” shall be replaced by “K.A.R. 47-9-1 (c)(21).”
(41) “§ 816.66(c)” shall be replaced by “K.A.R. 47-9-1 (c)(19).”
(42) “§ 780.13 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(23).”
(43) “§ 780.35(c) of this chapter” shall be replaced by “K.A.R. 47-3-42 (c)(36).”
(44) “§ 816.83” shall be replaced by “K.A.R. 47-9-1 (c)(26).”
(45) “§ 784.25 of this chapter” shall be replaced by “K.A.R. 47-10-1 (a)(2)(P).”
(46) “§ 816.71” and “§ 816.71(f)(3)” shall be replaced by “K.A.R. 47-9-1 (c)(22).”
(47) “§ 816.81” shall be replaced by “K.A.R. 47-9-1 (c)(25).”
(48) “This title” shall be replaced by “the 30 CFR.”
(49) “§ 785.18 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(41).”
(50) “§§ 816.71 through 816.74,” “§§ 816.71 through 816.74 of this part” and “§§ 816.71 - 816.74 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(22) through (23).”
(51) “§§ 816.81 and 816.83” shall be replaced by “K.A.R. 47-9-1 (c)(25) and (26).”
(52) “§§ 816.49 and 816.56” and “§§ 816.49 and 816.56 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(12) and (13).”
(53) “§ 816.105” shall be replaced by “K.A.R. 47-9-1 (c)(37).”
(54) “§ 816.106” shall be replaced by “K.A.R. 47-9-1 (c)(38).”
(55) “§§ 816.102 through 816.107 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(35) through (38).”
(56) “Part 823 of this chapter” shall be replaced by “K.A.R. 47-9-1 (f).”
(57) “§ 701.5 of this chapter” shall be replaced by “K.A.R. 47-2-75 (b).”
(58) “§§ 816.41 through 816.43 and 816.57 of this chapter” and “§ 816.41 through 816.43 and 816.57 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(6) through (8) and (14).”
(59) “§§ 816.22 and 816.111 through 816.116 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(5) and (39) through (42).”
(60) “Section 816.150” shall be replaced by “K.A.R. 47-9-1 (c)(46).”
(61) “§ 780.37(c) of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(37).”
(62) “§ 817.57” and “30 CFR 817.57” shall be replaced by “K.A.R. 47-9-1 (d)(14).”
(63) “§ 817.22,” “§ 817.22 of this chapter,” “§ 817.22 of this part,” and “§ 817.22(b)” shall be replaced by “K.A.R. 47-9-1 (d)(5).”
(64) “§ 817.41 of this part,” “30 CFR 817.41,” “§ 817.41(h),” and “§ 817.41(j)” shall be replaced by “K.A.R. 47-9-1 (d)(6).”
(65) “§ 817.13” shall be replaced by “K.A.R. 47-9-1 (d)(2).”
(66) “§§ 817.111, 817.113, 817.114, and 817.116 of this chapter” shall be replaced by “K.A.R. 47-9-1 (d)(35), (36), (37), and (38).”
(67) “§ 784.14(g) of this chapter,” “§ 784.14(h) of this chapter,” and “§ 784.14(i) of this chapter” shall be replaced by “K.A.R. 47-10-1 (a)(2)(E).”
(68) “§§ 817.13 and 817.15” shall be replaced by “K.A.R. 47-9-1 (d)(2) and (4).”
(69) “§§ 817.13 to 817.15” shall be replaced by “K.A.R. 47-9-1 (d)(2) to (4).”
(70) “§ 817.42” shall be replaced by “K.A.R. 47-9-1 (d)(7).”
(71) “§§ 780.21 and 784.14 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(28) and K.A.R. 47-10-1 (a)(2)(E).”
(72) “§§ 780.21 and 784.22 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(28) and K.A.R. 47-10-1 (a)(2)(M).”
(73) “§ 817.46” shall be replaced by “K.A.R. 47-9-1 (d)(10).”
(74) “§ 817.111” and “§ 817.111(b)” shall be replaced by “K.A.R. 47-9-1 (d)(35).”
(75) “§ 817.102,” “§ 817.102 (c), (e) through (h), and (j),” and “§ 817.102(a) (1) and (2)” shall be replaced by “K.A.R. 47-9-1 (d)(33).”
(76) “§ 784.16(a) of this chapter” and “§ 784.16(c)(3)” shall be replaced by “K.A.R. 47-10-1 (a)(2)(G).”
(77) “§ 817.49 of this chapter,” “§ 817.49(a)(9),” and “§ 817.49(a) and (c)” shall be replaced by “K.A.R. 47-9-1 (d)(12).”
(78) “§§ 817.111 through 817.116 of this chapter” and “§§ 817.111 through 817.116” shall be replaced by “K.A.R. 47-9-1 (d)(35) through (38).”
(79) “§§ 817.22 and 817.111 through 817.116 of this chapter” shall be replaced by “K.A.R. 47-9-1 (d)(5) and (35) through (38).”
(80) “§ 817.84 of this chapter” shall be replaced by “K.A.R. 47-9-1 (d)(26).”
(81) “§ 817.43” shall be replaced by “K.A.R. 47-9-1 (d)(8).”
(82) “§ 817.11” shall be replaced by “K.A.R. 47-9-1 (d)(1).”
(83) “Sections 817.61–817.68” shall be replaced by “K.A.R. 47-9-1 (d)(16)–(21).”
(84) “§ 817.67” and “§ 817.67 (e)” shall be replaced by “K.A.R. 47-9-1 (d)(20).”
(85) “§ 817.68(p)” shall be replaced by “K.A.R. 47-9-1 (d)(21).”
(86) “§ 817.64(a)” shall be replaced by “K.A.R. 47-9-1 (d)(18).”
(87) “§ 817.66(c)” shall be replaced by “K.A.R. 47-9-1 (d)(19).”
(88) “§ 784.19 of this chapter” shall be replaced by “K.A.R. 47-10-1 (a)(2)(J).”
(89) “§ 817.83” shall be replaced by “K.A.R. 47-9-1 (d)(25).”
(90) “§ 817.71” and “§ 817.71(f)(3)” shall be replaced by “K.A.R. 47-9-1 (d)(22).”
(91) “§ 817.81” shall be replaced by “K.A.R. 47-9-1 (d)(24).”
(92) “§§ 817.71 through 817.74” and “§§ 817.71 through 817.74 of this chapter” shall be replaced by “K.A.R. 47-9-1 (d)(22) and (23).”
(93) “§§ 817.81 and 817.83” shall be replaced by “K.A.R. 47-9-1 (d)(24) and (25).”
(94) “§§ 817.49 and 817.56” shall be replaced by “K.A.R. 47-9-1 (d)(12) and (13).”
(95) “§ 817.106” shall be replaced by “K.A.R. 47-9-1 (d)(34).”
(96) “§ 817.116” shall be replaced by “K.A.R. 47-9-1 (d)(38).”
(97) “§ 817.102 through 817.107 of this chapter” shall be replaced by “K.A.R. 47-9-1 (d)(33) and (34).”
(98) “§ 784.20 of this chapter” and “§ 784.20(a) of this chapter” shall be replaced by “K.A.R. 47-10-1 (a)(2)(K).”
(99) “§ 784.24(c)” shall be replaced by “K.A.R. 47-10-1 (a)(2)(O).”
(100) “§ 773.6(d) of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(46).”
(101) “§§ 817.41 through 817.43 and 817.57 of this chapter” shall be replaced by “K.A.R. 47-9-1 (d)(6) through (8) and (14).”
(102) “§ 817.150” shall be replaced by “K.A.R. 47-9-1 (d)(44).”
(103) “§ 817.106” shall be replaced by “K.A.R. 47-9-1 (d)(34).”
(104) “30 CFR 817.133” and “30 CFR 817.133(a)” shall be replaced by “K.A.R. 47-9-1 (d)(43).”
(106) “30 CFR part 773 and 775” shall be replaced by “K.A.R. 47-3-42 (a)(47) through (64), and K.S.A. 49-407 (d), 49-416a, 49-422a, and amendments thereto, and article 4 of these regulations.”
(107) “§ 816.59 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(15).”
(108) “§§ 816.41 and 816.42 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(6) and (7).”
(109) “§ 817.121 (a) and (c) of this chapter” shall be replaced by “K.A.R. 47-9-1 (d)(39).”
(110) “§§ 816.102 and 816.104 through 816.106 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(35) and (36) through (38).”
(111) “§ 816.79 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(24).”
(112) “§ 785.17 and subchapter J of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(40) and article 8 of these regulations.”
(113) “§ 785.17(a) of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(40).”
(114) “§ 823.14(b)” shall be replaced by “K.A.R. 47-9-1 (f)(4).”
(115) “§ 816.22 or § 817.22 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(5) or K.A.R. 47-9-1 (d)(5).”
(116) “§ 823.12(c)(2)” and “§ 823.12(c)(1)” shall be replaced by “K.A.R. 47-9-1 (f)(3).”
(117) “§ 785.21 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(43).”
(118) "§ 827.13 of this part" shall be replaced by "K.A.R. 47-9-1 (g)(3)."
(119) "§ 816.45 through 816.47 of this chapter" shall be replaced by "K.A.R. 47-9-1 (c)(9) through (11)."
(120) "§§ 816.81, 816.83, 816.84, 816.87, 816.89, and 816.71 through 816.74 of this chapter" shall be replaced by "K.A.R. 47-9-1 (c)(25), (26), (27), (28), (29), and (22) through (23)."
(121) "§ 816.97 of this chapter" shall be replaced by "K.A.R. 47-9-1 (c)(31)."
(122) "§ 816.181 of this chapter" shall be replaced by "K.A.R. 47-9-1 (c)(49)."
(123) "§§ 816.150 and 816.151 of this chapter" shall be replaced by "K.A.R. 47-9-1 (c)(46) and (47)."
(124) "§§ 816.131 and 816.132 of this chapter" shall be replaced by "K.A.R. 47-9-1 (c)(43) and (44)."
(125) "§§ 816.22, 816.100, 816.102, 816.104, 816.106, 816.111, 816.113, 816.114, 816.116, and 816.133 of this chapter" shall be replaced by "K.A.R. 47-9-1 (c)(5), (33), (35), (36), (38), (39), (40), (41), (42), and (45)."
(127) "§ 827.12" shall be replaced by "K.A.R. 47-9-1 (g)(2)."

30 CFR 810.2 Objective. The objective of this subchapter is to ensure that coal exploration and surface coal mining and reclamation operations are conducted in manners which are compatible with the environmental, social, and esthetic needs of the Nation. Accordingly, the performance standards and design requirements in this subchapter will provide for--
(a) Protection of the health, safety, and general welfare of mine workers and the public;
(b) Maximum use and conservation of the solid fuel resource being recovered so that reaffecting the land through future surface coal mining operations can be minimized;
(c) Prompt reclamation of all affected areas to conditions that are capable of supporting the premining land uses or higher or better land uses;
(d) Reclamation of land affected by surface coal mining operations as contemporaneously as practicable with mining operations;
(e) Minimizing, to the extent possible using the best technology currently available, disturbances and adverse impacts on fish, wildlife, and other related environmental values, and enhancement of such resources where practicable;
(f) Revegetation which achieves a prompt vegetative cover and recovery of productivity levels compatible with approved land uses;
(g) Minimum disturbance to the prevailing hydrologic balance at the mine-site and in associated off-site areas, and to the quality and quantity of water in surface and ground water systems;
(h) Protection of fragile and historic lands where surface coal mining operations could result in significant damage to important historic, cultural, scientific, or esthetic values and natural systems;
(i) Confinement of surface coal mining and reclamation operations including, but not limited to, the location of spoil disposal areas to lands within the permit area; and
(j) Striking a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy.

30 CFR 810.4 Responsibility. (a) The Director shall ensure that performance standards and design requirements at least as stringent as the standards of this subchapter are implemented and enforced under every regulatory program.
(b) The State regulatory authority shall ensure that performance standards and design requirements at least as stringent as the standards in this subchapter are implemented and enforced under every State program.
(c) Each person conducting coal exploration or surface coal mining and reclamation operations is responsible for complying with performance standards and design requirements which are at least as stringent as the standards in this subchapter and the applicable regulatory program.

30 CFR 810.11 Applicability. Part 815 applies to all coal exploration conducted under regulatory programs. Part 816 applies to all surface mining activities conducted under regulatory programs. Part 817 applies to all underground mining activities conducted under regulatory programs. Parts 818 through 828 apply to certain special categories of surface coal mining and reclamation operations. Parts 816 and 817 apply to each of those special categories of operations, except to the extent that a provision of parts 818 through 828 specifically exempts a particular category from a particular requirement of part 816 or part 817.

30 CFR 815.13 Required documents. Each person who conducts coal exploration which substantially disturbs the natural land surface shall, while in the exploration area, have available a copy of the filed notice of intention to explore or a copy of the exploration permit for review by the authorized representative of the regulatory authority upon request.

30 CFR 815.15 Performance standards for coal exploration. (a) Habitats of unique or unusually high value for fish, wildlife, and other related environmental values and critical habitats of threatened or endangered species identified pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall not be disturbed during coal exploration.
(b) All roads or other transportation facilities used for coal exploration shall comply with the applicable provisions of §§ 816.150 (b) through (f), 816.180, and 816.181 of this chapter.
(c) If excavations, artificially flat areas, or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.
(d) Topsoil shall be separately removed, stored, and redistributed on areas disturbed by coal exploration activities as necessary to assure successful revegetation or as required by the regulatory authority.
(e) All areas disturbed by coal exploration activities shall be revegetated in a manner that encourages prompt revegetation and recovery of a diverse, effective, and permanent vegetative cover. Revegetation shall be accomplished in accordance with the following:

(1) All areas disturbed by coal exploration activities shall be seeded or planted to the same seasonal variety native to the areas disturbed. If the land use of the exploration area is intensive agriculture, planting of the crops normally grown will meet the requirements of this paragraph.

(2) The vegetative cover shall be capable of stabilizing the soil surface from erosion.

(f) Diversions of overland flows and ephemeral, perennial, or intermittent streams shall be made in accordance with § 816.43 of this chapter.

(g) Each exploration hole, borehole, well, or other exposed underground opening created during exploration shall be reclaimed in accordance with §§ 816.13 through 816.15 of this chapter.

(h) All facilities and equipment shall be promptly removed from the exploration area when they are no longer needed for exploration, except for those facilities and equipment that the regulatory authority determines may remain to--

(1) Provide additional environmental data,

(2) Reduce or control the onsite and offsite effects of the exploration activities, or

(3) Facilitate future surface mining and reclamation operations by the person conducting the exploration.

(i) Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance in accordance with §§ 816.41 through 816.49 of this chapter. The regulatory authority may specify additional measures which shall be adopted by the person engaged in coal exploration.

(j) Acid- or toxic-forming materials shall be handled and disposed of in accordance with §§ 816.41(b), 816.41(f), and 816.102(e) of this chapter. The regulatory authority may specify additional measures which shall be adopted by the person engaged in coal exploration. [48 FR 40636, Sept. 8, 1983, as amended at 53 FR 45211, Nov. 8, 1988]

30 CFR 816.11 Signs and markers. (a) Specifications. Signs and markers required under this part shall--

(1) Be posted and maintained by the person who conducts the surface mining activities;

(2) Be of a uniform design throughout the operation that can be easily seen and read;

(3) Be made of durable material; and

(4) Conform to local ordinances and codes.

(b) Duration of maintenance. Signs and markers shall be maintained during the conduct of all activities to which they pertain.

(c) Mine and permit identification signs.

(1) Identification signs shall be displayed at each point of access to the permit area from public roads.

(2) Signs shall show the name, business address, and telephone number of the person who conducts the surface mining activities and the identification number of the current permit authorizing surface mining activities.
(3) Signs shall be retained and maintained until after the release of all bonds for the permit area.

(d) Perimeter markers. The perimeter of a permit area shall be clearly marked before the beginning of surface mining activities.

(e) Buffer zone markers. Buffer zones shall be marked along their boundaries as required under § 816.57.

(f) Topsoil markers. Where topsoil or other vegetation-supporting material is segregated and stockpiled as required under § 816.22, the stockpiled material shall be clearly marked. [44 FR 15395, Mar. 13, 1979, as amended at 48 FR 9806, Mar. 8, 1983; 48 FR 44780, Sept. 30, 1983]

30 CFR 816.13 Casing and sealing of drilled holes: General requirements. Each exploration hole, other drill or borehole, well, or other exposed underground opening shall be cased, sealed, or otherwise managed, as approved by the regulatory authority, to prevent acid or other toxic drainage from entering ground or surface waters, to minimize disturbance to the prevailing hydrologic balance, and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit area and adjacent area. If these openings are uncovered or exposed by surface mining activities within the permit area they shall be permanently closed, unless approved for water monitoring, or otherwise managed in a manner approved by the regulatory authority. Use of a drilled hole or borehole or monitoring well as a water well must meet the provisions of § 816.41 of this part. This section does not apply to holes solely drilled and used for blasting. [44 FR 15395, Mar. 13, 1979, as amended at 48 FR 14822, Apr. 5, 1983; 48 FR 43990, Sept. 26, 1983]

30 CFR 816.14 Casing and sealing of drilled holes: Temporary. Each exploration hole, other drill or boreholes, wells and other exposed underground openings which have been identified in the approved permit application for use to return coal processing waste or water to underground workings, or to be used to monitor ground water conditions, shall be temporarily sealed before use and protected during use by barricades, or fences, or other protective devices approved by the regulatory authority. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the surface mining activities. [44 FR 15395, Mar. 13, 1979; 44 FR 49686, Aug. 24, 1979]

30 CFR 816.15 Casing and sealing of drilled holes: Permanent. When no longer needed for monitoring or other use approved by the regulatory authority upon a finding of no adverse environmental or health and safety effect, or unless approved for transfer as a water well under § 816.41, each exploration hole, other drilled hole or borehole, well, and other exposed underground opening shall be capped, sealed, backfilled, or otherwise properly managed, as required by the regulatory authority, under § 816.13 and consistent with 30 CFR 75.1711. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery, and to keep acid or other toxic drainage from entering ground or surface waters. [44 FR 15395, Mar. 13, 1979, as amended at 48 FR 43990, Sept. 26, 1983]
30 CFR 816.22 Topsoil and subsoil. (a) Removal. (1)(i) All topsoil shall be removed as a separate layer from the area to be disturbed, and segregated.
   (ii) Where the topsoil is of insufficient quantity or poor quality for sustaining vegetation, the materials approved by the regulatory authority in accordance with paragraph (b) of this section shall be removed as a separate layer from the area to be disturbed, and segregated.
   (2) If topsoil is less than 6 inches thick, the operator may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.
   (3) The regulatory authority may choose not to require the removal of topsoil for minor disturbances which–
      (i) Occur at the site of small structures, such as power poles, signs, or fence lines; or
      (ii) Will not destroy the existing vegetation and will not cause erosion.
   (4) Timing. All material to be removed under this section shall be removed after the vegetative cover that would interfere with its salvage is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other surface disturbance takes place.

(b) Substitutes and supplements. Selected overburden materials may be substituted for, or used as a supplement to topsoil if the operator demonstrates to the regulatory authority that the resulting soil medium is equal to, or more suitable for sustaining vegetation than, the existing topsoil, and the resulting soil medium is the best available in the permit area to support revegetation.

(c) Storage. (1) Materials removed under paragraph (a) of this section shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas.
   (2) Stockpiled materials shall–
      (i) Be selectively placed on a stable site within the permit area;
      (ii) Be protected from contaminants and unnecessary compaction that would interfere with revegetation;
      (iii) Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the regulatory authority; and
      (iv) Not be moved until required for redistribution unless approved by the regulatory authority.
   (3) Where long-term surface disturbances will result from facilities such as support facilities and preparation plants and where stockpiling of materials removed under paragraph (a)(1) of this section would be detrimental to the quality or quantity of those materials, the regulatory authority may approve the temporary distribution of the soil materials so removed to an approved site within the permit area to enhance the current use of that site until needed for later reclamation, provided that–
      (i) Such action will not permanently diminish the capability of the topsoil of the host site; and
      (ii) The material will be retained in a condition more suitable for redistribution than if stockpiled.

(d) Redistribution. (1) Topsoil materials removed under paragraph (a) of this section shall be redistributed in a manner that–
      (i) Achieves an approximately uniform, stable thickness consistent with the approved postmining land use, contours, and surface-water drainage systems;
(ii) Prevents excess compaction of the materials; and
(iii) Protects the materials from wind and water erosion before and after seeding and planting.

(2) Before redistribution of the material removed under paragraph (a) of this section the regraded land shall be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is replaced.

(3) The regulatory authority may choose not to require the redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or of roads if it determines that—
   (i) Placement of topsoil or topsoil substitutes on such embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation, and
   (ii) Such embankments will be otherwise stabilized.

(4) *Nutrients and soil amendments.* Nutrients and soil amendments shall be applied to the initially redistributed material when necessary to establish the vegetative cover.

(e) *Subsoil segregation.* The regulatory authority may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of paragraphs (c) and (d) of this section if it finds that such subsoil layers are necessary to comply with the revegetation requirements of §§ 816.111, 816.113, 816.114, and 816.116 of this chapter. [48 FR 22100, May 16, 1983]

30 CFR 816.41 Hydrologic-balance protection. (a) General. All surface mining and reclamation activities shall be conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, to assure the protection or replacement of water rights, and to support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this part. The regulatory authority may require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Mining and reclamation practices that minimize water pollution and changes in flow shall be used in preference to water treatment.

(b) *Ground-water protection.* In order to protect the hydrologic balance, surface mining activities shall be conducted according to the plan approved under § 780.21(h) of this chapter and the following:

   (1) Ground-water quality shall be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic, or other harmful infiltration to ground-water systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the ground water.

   (2) Ground-water quantity shall be protected by handling earth materials and runoff in a manner that will restore the approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and fills, so as to allow the movement of water to the ground-water system.
(c) **Ground-water monitoring.** (1) Ground-water monitoring shall be conducted according to the ground-water monitoring plan approved under § 780.21(i) of this chapter. The regulatory authority may require additional monitoring when necessary.

(2) Ground-water monitoring data shall be submitted every 3 months to the regulatory authority or more frequently as prescribed by the regulatory authority. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the operator shall promptly notify the regulatory authority and immediately take the actions provided for in §§ 773.17(e) and 780.21(h) of this chapter.

(3) Ground-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of § 774.13 of this chapter, the regulatory authority may modify the monitoring requirements, including the parameters covered and the sampling frequency, if the operator demonstrates, using the monitoring data obtained under this paragraph, that--

(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under § 780.21(i) of this chapter.

(4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of ground water onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the operator when no longer needed.

(d) **Surface-water protection.** In order to protect the hydrologic balance, surface mining activities shall be conducted according to the plan approved under § 780.21(h) of this chapter, and the following:

(1) Surface-water quality shall be protected by handling earth materials, ground-water discharges, and runoff in a manner that minimizes the formation of acidic or toxic drainage; prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to streamflow outside the permit area; and otherwise prevents water pollution. If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and § 816.42, the operator shall use and maintain the necessary water-treatment facilities or water quality controls.

(2) Surface-water quality and flow rates shall be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under § 780.21(h) of this chapter.

(e) **Surface-water monitoring.** (1) Surface-water monitoring shall be conducted according to the surface-water monitoring plan approved under § 780.21(j) of this chapter. The regulatory authority may require additional monitoring when necessary.

(2) Surface-water monitoring data shall be submitted every 3 months to the regulatory authority or more frequently as prescribed by the regulatory authority. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any surface-water sample indicates noncompliance with the permit conditions, the operator
shall promptly notify the regulatory authority and immediately take the actions provided for in §§ 773.17(e) and 780.21(h) of this chapter. The reporting requirements of this paragraph do not exempt the operator from meeting any National Pollutant Discharge Elimination System (NPDES) reporting requirements.

(3) Surface-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with § 774.13 of this chapter, the regulatory authority may modify the monitoring requirements, except those required by the NPDES permitting authority, including the parameters covered and sampling frequency if the operator demonstrates, using the monitoring data obtained under this paragraph, that—

(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under § 780.21(j) of this chapter.

(4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of surface water onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the operator when no longer needed.

(f) Acid- and toxic-forming materials. (1) Drainage from acid- and toxic-forming materials into surface water and ground water shall be avoided by—

(i) Identifying and burying and/or treating, when necessary, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated, and

(ii) Storing materials in a manner that will protect surface water and ground water by preventing erosion, the formation of polluted runoff, and the infiltration of polluted water. Storage shall be limited to the period until burial and/or treatment first become feasible, and so long as storage will not result in any risk of water pollution or other environmental damage.

(2) Storage, burial or treatment practices shall be consistent with other material handling and disposal provisions of this chapter.

(g) Transfer of wells. Before final release of bond, exploratory or monitoring wells shall be sealed in a safe and environmentally sound manner in accordance with §§ 816.13 to 816.15. With the prior approval of the regulatory authority, wells may be transferred to another party for further use. At a minimum, the conditions of such transfer shall comply with State and local law and the permittee shall remain responsible for the proper management of the well until bond release in accordance with §§ 816.13 to 816.15.

(h) Water rights and replacement. Any person who conducts surface mining activities shall replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the surface mining activities. Baseline hydrologic information required in §§ 780.21 and 780.22 of this chapter shall be used to determine the extent of the impact of mining upon ground water and surface water.
(i) Discharges into an underground mine. (1) Discharges into an underground mine are prohibited, unless specifically approved by the regulatory authority after a demonstration that the discharge will—
   (i) Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from surface mining activities;
   (ii) Not result in a violation of applicable water quality standards or effluent limitations;
   (iii) Be at a known rate and quality which shall meet the effluent limitations of 30 CFR 816.42 for pH and total suspended solids, except that the pH and total suspended-solids limitations may be exceeded, if approved by the regulatory authority; and
   (iv) Meet with the approval of the Mine Safety and Health Administration.
(2) Discharges shall be limited to the following:
   (i) Water;
   (ii) Coal processing waste;
   (iii) Fly ash from a coal-fired facility;
   (iv) Sludge from an acid-mine-drainage treatment facility;
   (v) Flue-gas desulfurization sludge;
   (vi) Inert materials used for stabilizing underground mines; and


30 CFR 816.43 Diversions. (a) General requirements. (1) With the approval of the regulatory authority, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of § 816.46 for siltation structure removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions shall be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions shall not be used to divert water into underground mines without approval of the regulatory authority under § 816.41(i).
(2) The diversion and its appurtenant structures shall be designed, located, constructed, maintained and used to—
   (i) Be stable;
   (ii) Provide protection against flooding and resultant damage to life and property;
   (iii) Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and
   (iv) Comply with all applicable local, State, and Federal laws and regulations.
(3) Temporary diversions shall be removed promptly when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process shall be
restored in accordance with this part. Before diversions are removed, downstream water-treatment facilities previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement shall not relieve the operator from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

(4) The regulatory authority may specify design criteria for diversions to meet the requirements of this section.

(b) Division of perennial and intermittent streams. (1) Division of perennial and intermittent streams within the permit area may be approved by the regulatory authority after making the finding relating to stream buffer zones that the diversion will not adversely affect the water quantity and quality and related environmental resources of the stream.

(2) The design capacity of channels for temporary and permanent stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

(3) The requirements of paragraph (a)(2)(ii) of this section shall be met when the temporary and permanent diversions for perennial and intermittent streams are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

(4) The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the performance standards of this part and any design criteria set by the regulatory authority.

(c) Division of miscellaneous flows. (1) Miscellaneous flows, which consist of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required or approved by the regulatory authority. Miscellaneous flows shall include groundwater discharges and ephemeral streams.

(2) The design, location, construction, maintenance, and removal of diversions of miscellaneous flows shall meet all of the performance standards set forth in paragraph (a) of this section:

(3) The requirements of paragraph (a)(2)(ii) of this section shall be met when the temporary and permanent diversions for miscellaneous flows are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion. [48 FR 43991, Sept. 26, 1983]

30 CFR 816.45 Hydrologic balance: Sediment control measures. (a) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

(1) Prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area,

(2) Meet the more stringent of applicable State or Federal effluent limitations,
(3) Minimize erosion to the extent possible.

(b) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed area shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:

1. Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in § 816.111(b);
2. Stabilizing the backfill material to promote a reduction in the rate and volume of runoff, in accordance with the requirements of § 816.102;
3. Retaining sediment within disturbed areas;
4. Diverting runoff away from disturbed areas;
5. Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;
6. Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment; and

30 CFR 816.46 Hydrologic balance: Siltation structures. (a) For the purpose of this section only, disturbed areas shall not include those areas—

1. In which the only surface mining activities include diversion ditches, siltation structures, or roads that are designed constructed and maintained in accordance with this part; and
2. For which the upstream area is not otherwise disturbed by the operator.

(b) General requirements. (1) Additional contributions of suspended solids sediment to streamflow or runoff outside the permit area shall be prevented to the extent possible using the best technology currently available.

(2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area, except as provided in paragraph (b)(5) or (e) of this section.

(3) Siltation structures for an area shall be constructed before beginning any surface mining activities in that area, and upon construction shall be certified by a qualified registered professional engineer, or in any State which authorizes land surveyors to prepare and certify plans in accordance with § 780.25(a) of this chapter a qualified registered professional land surveyor, to be constructed as designed and as approved in the reclamation plan.

(4) Any siltation structure which impounds water shall be designed, constructed and maintained in accordance with § 816.49 of this chapter.

(5) Siltation structures shall be maintained until removal is authorized by the regulatory authority and the disturbed area has been stabilized and revegetated. In no case shall the structure be removed sooner than 2 years after the last augmented seeding.
(6) When siltation structure is removed, the land on which the siltation structure was
located shall be regraded and revegetated in accordance with the reclamation plan and §§
816.111 through 816.116 of this chapter. Sedimentation ponds approved by the regulatory
authority for retention as permanent impoundments may be exempted from this requirement.

(c) Sedimentation ponds. (1) When used, sedimentation ponds shall--
   (i) Be used individually or in series;
   (ii) Be located as near as possible to the disturbed area and out of perennial streams
unless approved by the regulatory authority, and
   (iii) Be designed, constructed, and maintained to--
      (A) Provide adequate sediment storage volume;
      (B) Provide adequate detention time to allow the effluent from the ponds to meet State
and Federal effluent limitations;
      (C) Contain or treat the 10-year, 24-hour precipitation event (“design event”) unless a
lesser design event is approved by the regulatory authority based on terrain, climate, other site-
specific conditions and on a demonstration by the operator that the effluent limitations of §
816.42 will be met;
      (D) Provide a nonclogging dewatering device adequate to maintain the detention time
required under paragraph (c)(1)(iii)(B) of this section;
      (E) Minimize, to the extent possible, short circuiting;
      (F) Provide periodic sediment removal sufficient to maintain adequate volume for the
design event;
      (G) Ensure against excessive settlement;
      (H) Be free of sod, large roots, frozen soil, and acid- or toxic-forming coal-processing
waste; and
      (I) Be compacted properly.
   (2) Spillways. A sedimentation pond shall include either a combination of principal and
emergency spillways or single spillway configured as specified in § 816.49(a)(9).

(d) Other treatment facilities. (1) Other treatment facilities shall be designed to treat the
10-year, 24-hour precipitation event unless a lesser design event is approved by the regulatory
authority based on terrain, climate, other site-specific conditions and a demonstration by the
operator that the effluent limitations of § 816.42 will be met.
   (2) Other treatment facilities shall be designed in accordance with the applicable
requirements of paragraph (c) of this section.

(e) Exemptions. Exemptions to the requirements of this section may be granted if--
   (1) The disturbed drainage area within the total disturbed area is small; and
   (2) The operator demonstrates that siltation structures and alternate sediment control
measures are not necessary for drainage from the disturbed area to meet the effluent limitations
under § 816.42 and the applicable State and Federal water quality standards for the receiving
Oct. 20, 1994] Effective Date Note: At 51 FR 41961, Nov. 20, 1986, paragraph (b)(2) of §
816.46 was suspended.
30 CFR 816.47 Hydrologic balance: Discharge structures. Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipaters, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering-design procedures.

30 CFR 816.49 Impoundments. (a) General requirements. The requirements of this paragraph apply to both temporary and permanent impoundments.

(1) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), “Earth Dams and Reservoirs,” 1985 shall comply with “Minimum Emergency Spillway Hydrologic Criteria” table in TR-60 and the requirements of this section. The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, order No. PB 87-157509/AS. Copies can be inspected at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, 1951 Constitution Avenue, NW, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(2) An impoundment meeting the size or other criteria of § 77.216(a) of this title shall comply with the requirements of § 77.216 of this title and this section.

(3) Design certification. The design of impoundments shall be certified in accordance with § 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.

(4) Stability. (i) An impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of § 77.216(a) of this title shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(ii) Impoundments not included in paragraph (a)(4)(i) of this section, except for a coal mine waste impounding structure, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of § 780.25(c)(3).

(5) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the “Minimum Emergency Spillway Hydrologic Criteria” table in TR-60.

(6) Foundation. (i) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of § 77.216(a) of this title, foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.
(ii) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(7) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(8) Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

(9) **Spillways.** An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in paragraph (a)(9)(i) of this section, designed and constructed to safely pass the applicable design precipitation event specified in paragraph (a)(9)(ii) of this section, except as set forth in paragraph (c)(2) of this section.

(i) The regulatory authority may approve a single open-channel spillway that is:

(A) Of nonerodible construction and designed to carry sustained flows; or

(B) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(ii) Except as specified in paragraph (c)(2) of this section, the required design precipitation event for an impoundment meeting the spillway requirements of paragraph (a)(9) of this section is:

(A) For an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the “Minimum Emergency Spillway Hydrologic Criteria” table in TR-60, or greater event as specified by the regulatory authority.

(B) For an impoundment meeting or exceeding the size or other criteria of § 77.216(a) of this title, a 100-year 6-hour event, or greater event as specified by the regulatory authority.

(C) For an impoundment not included in paragraph (a)(9)(ii) (A) and (B) of this section, a 25-year 6-hour or greater event as specified by the regulatory authority.

(10) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of highwall to provide adequate safety and access for the proposed water users.

(11) **Inspections.** Except as provided in paragraph (a)(11)(iv) of this section, a qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, shall inspect each impoundment as provided in paragraph (a)(11)(i) of this section. The professional engineer or specialist shall be experienced in the construction of impoundments.

(i) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond. (ii) The qualified registered professional engineer, or qualified registered professional land surveyor as specified in paragraph (a)(11)(iv) of this section, shall promptly after each inspection required in paragraph (a)(11)(i) of this section provide to the regulatory authority a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this chapter. The report shall include discussion of any appearance of instability, structural weakness or other hazardous condition, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.
(iii) A copy of the report shall be retained at or near the minesite.

(iv) In any State which authorizes land surveyors to prepare and certify plans in accordance with § 780.25(a) of this chapter, a qualified registered professional land surveyor may inspect any temporary or permanent impoundment that does not meet the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of § 77.216(a) of this title and certify and submit the report required by paragraph (a)(11)(ii) of this section, except that all coal mine waste impounding structures covered by § 816.84 of this chapter shall be certified by a qualified registered professional engineer. The professional land surveyor shall be experienced in the construction of impoundments.

(12) Impoundments meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of § 77.216 of this title must be examined in accordance with § 77.216-3 of this title. Impoundments not meeting the SCS Class B or C criteria for dams in TR-60, or subject to § 77.216 of this title, shall be examined at least quarterly. A qualified person designated by the operator shall examine impoundments for the appearance of structural weakness and other hazardous conditions.

(13) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the regulatory authority of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the regulatory authority shall be notified immediately. The regulatory authority shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) Permanent impoundments. A permanent impoundment of water may be created, if authorized by the regulatory authority in the approved permit based upon the following demonstration:

(1) The size and configuration of such impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable State and Federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable State and Federal water quality standards.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provide for adequate safety and access for proposed water users.

(5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining land use.

(c) Temporary impoundments. (1) The regulatory authority may authorize the construction of temporary impoundments as part of a surface coal mining operation.

(2) In lieu of meeting the requirements in paragraph (a)(9)(i) of this section, the regulatory authority may approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered professional land surveyor in accordance with § 780.25(a) of this chapter that the impoundment will safely control the
design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(i) Impoundments meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of § 77.216(a) of this title shall be designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event specified by the regulatory authority.

(ii) Impoundments not included in paragraph (c)(2)(i) of this section shall be designed to control the precipitation of the 100-year 6-hour event, or greater event specified by the regulatory authority. [48 FR 44004, Sept. 26, 1983, as amended at 50 FR 16200, Apr. 24, 1985; 53 FR 43605, Oct. 27, 1988; 59 FR 53029, 53030, Oct. 20, 1994; 66 FR 14317, Mar. 12, 2001]

30 CFR 816.56 Postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities. Before abandoning a permit area or seeking bond release, the operator shall ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments, and treatment facilities meet the requirements of this chapter for permanent structures, have been maintained properly, and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The operator shall renovate such structures if necessary to meet the requirements of this chapter and to conform to the approved reclamation plan. [48 FR 44005, Sept. 26, 1983]

30 CFR 816.57 Hydrologic balance: Stream buffer zones. (a) No land within 100 feet of a perennial stream or an intermittent stream shall be disturbed by surface mining activities, unless the regulatory authority specifically authorizes surface mining activities closer to, or through, such a stream. The regulatory authority may authorize such activities only upon finding that–

(1) Surface mining activities will not cause or contribute to the violation of applicable State or Federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

(2) If there will be a temporary or permanent stream-channel diversion, it will comply with § 816.43.

(b) The area not to be disturbed shall be designated as a buffer zone, and the operator shall mark it as specified in § 816.11. [48 FR 30327, June 30, 1983]

30 CFR 816.59 Coal recovery. Surface mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface coal mining operations is minimized.

39 CFR 816.61 Use of explosives: General requirements. (a) Each operator shall comply with all applicable State and Federal laws and regulations in the use of explosives.

(b) Blasts that use more than 5 pounds of explosive or blasting agent shall be conducted according to the schedule required under § 816.64.

(c) Blasters. (1) No later than 12 months after the blaster certification program for a State required by part 850 of this chapter has been approved under the procedures of subchapter C of
this chapter, all blasting operations in that State shall be conducted under the direction of a certified blaster. Before that time, all such blasting operations in that State shall be conducted by competent, experienced persons who understand the hazards involved.

(2) Certificates of blaster certification shall be carried by blasters or shall be on file at the permit area during blasting operations.

(3) A blaster and at least one other person shall be present at the firing of a blast.

(4) Any blaster who is responsible for conducting blasting operations at a blasting site shall:

(i) Be familiar with the blasting plan and site-specific performance standards; and

(ii) Give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

(d) Blast design. (1) An anticipated blast design shall be submitted if blasting operations will be conducted within—

(i) 1,000 feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or

(ii) 500 feet of an active or abandoned underground mine.

(2) The blast design may be presented as part of a permit application or at a time, before the blast, approved by the regulatory authority.

(3) The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground-vibration standards in § 816.67.

(4) The blast design shall be prepared and signed by a certified blaster.


30 CFR 816.62 Use of explosives: Preblasting survey. (a) At least 30 days before initiation of blasting, the operator shall notify, in writing, all residents or owners of dwellings or other structures located within ½ mile of the permit area how to request a preblasting survey.

(b) A resident or owner of a dwelling or structure within ½ mile of any part of the permit area may request a preblasting survey. This request shall be made, in writing, directly to the operator or to the regulatory authority, who shall promptly notify the operator. The operator shall promptly conduct a preblasting survey of the dwelling or structure and promptly prepare a written report of the survey. An updated survey of any additions, modifications, or renovations shall be performed by the operator if requested by the resident or owner.

(c) The operator shall determine the condition of the dwelling or structure and shall document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Structures such as pipelines, cables, transmission lines, and cisterns, wells, and other water systems warrant special attention; however, the assessment of these structures may be limited to surface conditions and other readily available data.

(d) The written report of the survey shall be signed by the person who conducted the survey. Copies of the report shall be promptly provided to the regulatory authority and to the person requesting the survey. If the person requesting the survey disagrees with the contents
and/or recommendations contained therein, he or she may submit to both the operator and the regulatory authority a detailed description of the specific areas of disagreement.

(e) Any surveys requested more than 10 days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting. [48 FR 9807, Mar. 8, 1983]

### 30 CFR 816.64 Use of explosives: Blasting schedule

(a) **General requirements.**

(1) The operator shall conduct blasting operations at times approved by the regulatory authority and announced in the blasting schedule. The regulatory authority may limit the area covered, timing, and sequence of blasting as listed in the schedule, if such limitations are necessary and reasonable in order to protect the public health and safety or welfare.

(2) All blasting shall be conducted between sunrise and sunset, unless nighttime blasting is approved by the regulatory authority based upon a showing by the operator that the public will be protected from adverse noise and other impacts. The regulatory authority may specify more restrictive time periods for blasting.

(3) Unscheduled blasts may be conducted only where public or operator health and safety so require and for emergency blasting actions. When an operator conducts an unscheduled blast, the operator, using audible signals, shall notify residents within 2 mile of the blasting site and document the reason for the unscheduled blast in accordance with § 816.68(p).

(b) **Blasting schedule publication and distribution.**

(1) The operator shall publish the blasting schedule in a newspaper of general circulation in the locality of the blasting site at least 10 days, but not more than 30 days, before beginning a blasting program.

(2) The operator shall distribute copies of the schedule to local governments and public utilities and to each local residence within 1/2 mile of the proposed blasting site described in the schedule.

(3) The operator shall republish and redistribute the schedule at least every 12 months and revise and republish the schedule at least 10 days, but not more than 30 days, before blasting whenever the area covered by the schedule changes or actual time periods for blasting significantly differ from the prior announcement.

(c) **Blasting schedule contents.** The blasting schedule shall contain, at a minimum—

(1) Name, address, and telephone number of operator;

(2) Identification of the specific areas in which blasting will take place;

(3) Dates and time periods when explosives are to be detonated;

(4) Methods to be used to control access to the blasting area; and

(5) Type and patterns of audible warning and all-clear signals to be used before and after blasting. [48 FR 9807, Mar. 8, 1983]

### 30 CFR 816.66 Use of explosives: Blasting signs, warnings, and access control

(a) **Blasting signs.** Blasting signs shall meet the specifications of § 816.11. The operator shall—

(1) Conspicuously place signs reading “Blasting Area” along the edge of any blasting area that comes within 100 feet of any public road right-of-way, and at the point where any other road provides access to the blasting area; and

(2) At all entrances to the permit area from public roads or highways, place conspicuous signs which state “Warning! Explosives in Use,” which clearly list and describe the meaning of
the audible blast warning and all-clear signals that are in use, and which explain the marking of blasting areas and charged holes awaiting firing within the permit area.

(b) **Warnings.** Warning and all-clear signals of different character or pattern that are audible within a range of ½ mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within ½ mile of the permit area shall be notified of the meaning of the signals in the blasting schedule.

(c) **Access control.** Access within the blasting area shall be controlled to prevent presence of livestock or unauthorized persons during blasting and until an authorized representative of the operator has reasonably determined that–

1. No unusual hazards, such as imminent slides or undetonated charges, exist; and
2. Access to and travel within the blasting area can be safely resumed. [48 FR 9807, Mar. 8, 1983]

30 CFR 816.67 **Use of explosives: Control of adverse effects.** (a) **General requirements.**

Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or ground water outside the permit area.

(b) **Airblast – (1) Limits.** (i) Airblast shall not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in paragraph (e) of this section.

<table>
<thead>
<tr>
<th>Lower frequency limit of measuring system, in Hz (± 3 dB)</th>
<th>Maximum level, in dB</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.1 Hz or lower – flat response¹ ..........................</td>
<td>134 peak.</td>
</tr>
<tr>
<td>2 Hz or lower – flat response ..................................</td>
<td>133 peak.</td>
</tr>
<tr>
<td>6 Hz or lower – flat response ..................................</td>
<td>129 peak.</td>
</tr>
<tr>
<td>C-weighted – slow response¹ ..................................</td>
<td>105 peak dBC.</td>
</tr>
</tbody>
</table>

¹Only when approved by the regulatory authority.

(ii) If necessary to prevent damage, the regulatory authority shall specify lower maximum allowable airblast levels than those of paragraph (b)(1)(i) of this section for use in the vicinity of a specific blasting operation.

(2) **Monitoring.** (i) The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The regulatory authority may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken.

(ii) The measuring systems shall have an upper-end flat-frequency response of at least 200 Hz.

(c) **Flyrock.** Flyrock traveling in the air or along the ground shall not be cast from the blasting site–

1. More than one-half the distance to the nearest dwelling or other occupied structure;
2. Beyond the area of control required under § 816.66(c); or
3. Beyond the permit boundary.
(d) **Ground vibration** – (1) **General.** In all blasting operations, except as otherwise authorized in paragraph (e) of this section, the maximum ground vibration shall not exceed the values approved in the blasting plan required under § 780.13 of this chapter. The maximum ground vibration for protected structures listed in paragraph (d)(2)(i) of this section shall be established in accordance with either the maximum peak-particle-velocity limits of paragraph (d)(2), the scaled-distance equation of paragraph (d)(3), the blasting-level chart of paragraph (d)(4) of this section, or by the regulatory authority under paragraph (d)(5) of this section. All structures in the vicinity of the blasting area, not listed in paragraph (d)(2)(i) of this section, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines, shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator in the blasting plan and approved by the regulatory authority.

(2) **Maximum peak particle velocity.** (i) The maximum ground vibration shall not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area:

<table>
<thead>
<tr>
<th>Distance (D), from the blasting site, in feet</th>
<th>Maximum allowable peak particle velocity (Vmax) for ground vibration, in inches/second&lt;sup&gt;1&lt;/sup&gt;</th>
<th>Scaled-distance factor to be applied without seismic monitoring&lt;sup&gt;2&lt;/sup&gt; (Ds)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to 300 ............................................</td>
<td>1.25</td>
<td>50</td>
</tr>
<tr>
<td>301 to 5,000 .....................................</td>
<td>1.00</td>
<td>55</td>
</tr>
<tr>
<td>5,001 and beyond ..................................</td>
<td>0.75</td>
<td>65</td>
</tr>
</tbody>
</table>

<sup>1</sup>Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

<sup>2</sup>Applicable to the scaled-distance equation of paragraph (d)(3)(i) of this section.

(ii) A seismographic record shall be provided for each blast.

(3) **Scale-distance equation.** (i) An operator may use the scaled-distance equation, \( W = (D/D_s)^2 \), to determine the allowable charge weight of explosives to be detonated in any 8-millisecond period, without seismic monitoring; where \( W \) = the maximum weight of explosives, in pounds; \( D \) = the distance, in feet, from the blasting site to the nearest protected structure; and \( D_s \) = the scaled-distance factor, which may initially be approved by the regulatory authority using the values for scaled-distance factor listed in paragraph (d)(2)(i) of this section.

(ii) The development of a modified scaled-distance factor may be authorized by the regulatory authority on receipt of a written request by the operator, supported by seismographic records of blasting at the minesite. The modified scale-distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of paragraph (d)(2)(i) of this section, at a 95-percent confidence level.

(4) **Blasting-level chart.** (i) An operator may use the ground vibration limits in Figure 1 to determine the maximum allowable ground vibration.
(ii) If the Figure 1 limits are used, a seismographic record including both particle velocity and vibration-frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the regulatory authority before application of this alternative blasting criterion.

(5) The maximum allowable ground vibration shall be reduced by the regulatory authority beyond the limits otherwise provided by this section, if determined necessary to provide damage protection.

(6) The regulatory authority may require an operator to conduct seismic monitoring of any or all blasts or may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(e) The maximum airblast and ground-vibration standards of paragraphs (b) and (d) of this section shall not apply at the following locations:

(1) At structures owned by the permittee and not leased to another person.
(2) At structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the regulatory authority before blasting. [48 FR 9807, Mar. 8, 1983, as amended at 48 FR 44780, Sept. 30, 1983]

30 CFR. 816.68 Use of explosives: Records of blasting operations. The operator shall retain a record of all blasts for at least 3 years. Upon request, copies of these records shall be made available to the regulatory authority and to the public for inspection. Such records shall contain the following data:

(a) Name of the operator conducting the blast.
(b) Location, date, and time of the blast.
(c) Name, signature, and certification number of the blaster conducting the blast.
(d) Identification, direction, and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, community or institutional building outside the permit area, except those described in § 816.67(e).
(e) Weather conditions, including those which may cause possible adverse blasting effects.
(f) Type of material blasted.
(g) Sketches of the blast pattern including number of holes, burden, spacing, decks, and delay pattern.
(h) Diameter and depth of holes.
(i) Types of explosives used.
(j) Total weight of explosives used per hole.
(k) The maximum weight of explosives detonated in an 8-millisecond period.
(l) Initiation system.
(m) Type and length of stemming.
(n) Mats or other protections used.
(o) Seismographic and airblast records, if required, which shall include–
   (1) Type of instrument, sensitivity, and calibration signal or certification of annual calibration;
   (2) Exact location of instrument and the date, time, and distance from the blast;
   (3) Name of the person and firm taking the reading;
   (4) Name of the person and firm analyzing the seismographic record; and
   (5) The vibration and/or airblast level recorded.
(p) Reasons and conditions for each unscheduled blast. [48 FR 9809, Mar. 8, 1983, as amended at 52 FR 29181, Aug. 6, 1987]

30 CFR 816.71 Disposal of excess spoil: General requirements. (a) General. Excess spoil shall be placed in designated disposal areas within the permit area, in a controlled manner to–

(1) Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground waters;
(2) Ensure mass stability and prevent mass movement during and after construction; and
(3) Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.
(b) Design certification. (1) The fill and appurtenant structures shall be designed using current, prudent engineering practices and shall meet any design criteria established by the regulatory authority. A qualified registered professional engineer experienced in the design of earth and rock fills shall certify the design of the fill and appurtenant structures.

(2) The fill shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill must be stable under all conditions of construction.

(c) Location. The disposal area shall be located on the most moderately sloping and naturally stable areas available, as approved by the regulatory authority, and shall be placed, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement.

(d) Foundation. (1) Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the fill and appurtenant structures.

(2) Where the slope in the disposal area is in excess of 2.8h:1v (36 percent), or such lesser slope as may be designated by the regulatory authority based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to ensure stability of the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with § 780.35(c) of this chapter to determine the size of rock toe buttresses and keyway cuts.

(e) Placement of excess spoil. (1) All vegetative and organic materials shall be removed from the disposal area prior to placement of the excess spoil. Topsoil shall be removed, segregated and stored or redistributed in accordance with § 816.22. If approved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

(2) Excess spoil shall be transported and placed in a controlled manner in horizontal lifts not exceeding 4 feet in thickness; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material in accordance with § 816.22 of this chapter. The regulatory authority may approve a design which incorporates placement of excess spoil in horizontal lifts other than 4 feet in thickness when it is demonstrated by the operator and certified by a qualified registered professional engineer that the design will ensure the stability of the fill and will meet all other applicable requirements.

(3) The final configuration of the fill shall be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the fill if required for stability, control of erosion, to conserve soil moisture, or to facilitate the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (50 percent).

(4) No permanent impoundments are allowed on the completed fill. Small depressions may be allowed by the regulatory authority if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation; and if they are not incompatible with the stability of the fill.
(5) Excess spoil that is acid- or toxic-forming or combustible shall be adequately covered with nonacid, nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with § 816.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

(f) Drainage control. (1) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.

(2) Diversions shall comply with the requirements of § 816.43.

(3) Underdrains shall consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices and meet any design criteria established by the regulatory authority. The underdrain system shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter. Rock underdrains shall be constructed of durable, nonacid-, nontoxic-forming rock (e.g., natural sand and gravel, sandstone, limestone, or other durable rock) that does not slake in water or degrade to soil material, and which is free of coal, clay or other nondurable material. Perforated pipe underdrains shall be corrosion resistant and shall have characteristics consistent with the long-term life of the fill.

(g) Surface area stabilization. Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(h) Inspections. A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall periodically inspect the fill during construction. The professional engineer or specialist shall be experienced in the construction of earth and rock fills.

(1) Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum:

(i) Foundation preparation, including the removal of all organic material and topsoil;

(ii) placement of underdrains and protective filter systems;

(iii) installation of final surface drainage systems; and

(iv) the final graded and revegetated fill. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of fill materials.

(2) The qualified registered professional engineer shall provide a certified report to the regulatory authority promptly after each inspection that the fill has been constructed and maintained as designed and in accordance with the approved plan and this chapter. The report shall include appearances of instability, structural weakness, and other hazardous conditions.

(3)(i) The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately.

(ii) Where excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, in accordance with § 816.73, color photographs shall be taken of the underdrain as the underdrain system is being formed.
(iii) The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(4) A copy of each inspection report shall be retained at or near the mine site.

(i) Coal mine waste. Coal mine waste may be disposed of in excess spoil fills if approved by the regulatory authority and, if such waste is—

1. Placed in accordance with § 816.83;
2. Nontoxic and nonacid forming; and
3. Of the proper characteristics to be consistent with the design stability of the fill.

(j) Underground disposal. Excess spoil may be disposed of in underground mine workings, but only in accordance with a plan approved by the regulatory authority and MSHA under § 784.25 of this chapter. [48 FR 32925, July 19, 1983, as amended at 48 FR 44780, Sept. 30, 1983]

30 CFR 816.74 Disposal of excess spoil: Preexisting benches. (a) The regulatory authority may approve the disposal of excess spoil through placement on a preexisting bench if the affected portion of the preexisting bench is permitted and the standards set forth in §§816.102(c), (e) through (h), and (j), and the requirements of this section are met.

(b) All vegetation and organic materials shall be removed from the affected portion of the preexisting bench prior to placement of the excess spoil. Any available topsoil on the bench shall be removed, stored and redistributed in accordance with § 816.22 of this part. Substitute or supplemental materials may be used in accordance with § 816.22(b) of this part.

(c) The fill shall be designed and constructed using current, prudent engineering practices. The design will be certified by a registered professional engineer. The spoil shall be placed on the solid portion of the bench in a controlled manner and concurrently compacted as necessary to attain a long term static safety factor of 1.3 for all portions of the fill. Any spoil deposited on any fill portion of the bench will be treated as excess spoil fill under § 816.71.

(d) The preexisting bench shall be backfilled and graded to—

1. Achieve the most moderate slope possible which does not exceed the angle of repose;
2. Eliminate the highwall to the maximum extent technically practical;
3. Minimize erosion and water pollution both on and off the site; and
4. If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.

(e) All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(f) Permanent impoundments may not be constructed on preexisting benches backfilled with excess spoil under this regulation.

(g) Final configuration of the backfill must be compatible with the natural drainage patterns and the surrounding area, and support the approved postmining land use.

(h) Disposal of excess spoil from an upper actively mined bench to a lower preexisting bench by means of gravity transport may be approved by the regulatory authority provided that—

1. The gravity transport courses are determined on a site-specific basis by the operator as part of the permit application and approved by the regulatory authority to minimize hazards to
health and safety and to ensure that damage will be minimized between the benches, outside the set course, and downslope of the lower bench should excess spoil accidentally move;

(2) All gravity transported excess spoil, including that excess spoil immediately below the gravity transport courses and any preexisting spoil that is disturbed, is rehandled and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and to prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and to ensure a minimum long-term static safety factor of 1.3. Excess spoil on the bench prior to the current mining operation that is not disturbed need not be rehandled except where necessary to ensure stability of the fill;

(3) A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm, only that amount of excess spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm.

(4) Excess spoil shall not be allowed on the downslope below the upper bench except on designated gravity transport courses properly prepared according to § 816.22. Upon completion of the fill, no excess spoil shall be allowed to remain on the designated gravity transport course between the two benches and each transport course shall be reclaimed in accordance with the requirements of this part. [48 FR 32927, July 19, 1983, as amended at 56 FR 65635, Dec. 17, 1991]

30 CFR 816.79 Protection of underground mining. No surface mining activities shall be conducted closer than 500 feet to any point of either an active or abandoned underground mine, except to the extent that–

(a) The activities result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public; and

(b) The nature, timing, and sequence of the activities that propose to mine closer than 500 feet to an active underground mine are jointly approved by the regulatory authority, the Mine Safety and Health Administration, and the State agency, if any, responsible for the safety of underground mine workers. [48 FR 24651, June 1, 1983]

30 CFR 816.81 Coal mine waste: General requirements. (a) General. All coal mine waste disposed of in an area other than the mine workings or excavations shall be placed in new or existing disposal areas within a permit area, which are approved by the regulatory authority for this purpose. Coal mine waste shall be hauled or conveyed and placed for final placement in a controlled manner to–

(1) Minimize adverse effects of leachate and surface-water runoff on surface and ground water quality and quantity;

(2) Ensure mass stability and prevent mass movement during and after construction;

(3) Ensure that the final disposal facility is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use;

(4) Not create a public hazard; and

(5) Prevent combustion.
(b) Coal mine waste material from activities located outside a permit area may be
disposed of in the permit area only if approved by the regulatory authority. Approval shall be
based upon a showing that such disposal will be in accordance with the standards of this section.
(c) Design certification. (1) The disposal facility shall be designed using current, prudent
engineering practices and shall meet any design criteria established by the regulatory authority.
A qualified registered professional engineer, experienced in the design of similar earth and waste
structures, shall certify the design of the disposal facility.
(2) The disposal facility shall be designed to attain a minimum long-term static safety
factor of 1.5. The foundation and abutments must be stable under all conditions of construction.
(d) Foundation. Sufficient foundation investigations, as well as any necessary laboratory
testing of foundation material, shall be performed in order to determine the design requirements
for foundation stability. The analyses of the foundation conditions shall take into consideration
the effect of underground mine workings, if any, upon the stability of the disposal facility.
(e) Emergency procedures. If any examination or inspection discloses that a potential
hazard exists, the regulatory authority shall be informed promptly of the finding and of the
emergency procedures formulated for public protection and remedial action. If adequate
procedures cannot be formulated or implemented, the regulatory authority shall be notified
immediately. The regulatory authority shall then notify the appropriate agencies that other
emergency procedures are required to protect the public.
(f) Underground disposal. Coal mine waste may be disposed of in underground mine
workings, but only in accordance with a plan approved by the regulatory authority and MSHA
17, 1991] Effective Date Note: At 51 FR 41961, Nov. 20, 1986, in § 816.81 paragraph (a) was
suspended insofar as it allows end dumping or side dumping of coal mine waste.

30 CFR 816.83 Coal mine waste: Refuse piles. Refuse piles shall meet the requirements of §
816.81, the additional requirements of this section, and the requirements of §§ 77.214 and 77.215
of this title.
(a) Drainage control. (1) If the disposal area contains springs, natural or manmade water
courses, or wet weather seeps, the design shall include diversions and underdrains as necessary
to control erosion, prevent water infiltration into the disposal facility and ensure stability.
(2) Uncontrolled surface drainage may not be diverted over the outslope of the refuse
piles. Runoff from the areas above the refuse pile and runoff from the surface of the refuse pile
shall be diverted into stabilized diversion channels designed to meet the requirements of §
816.43 to safely pass the runoff from a 100-year, 6-hour precipitation event. Runoff diverted
from undisturbed areas need not be commingled with runoff from the surface of the refuse pile.
(3) Underdrains shall comply with the requirements of § 816.71(f)(3).
(b) Surface area stabilization. Slope protection shall be provided to minimize surface
erosion at the site. All disturbed areas, including diversion channels that are not riprapped or
otherwise protected, shall be revegetated upon completion of construction.
(c) Placement. (1) All vegetative and organic materials shall be removed from the
disposal area prior to placement of coal mine waste. Topsoil shall be removed, segregated and
stored or redistributed in accordance with § 816.22. If approved by the regulatory authority,
organic material may be used as mulch, or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

(2) The final configuration of the refuse pile shall be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the refuse pile if required for stability, control or erosion, conservation of soil moisture, or facilitation of the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (50 percent).

(3) No permanent impoundments shall be allowed on the completed refuse pile. Small depressions may be allowed by the regulatory authority if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation, and if they are not incompatible with stability of the refuse pile.

(4) Following final grading of the refuse pile, the coal mine waste shall be covered with a minimum of 4 feet of the best available, nontoxic and noncombustible material, in a manner that does not impede drainage from the underdrains. The regulatory authority may allow less than 4 feet of cover material based on physical and chemical analyses which show that the requirements of §§ 816.111 through 816.116 will be met.

(d) Inspections. A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall inspect the refuse pile during construction. The professional engineer or specialist shall be experienced in the construction of similar earth and waste structures.

(1) Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum:

(i) Foundation preparation including the removal of all organic material and topsoil;

(ii) placement of underdrains and protective filter systems;

(iii) installation of final surface drainage systems; and

(iv) the final graded and revegetated facility. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of coal mine waste materials. More frequent inspections shall be conducted if a danger of harm exists to the public health and safety or the environment. Inspections shall continue until the refuse pile has been finally graded and revegetated or until a later time as required by the regulatory authority.

(2) The qualified registered professional engineer shall provide a certified report to the regulatory authority promptly after each inspection that the refuse pile has been constructed and maintained as designed and in accordance with the approved plan and this chapter. The report shall include appearances of instability, structural weakness, and other hazardous conditions.

(3) The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with coal mine waste. If the underdrain system is constructed in phases, each phase shall be certified separately. The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(4) A copy of each inspection report shall be retained at or near the minesite. [48 FR 44028, Sept. 26, 1983]
30 CFR 816.84 Coal mine waste: Impounding structures. New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste shall meet the requirements of Sec. 816.81.

(a) Coal mine waste shall not be used for construction of impounding structures unless it has been demonstrated to the regulatory authority that the stability of such a structure conforms to the requirements of this part and the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The stability of the structure and the potential impact of acid mine seepage through the impounding structure shall be discussed in detail in the design plan submitted to the regulatory authority in accordance with Sec. 780.25 of this chapter.

(b)(1) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste shall be designed, constructed and maintained in accordance with Sec. 816.49 (a) and (c). Such structures may not be retained permanently as part of the approved postmining land use.

(2) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of Sec. 77.216(a) of this title shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a 6-hour precipitation event, or greater event as specified by the regulatory authority.

(c) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(d) Drainage control. Runoff from areas above the disposal facility or runoff from surface of the facility that may cause instability or erosion of the impounding structure shall be diverted into stabilized diversion channels designed to meet the requirements of Sec. 816.43 and designed to safely pass the round off from a 100-year, 6-hour design precipitation event.

(e) Impounding structures constructed of or impounding coal mine waste shall be designed so that at least 90 percent of the water stored during the design precipitation event can be removed within a 10-day period.

(f) For an impounding structure constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event.

30 CFR 816.87 Coal mine waste: Burning and burned waste utilization. (a) Coal mine waste fires shall be extinguished by the person who conducts the surface mining activities, in accordance with a plan approved by the regulatory authority and the Mine Safety and Health Administration. The plan shall contain, at a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedures to be used, shall be involved in the extinguishing operations.

(b) No burning or burned coal mine waste shall be removed from a permitted disposal area without a removal plan approved by the regulatory authority. Consideration shall be given to potential hazards to persons working or living in the vicinity of the structure. [48 FR 44029, Sept. 26, 1983]
30 CFR 816.89 Disposal of noncoal mine wastes. (a) Noncoal mine wastes including, but not limited to grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface runoff do not degrade surface or ground water, that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(b) Final disposal of noncoal mine wastes shall be in a designated disposal site in the permit area or a State-approved solid waste disposal area. Disposal sites in the permit area shall be designed and constructed to ensure that leachate and drainage from the noncoal mine waste area does not degrade surface or underground water. Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of 2 feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with §§ 816.111 through 816.116. Operation of the disposal site shall be conducted in accordance with all local, State and Federal requirements.

(c) At no time shall any noncoal mine waste be deposited in a refuse pile or impounding structure, nor shall an excavation for a noncoal mine waste disposal site be located within 8 feet of any coal outcrop or coal storage area. [48 FR 44030, Sept. 26, 1983, as amended at 56 FR 65635, Dec. 17, 1991]

30 CFR 816.95 Stabilization of surface areas. (a) All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

(b) Rills and gullies, which form in areas that have been regraded and topsoiled and which either (1) disrupt the approved postmining land use or the reestablishment of the vegetative cover, or (2) cause or contribute to a violation of water quality standards for receiving streams shall be filled, regraded, or otherwise stabilized; topsoil shall be replaced; and the areas shall be reseeded or replanted. [48 FR 1163, Jan. 10, 1983]

30 CFR 816.97 Protection of fish, wildlife, and related environmental values. (a) The operator shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and shall achieve enhancement of such resources where practicable.

(b) Endangered and threatened species. No surface mining activity shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or which is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The operator shall promptly report to the regulatory authority any State- or federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

(c) Bald and golden eagles. No surface mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The operator shall promptly report to the regulatory authority any golden or bald eagle nest
within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the State fish and wildlife agency and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

(d) Nothing in this chapter shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq., or the Bald Eagle Protection Act, as amended, 16 U.S.C. 668 et seq.

(e) Each operator shall, to the extent possible using the best technology currently available--

(1) Ensure that electric powerlines and other transmission facilities used for, or incidental to, surface mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the regulatory authority determines that such requirements are unnecessary;

(2) Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by State or Federal law;

(3) Design fences, overland conveyors, and other potential barriers to permit passage for large mammals, except where the regulatory authority determines that such requirements are unnecessary; and

(4) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic- forming materials.

(f) Wetlands and habitats of unusually high value for fish and wildlife. The operator conducting surface mining activities shall avoid disturbances to, enhance where practicable, restore, or replace, wetlands, and riparian vegetation along rivers and streams and bordering ponds and lakes. Surface mining activities shall avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.

(g) Where fish and wildlife habitat is to be a postmining land use, the plant species to be used on reclaimed areas shall be selected on the basis of the following criteria:

(1) Their proven nutritional value for fish or wildlife.

(2) Their use as cover for fish or wildlife.

(3) Their ability to support and enhance fish or wildlife habitat after the release of performance bonds. The selected plants shall be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits to fish and wildlife.

(h) Where cropland is to be the postmining land use, and where appropriate for wildlife- and crop-management practices, the operator shall intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals.

(i) Where residential, public service, or industrial uses are to be the postmining land use, and where consistent with the approved postmining land use, the operator shall intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife. [48 FR 30327, June 30, 1983, as amended at 52 FR 47360, Dec. 11, 1987]
30 CFR 816.99 Slides and other damage. (a) An undisturbed natural barrier shall be provided beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as may be determined by the regulatory authority as is needed to assure stability. The barrier shall be retained in place to prevent slides and erosion.  
(b) At any time a slide occurs which may have a potential adverse effect on public property, health, safety, or the environment, the person who conducts the surface mining activities shall notify the regulatory authority by the fastest available means and comply with any remedial measures required by the regulatory authority.

30 CFR 816.100 Contemporaneous reclamation. Reclamation efforts, including but not limited to backfilling, grading, topsoil replacement, and revegetation, on all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities issued under § 785.18 of this chapter. [48 FR 24652, June 1, 1983, as amended at 56 FR 65635, Dec. 17, 1991]

30 CFR 816.101 Backfilling and grading: Time and distance requirements. (a) Except as provided in paragraph (b) of this section, rough backfilling and grading for surface mining activities shall be completed according to one of the following schedules:

1) Contour mining. Within 60 days or 1,500 linear feet following coal removal;
2) Area mining. Within 180 days following coal removal, and not more than four spoil ridges behind the pit being worked, the spoil from the active pit constituting the first ridge; or
3) Other surface mining methods. In accordance with the schedule established by the regulatory authority. For States with approved State programs, schedules are subject to the State program approval process.

(b) The regulatory authority may extend the time allowed for rough backfilling and grading for the entire permit area or for a specified portion of the permit area if the permittee demonstrates in accordance with § 780.18(b)(3) of this chapter that additional time is necessary. [56 FR 65635, Dec. 17, 1991] Effective Date Note: At 57 FR 33875, July 31, 1992, § 816.101 was suspended indefinitely, effective Aug. 31, 1992.

30 CFR 816.102 Backfilling and grading: General requirements. (a) Disturbed areas shall be backfilled and graded to:

1) Achieve the approximate original contour, except as provided in paragraph (k) of this section;
2) Eliminate all highwalls, spoil piles, and depressions, except as provided in paragraph (h) (small depressions) and in paragraph (k)(3)(iii) (previously mined highwalls) of this section;
3) Achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides;
4) Minimize erosion and water pollution both on and off the site; and
5) Support the approved postmining land use.

(b) Spoil, except excess spoil disposed of in accordance with §§ 816.71 through 816.74, shall be returned to the mined-out area.
(c) Spoil and waste materials shall be compacted where advisable to ensure stability or to prevent leaching of toxic materials.

(d) Spoil may be placed on the area outside the mined-out area in nonsteep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:

(1) All vegetative and organic material shall be removed from the area.
(2) The topsoil on the area shall be removed, segregated, stored, and redistributed in accordance with § 816.22.
(3) The spoil shall be backfilled and graded on the area in accordance with the requirements of this section.

(e) Disposal of coal processing waste and underground development waste in the mined-out area shall be in accordance with §§ 816.81 and 816.83, except that a long-term static safety factor of 1.3 shall be achieved.

(f) Exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be adequately covered with nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with § 816.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

(g) Cut-and-fill terraces may be allowed by the regulatory authority where:
   (1) Needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes, if the terraces are compatible with the approved postmining land use; or
   (2) Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land-use plan.

(h) Small depressions may be constructed if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.

(i) Permanent impoundments may be approved if they meet the requirements of §§ 816.49 and 816.56 and if they are suitable for the approved postmining land use.

(j) Preparation of final-graded surfaces shall be conducted in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage.

(k) The postmining slope may vary from the approximate original contour when:
   (1) The standards for thin overburden in § 816.104 are met;
   (2) The standards for thick overburden in § 816.105 are met; or
   (3) Approval is obtained from the regulatory authority for:
      (i) deleted;
      (ii) A variance from approximate original contour requirements in accordance with § 785.16 of this chapter; or
      (iii) Incomplete elimination of highwalls in previously mined areas in accordance with § 816.106. [48 FR 23368, May 24, 1983, as amended at 48 FR 41734, Sept. 16, 1983]

30 CFR 816.104 Backfilling and grading: Thin overburden. (a) Definition. Thin overburden means insufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste
materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

1) Closely resemble the surface configuration of the land prior to mining; or
2) Blend into and complement the drainage pattern of the surrounding terrain.

(b) Performance standards. Where thin overburden occurs within the permit area, the permittee at a minimum shall:

1) Use all spoil and other waste materials available from the entire permit area to attain the lowest practicable grade, but not more than the angle of repose; and
2) Meet the requirements of §§ 816.102(a)(2) through (j) of this part. [56 FR 65635, Dec. 17, 1991]

30 CFR 816.105 Backfilling and grading: Thick overburden. (a) Definition. Thick overburden means more than sufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

1) Closely resemble the surface configuration of the land prior to mining; or
2) Blend into and complement the drainage pattern of the surrounding terrain.

(b) Performance standards. Where thick overburden occurs within the permit area, the permittee at a minimum shall:

1) Restore the approximate original contour and then use the remaining spoil and other waste materials to attain the lowest practicable grade, but not more than the angle of repose; and
2) Meet the requirements of §§ 816.102(a)(2) through (j) of this part; and
3) Dispose of any excess spoil in accordance with §§ 816.71 through 816.74 of this part. [56 FR 65635, Dec. 17, 1991]

30 CFR 816.106 Backfilling and grading: Previously mined areas. (a) Remining operations on previously mined areas that contain a preexisting highwall shall comply with the requirements of §§ 816.102 through 816.107 of this chapter, except as provided in this section.

(b) The requirements of § 816.102(a) (1) and (2) requiring the elimination of highwalls shall not apply to remining operations where the volume of all reasonably available spoil is demonstrated in writing to the regulatory authority to be insufficient to completely backfill the reaffected or enlarged highwall. The highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

1) All spoil generated by the remining operation and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil in the immediate vicinity of the remining operation shall be included within the permit area.
2) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.
(3) Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The operator shall demonstrate, to the satisfaction of the regulatory authority, that the highwall remnant is stable.

(4) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment. [48 FR 41734, Sept. 16, 1983, as amended at 51 FR 41737, Nov. 18, 1986]

30 CFR 816.111 Revegetation: General requirements. (a) The permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is—

(1) Diverse, effective, and permanent;

(2) Comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the regulatory authority;

(3) At least equal in extent of cover to the natural vegetation of the area; and

(4) Capable of stabilizing the soil surface from erosion.

(b) The reestablished plant species shall—

(1) Be compatible with the approved postmining land use;

(2) Have the same seasonal characteristics of growth as the original vegetation;

(3) Be capable of self-regeneration and plant succession;

(4) Be compatible with the plant and animal species of the area; and

(5) Meet the requirements of applicable State and Federal seed, poisonous and noxious plant, and introduced species laws or regulations.

(c) The regulatory authority may grant exception to the requirements of paragraphs (b) (2) and (3) of this section when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

(d) When the regulatory authority approves a cropland postmining land use, the regulatory authority may grant exception to the requirements of paragraphs (a) (1), (3), (b) (2), and (3) of this section. The requirements of part 823 of this chapter apply to areas identified as prime farmland. [48 FR 40160, Sept. 2, 1983]

30 CFR 816.113 Revegetation: Timing Disturbed areas shall be planted during the first normal period for favorable planting conditions after replacement of the plant-growth medium. The normal period for favorable planting is that planting time generally accepted locally for the type of plant materials selected. [48 FR 40160, Sept. 2, 1983]

30 CFR 816.114 Revegetation: Mulching and other soil stabilizing practices. Suitable mulch and other soil stabilizing practices shall be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The regulatory authority may waive this requirement if seasonal, soil, or slope factors result in a condition where mulch and other soil stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover. [48 FR 40160, Sept. 2, 1983]
30 CFR 816.116 Revegetation: Standards for success. (a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of § 816.111.

(1) Standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program.

(2) Standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

(b) Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

(1) For areas developed for use as grazing land or pasture land, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the regulatory authority.

(2) For areas developed for use as cropland, crop production on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the regulatory authority.

(3) For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

(i) Minimum stocking and planting arrangements shall be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may occur on either a program wide or a permit-specific basis.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for 60 percent of the applicable minimum period of responsibility.

(iii) Vegetative ground cover shall not be less than that required to achieve the approved postmining land use.

(4) For areas to be developed for industrial, commercial, or residential use less than 2 years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion.

(5) For areas previously disturbed by mining that were not reclaimed to the requirements of this subchapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion.
(c)(1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with paragraph (c)(4) of this section.

(2) In areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than:

   (i) Five full years, except as provided in paragraph (c)(2)(ii) of this section. The vegetation parameters identified in paragraph (b) of this section for grazing land, pasture land, or cropland shall equal or exceed the approved success standard during the growing season of any 2 years of the responsibility period, except the first year. Areas approved for the other uses identified in paragraph (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

   (ii) Two full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than:

   (i) Ten full years, except as provided in paragraph (c)(3)(ii) below. Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period.

   (ii) Five full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the growing seasons of the last two consecutive years of the responsibility period.

(4) The regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from the Director in accordance with § 732.17 of this chapter that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting specifically necessitated by such actions. [48 FR 40160, Sept. 2, 1983, as amended at 53 FR 34642, Sept. 7, 1988; 60 FR 58492, Nov. 27, 1995]

30 CFR 816.131 Cessation of operations: Temporary. (a) Each person who conducts surface mining activities shall effectively secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. Temporary abandonment shall not relieve a person of their obligation to comply with any provisions of the approved permit.

(b) Before temporary cessation of mining and reclamation operations for a period of thirty days or more, or as soon as it is known that a temporary cessation will extend beyond 30
days, persons who conduct surface mining activities shall submit to the regulatory authority a notice of intention to cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of acres which will have been affected in the permit area, prior to such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation.

**30 CFR 816.132 Cessation of operations: Permanent.** (a) Persons who cease surface mining activities permanently shall close or backfill or otherwise permanently reclaim all affected areas, in accordance with this chapter and the permit approved by the regulatory authority.

(b) All underground openings, equipment, structures, or other facilities not required for monitoring, unless approved by the regulatory authority as suitable for the postmining land use or environmental monitoring, shall be removed and the affected land reclaimed.

**30 CFR 816.133 Postmining land use.** (a) **General.** All disturbed areas shall be restored in a timely manner to conditions that are capable of supporting--

(1) The uses they were capable of supporting before any mining; or

(2) Higher or better uses.

(b) **Determining premining uses of land.** The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported, if the land has not been previously mined and has been properly managed. The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the land use that existed prior to any mining: Provided that, if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

(c) **Criteria for alternative postmining land uses.** Higher or better uses may be approved by the regulatory authority as alternative postmining land uses after consultation with the landowner or the land management agency having jurisdiction over the lands, if the proposed uses meet the following criteria:

(1) There is a reasonable likelihood for achievement of the use.

(2) The use does not present any actual or probable hazard to public health or safety, or threat of water diminution or pollution.

(3) The use will not--

(i) Be impractical or unreasonable;

(ii) Be inconsistent with applicable land use policies or plans;

(iii) Involve unreasonable delay in implementation; or

(iv) Cause or contribute to violation of Federal, State, or local law.

(d) **Approximate original contour: Criteria for variance.** Surface coal mining operations that meet the requirements of this paragraph may be conducted under a variance from the requirement to restore disturbed areas to their approximate original contour, if the following requirements are satisfied:
(1) The regulatory authority grants the variance under a permit issued in accordance with § 785.16 of this chapter.
(2) The alternative postmining land use requirements of paragraph (c) of this section are met.
(3) All applicable requirements of the Act and the regulatory program, other than the requirement to restore disturbed areas to their approximate original contour, are met.
(4) After consultation with the appropriate land use planning agencies, if any, the potential use is shown to constitute an equal or better economic or public use.
(5) The proposed use is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.
(6) After approval, where required, of the appropriate State environmental agencies, the watershed of the permit and adjacent areas is shown to be improved.
(7) The highwall is completely backfilled with spoil material, in a manner which results in a static factor of safety of at least 1.3, using standard geotechnical analysis.
(8) Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of the Act and this chapter is placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with §§ 816.71-816.74 of this chapter.
(9) The surface landowner of the permit area has knowingly requested, in writing, that a variance be granted, so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use (including recreational facilities).
(10) Federal, State, and local government agencies with an interest in the proposed land use have an adequate period in which to review and comment on the proposed use. [48 FR 39904, Sept. 1, 1983]

30 CFR 816.150 Roads: general. (a) Road classification system. (1) Each road, as defined in § 701.5 of this chapter, shall be classified as either a primary road or an ancillary road.
(2) A primary road is any road which is--
(i) Used for transporting coal or spoil;
(ii) Frequently used for access or other purposes for a period in excess of six months; or
(iii) To be retained for an approved postmining land use.
(3) An ancillary road is any road not classified as a primary road.
(b) Performance standards. Each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to:
(1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;
(2) Control or prevent damage to fish, wildlife, or their habitat and related environmental values;
(3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;
(4) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;
(5) Refrain from seriously altering the normal flow of water in streambeds or drainage channels;
(6) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Act of Congress;
(7) Use nonacid- and nontoxic-forming substances in road surfacing.

c) Design and construction limits and establishment of design criteria. To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices, and any necessary design criteria established by the regulatory authority.

d) Location. (1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the regulatory authority in accordance with applicable §§ 816.41 through 816.43 and 816.57 of this chapter.
(2) Roads shall be located to minimize downstream sedimentation and flooding.

e) Maintenance. (1) A road shall be maintained to meet the performance standards of this part and any additional criteria specified by the regulatory authority.
(2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.

f) Reclamation. A road not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include:
(1) Closing the road to traffic;
(2) Removing all bridges and culverts unless approved as part of the postmining land use;
(3) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements;
(4) Reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain;
(5) Protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface runoff and erosion; and
(6) Scarifying or ripping the roadbed; replacing topsoil or substitute material, and revegetating disturbed surfaces in accordance with §§ 816.22 and 816.111 through 816.116 of this chapter. [53 FR 45212, Nov. 8, 1988]

30 CFR 816.151 Primary roads. Primary roads shall meet the requirements of section 816.150 and the additional requirements of this section.
(a) Certification. The construction or reconstruction of primary roads shall be certified in a report to the regulatory authority by a qualified registered professional engineer, or in any State which authorizes land surveyors to certify the construction or reconstruction of primary roads, a
qualified registered professional land surveyor with experience in the design and construction of roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

(b) Safety Factor. Each primary road embankment shall have a minimum static factor of 1.3 or meet the requirements established under § 780.37(c) of this chapter.

(c) Location. (1) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

(2) Fords or perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the regulatory authority as temporary routes during periods of road construction.

(d) Drainage control. In accordance with the approved plan—

(1) Each primary road shall be constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to bridges, ditches, cross drains, and ditch relief drains. The drainage control system shall be designed to safely pass the peak runoff from a 10-year, 6-hour precipitation event, or greater event as specified by the regulatory authority;

(2) Drainage pipes and culverts shall be installed as designed, and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets;

(3) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment;

(4) Culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road;

(5) Natural stream channels shall not be altered or relocated without the prior approval of the regulatory authority in accordance with applicable § 816.41 through 816.43 and 816.57 of this chapter; and

(6) Except as provided in paragraph (c)(2) of this section, structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low-water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The regulatory authority shall ensure that low-water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow.

(e) Surfacing. Primary roads shall be surfaced with material approved by the regulatory authority as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road. [53 FR 45212, Nov. 8, 1988]

30 CFR 816.180 Utility installations. All surface coal mining operations shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the regulatory authority. [48 FR 20401, May 5, 1983]

30 CFR 816.181 Support facilities. (a) Support facilities shall be operated in accordance with a permit issued for the mine or coal preparation operation to which it is incident or from which its operation results.
(b) In addition to the other provisions of this part, support facilities shall be located, maintained, and used in a manner that—

(1) Prevents or controls erosion and siltation, water pollution, and damage to public or private property; and

(2) To the extent possible using the best technology currently available—

(i) Minimizes damage to fish, wildlife, and related environmental values; and

(ii) Minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law. [48 FR 20401, May 5, 1983]

30 CFR 816.200 Interpretative rules related to general performance standards. The following interpretations of rules promulgated in part 816 of this chapter have been adopted by the Office of Surface Mining Reclamation and Enforcement.

(a)-(b) [Reserved]

(c) Interpretation of § 816.22(e)--Topsoil Removal. (1) Results of physical and chemical analyses of overburden and topsoil to demonstrate that the resulting soil medium is equal to or more suitable for sustaining revegetation than the available topsoil, provided that trials, and tests are certified by an approved laboratory in accordance with 30 CFR 816.22(e)(1)(ii), may be obtained from any one or a combination of the following sources:

(i) U.S. Department of Agriculture Soil Conservation Service published data based on established soil series;

(ii) U.S. Department of Agriculture Soil Conservation Service Technical Guides;

(iii) State agricultural agency, university, Tennessee Valley Authority, Bureau of Land Management or U.S. Department of Agriculture Forest Service published data based on soil series properties and behavior, or

(iv) Results of physical and chemical analyses, field site trials, or greenhouse tests of the topsoil and overburden materials (soil series) from the permit area.

(2) If the operator demonstrates through soil survey or other data that the topsoil and unconsolidated material are insufficient and substitute materials will be used, only the substitute materials must be analyzed in accordance with 30 CFR 816.22(e)(1)(i). (§§ 501, 502, 504, 508, 515, 516, Pub. L. 95-87, 91 Stat. 467, 468, 471, 478, 492, 496 (30 U.S.C. 1251, 1252, 1254, 1258, 1265, 1266)) [45 FR 26000, Apr. 16, 1980 and 45 FR 39447, June 10, 1980, as amended at 45 FR 73946, Nov. 7, 1980]

30 CFR 817.11 Signs and markers. (a) Specifications. Signs and markers required under this part shall—

(1) Be posted, maintained, and removed by the person who conducts the underground mining activities;

(2) Be of a uniform design throughout the activities that can be easily seen and read;

(3) Be made of durable material; and

(4) Conform to local laws and regulations.

(b) Duration of maintenance. Signs and markers shall be maintained during all activities to which they pertain.
(c) **Mine and permit identification signs.** (1) Identification signs shall be displayed at each point of access from public roads to areas of surface operations and facilities on permit areas for underground mining activities.

(2) Signs will show the name, business address, and telephone number of the person who conducts underground mining activities and the identification number of the current regulatory program permit authorizing underground mining activities.

(3) Signs shall be retained and maintained until after the release of all bonds for the permit area.

(d) **Perimeter markers.** Each person who conducts underground mining activities shall clearly mark the perimeter of all areas affected by surface operations or facilities before beginning mining activities.

(e) **Buffer zone markers.** Buffer zones required by § 817.57 shall be clearly marked to prevent disturbance by surface operations and facilities.

(f) **Topsoil markers.** Where topsoil or other vegetation-supporting material is segregated and stockpiled as required under § 817.22, the stockpiled material shall be clearly marked. [44 FR 15422, Mar. 13, 1979, as amended at 48 FR 9809, Mar. 8, 1983; 48 FR 44781, Sept. 30, 1983]

**30 CFR 817.13 Casing and sealing of exposed underground openings: General requirements.** Each exploration hole, other drillhole or borehole, shaft, well, or other exposed underground opening shall be cased, lined, or otherwise managed as approved by the regulatory authority to prevent acid or other toxic drainage from entering ground and surface waters, to minimize disturbance to the prevailing hydrologic balance and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit area and adjacent area. Each exploration hole, drill hole or borehole or well that is uncovered or exposed by mining activities within the permit area shall be permanently closed, unless approved for water monitoring or otherwise managed in a manner approved by the regulatory authority. Use of a drilled hole or monitoring well as a water well must meet the provisions of § 817.41 of this part. This section does not apply to holes drilled and used for blasting, in the area affected by surface operations. [44 FR 15422, Mar. 13, 1979, as amended at 48 FR 14822, Apr. 5, 1983; 48 FR 43992, Sept. 26, 1983]

**30 CFR 817.14 Casing and sealing of underground openings: Temporary.** (a) Each mine entry which is temporarily inactive, but has a further projected useful service under the approved permit application, shall be protected by barricades or other covering devices, fenced, and posted with signs, to prevent access into the entry and to identify the hazardous nature of the opening. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the underground mining activities.

(b) Each exploration hole, other drill hole or borehole, shaft, well, and other exposed underground opening which has been identified in the approved permit application for use to return underground development waste, coal processing waste or water to underground workings, or to be used to monitor ground water conditions, shall be temporarily sealed until actual use.
30 CFR 817.15 Casing and sealing of underground openings: Permanent. When no longer needed for monitoring or other use approved by the regulatory authority upon a finding of no adverse environmental or health and safety effects, or unless approved for transfer as a water well under § 817.41, each shaft, drift, adit, tunnel, exploratory hole, entryway or other opening to the surface from underground shall be capped, sealed, backfilled, or otherwise properly managed, as required by the regulatory authority in accordance with § 817.13 and consistent with 30 CFR 75.1771. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters. [44 FR 15422, Mar. 13, 1979, as amended at 48 FR 43992, Sept. 26, 1983]

30 CFR 817.22 Topsoil and subsoil. (a) Removal. (1)(i) All topsoil shall be removed as a separate layer from the area to be disturbed, and segregated.
(ii) Where the topsoil is of insufficient quantity or of poor quality for sustaining vegetation, the materials approved by the regulatory authority in accordance with paragraph (b) of this section shall be removed as a separate layer from the area to be disturbed, and segregated.
(2) If topsoil is less than 6 inches thick, the operator may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.
(3) The regulatory authority may choose not to require the removal of topsoil for minor disturbances which–
(i) Occur at the site of small structures, such as power poles, signs, or fence lines; or
(ii) Will not destroy the existing vegetation and will not cause erosion.
(4) Timing. All materials to be removed under this section shall be removed after the vegetative cover that would interfere with its salvage is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other surface disturbance takes place.
(b) Substitutes and supplements. Selected overburden materials may be substituted for, or used as a supplement to, topsoil if the operator demonstrates to the regulatory authority that the resulting soil medium is equal to, or more suitable for sustaining vegetation than, the existing topsoil, and the resulting soil medium is the best available in the permit area to support revegetation.
(c) Storage. (1) Materials removed under Paragraph (a) of this section shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas.
(2) Stockpiled materials shall–
(i) Be selectively placed on a stable site within the permit area;
(ii) Be protected from contaminants and unnecessary compaction that would interfere with revegetation;
(iii) Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the regulatory authority; and
(iv) Not be moved until required for redistribution unless approved by the regulatory authority.
(3) Where long-term surface disturbances will result from facilities such as support facilities and preparation plants and where stockpiling of materials removed under paragraph
(a)(1) of this section would be detrimental to the quality or quantity of those materials, the regulatory authority may approve the temporary distribution of the soil materials so removed to an approved site within the permit area to enhance the current use of that site until needed for later reclamation, provided that—

(i) Such action will not permanently diminish the capability of the topsoil of the host site; and

(ii) The material will be retained in a condition more suitable for redistribution than if stockpiled.

(d) Redistribution. (1) Topsoil materials removed under paragraph (a) of this section shall be redistributed in a manner that—

(i) Achieves an approximately uniform, stable thickness consistent with the approved postmining land use, contours, and surface-water drainage systems;

(ii) Prevents excess compaction of the materials; and

(iii) Protects the materials from wind and water erosion before and after seeding and planting.

(2) Before redistribution of the material removed under paragraph (a) of this section, the regraded land shall be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is replaced.

(3) The regulatory authority may choose not to require the redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or of roads if it determines that—

(i) Placement of topsoil or topsoil substitutes on such embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation, and

(ii) Such embankments will be otherwise stabilized.

(4) Nutrients and soil amendments. Nutrients and soil amendments shall be applied to the initially redistributed material when necessary to establish the vegetative cover.

(e) Subsoil segregation. The regulatory authority may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of paragraphs (c) and (d) of this section if it finds that such subsoil layers are necessary to comply with the revegetation requirements of §§ 817.111, 817.113, 817.114, and 817.116 of this chapter. [48 FR 22101, May 16, 1983]

30 CFR §817.41 Hydrologic-balance protection. (a) General. All underground mining and reclamation activities shall be conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, and to support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this part. The regulatory authority may require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Mining and reclamation practices that minimize water pollution and changes in flow shall be used in preference to water treatment.
(b) *Ground-water protection.* In order to protect the hydrologic balance underground mining activities shall be conducted according to the plan approved under § 784.14(g) of this chapter and the following.

(1) Ground-water quality shall be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic, or other harmful infiltration to ground-water systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the ground water.

(c) *Ground-water monitoring.* (1) Ground-water monitoring shall be conducted according to the ground-water monitoring plan approved under § 784.14(h) of this chapter. The regulatory authority may require additional monitoring when necessary.

(2) Ground-water monitoring data shall be submitted every 3 months to the regulatory authority or more frequently as prescribed by the regulatory authority. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the operator shall promptly notify the regulatory authority and immediately take the actions provided for in §§ 773.17(e) and 784.14(g) of this chapter.

(3) Ground-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of § 774.13 of this chapter, the regulatory authority may modify the monitoring requirements including the parameters covered and the sampling frequency if the operator demonstrates, using the monitoring data obtained under this paragraph, that—

(i) The operation has minimized disturbance to the prevailing hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; or

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under § 784.14(h) of this chapter.

(4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of ground water onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the operator when no longer needed.

(d) *Surface-water protection.* In order to protect the hydrologic balance, underground mining activities shall be conducted according to the plan approved under § 784.14(g) of this chapter, and the following:

(1) Surface-water quality shall be protected by handling earth materials, ground-water discharges, and runoff in a manner that minimizes the formation of acidic or toxic drainage; prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to streamflow outside the permit area; and otherwise prevent water pollution. If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and § 817.42, the operator shall use and maintain the necessary water- treatment facilities or water quality controls.

(2) Surface-water quantity and flow rates shall be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under § 784.14(g) of this chapter.
(e) Surface-water monitoring. (1) Surface-water monitoring shall be conducted according to the surface-water monitoring plan approved under § 784.14(i) of this chapter. The regulatory authority may require additional monitoring when necessary.

(2) Surface-water monitoring data shall be submitted every 3 months to the regulatory authority or more frequently as prescribed by the regulatory authority. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any surface-water sample indicates noncompliance with the permit conditions, the operator shall promptly notify the regulatory authority and immediately take the actions provided for in §§ 773.17(e) and 784.14(g) of this chapter. The reporting requirements of this paragraph do not exempt the operator from meeting any National Pollutant Discharge Elimination System (NPDES) reporting requirements.

(3) Surface-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with § 774.13 of this chapter, the regulatory authority may modify the monitoring requirements, except those required by the NPDES permitting authority, including the parameters covered and sampling frequency if the operator demonstrates, using the monitoring data obtained under this paragraph, that—

(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under § 784.14(i) of this chapter.

(4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of surface water onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the operator when no longer needed.

(f) Acid- and toxic-forming materials. (1) Drainage from acid- and toxic-forming materials and underground development waste into surface water and ground water shall be avoided by—

(i) Identifying and burying and/or treating, when necessary, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated, and

(ii) Storing materials in a manner that will protect surface water and ground water by preventing erosion, the formation of polluted runoff, and the infiltration of polluted water. Storage shall be limited to the period until burial and/or treatment first become feasible, and so long as storage will not result in any risk of water pollution or other environmental damage.

(2) Storage, burial or treatment practices shall be consistent with other material handling and disposal provisions of this chapter.

(g) Transfer of wells. Before final release of bond, exploratory or monitoring wells shall be sealed in a safe and environmentally sound manner in accordance with §§ 817.13 and 817.15. With the prior approval of the regulatory authority, wells may be transferred to another party for further use. However, at a minimum, the conditions of such transfer shall comply with State and local laws and the permittee shall remain responsible for the proper management of the well until bond release in accordance with §§ 817.13 to 817.15.
(h) **Discharges into an underground mine.** (1) Discharges into an underground mine are prohibited, unless specifically approved by the regulatory authority after a demonstration that the discharge will—

(i) Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from underground mining activities;

(ii) Not result in a violation of applicable water quality standards or effluent limitations;

(iii) Be at a known rate and quality which shall meet the effluent limitations of § 817.42 for pH and total suspended solids, except that the pH and total suspended solids limitations may be exceeded, if approved by the regulatory authority; and

(iv) Meet with the approval of the Mine Safety and Health Administration.

(2) Discharges shall be limited to the following:

(i) water;

(ii) Coal-processing waste;

(iii) Fly ash from a coal-fired facility;

(iv) Sludge from an acid-mine-drainage treatment facility;

(v) Flue-gas desulfurization sludge;

(vi) Inert materials used for stabilizing underground mines; and

(vii) Underground mine development wastes.

(3) Water from one underground mine may be diverted into other underground workings according to the requirements of this section.

(i) Gravity discharges from underground mines.

(1) Surface entries and accesses to underground workings shall be located and managed to prevent or control gravity discharge of water from the mine. Gravity discharges of water from an underground mine, other than a drift mine subject to paragraph (i)(2) of this section, may be allowed by the regulatory authority if it is demonstrated that the untreated or treated discharge complies with the performance standards of this part and any additional NPDES permit requirements.

(2) Notwithstanding anything to the contrary in paragraph (i)(1) of this section, the surface entries and accesses of drift mines first used after the implementation of a State, Federal, or Federal Lands Program and located in acid-producing or iron-producing coal seams shall be located in such a manner as to prevent any gravity discharge from the mine.

(j) **Drinking, domestic or residential water supply.** The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic information required in §§ 780.21 and 784.14 of this chapter and the geologic information concerning baseline hydrologic conditions required in §§ 780.21 and 784.22 of this chapter will be used to determine the impact of mining activities upon the water supply. [48 FR 43992, Sept. 26, 1983, as amended at 52 FR 45924, Dec. 2, 1987; 60 FR 16749, Mar. 31, 1995]

30 CFR 817.43 Diversions. (a) General requirements. (1) With the approval of the regulatory authority, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of §817.46 for siltation structure removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions shall be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions shall not be used to divert water into underground mines without approval of the regulatory authority in accordance with §817.41(h).

(2) The diversion and its appurtenant structures shall be designed, located, constructed, and maintained to—
   (i) Be stable;
   (ii) Provide protection against flooding and resultant damage to life and property;
   (iii) Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and
   (iv) Comply with all applicable local, State, and Federal laws and regulations.

(3) Temporary diversions shall be removed when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process shall be restored in accordance with this part. Before diversions are removed, downstream water-treatment facilities previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement shall not relieve the operator from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

(4) The regulatory authority may specify additional design criteria for diversions to meet the requirements of this section.

(b) Diversion of perennial and intermittent streams. (1) Diversion of perennial and intermittent streams within the permit area may be approved by the regulatory authority after making the finding relating to stream buffer zones called for in 30 CFR 817.57 that the diversions will not adversely affect the water quantity and quality and related environmental resources of the stream.

(2) The design capacity of channels for temporary and permanent stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

(3) The requirements of paragraph (a)(2)(ii) of this section shall be met when the temporary and permanent diversions for perennial and intermittent streams are designed so that
the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

(4) The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the performance standards of this part and any design criteria set by the regulatory authority.

(c) Diversion of miscellaneous flows. (1) Miscellaneous flows, which consist of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required or approved by the regulatory authority. Miscellaneous flows shall include groundwater discharges and ephemeral streams.

(2) The design, location, construction, maintenance, and removal of diversions of miscellaneous flows shall meet all of the performance standards set forth in paragraph (a) of this section.

(3) The requirements of paragraph (a)(2)(ii) of this section shall be met when the temporary and permanent diversions for miscellaneous flows are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion. [48 FR 43993, Sept. 26, 1983]

30 CFR 817.45 Hydrologic balance: Sediment control measures. (a) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

(1) Prevent, to the extent possible, additional contributions of sediment to stream flow or to runoff outside the permit area,

(2) Meet the more stringent of applicable State or Federal effluent limitations,

(3) Minimize erosion to the extent possible.

(b) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed areas shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:

(1) Disturb the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in § 817.111(b);

(2) Stabilize the backfilled material to promote a reduction of the rate and volume of runoff in accordance with the requirements of § 817.102;

(3) Retain sediment within disturbed areas;

(4) Divert runoff away from disturbed areas;

(5) Divert runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;

(6) Use straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment; (7) Treat with chemicals; and (8) Treat mine drainage in underground sumps. [44 FR 15422, Mar. 13, 1979, as amended at 48 FR 44781, Sept. 30, 1983]
30 CFR 817.46 Hydrologic balance: Siltation structures. (a) For the purposes of this section only, disturbed areas shall not include those areas--

(1) In which the only surface mining activities include diversion ditches, siltation structures, or roads that are designed, constructed and maintained in accordance with this part; and

(2) For which the upstream area is not otherwise distributed by the operator.

(b) General requirements. (1) Additional contributions of suspended solids and sediment to streamflow or runoff outside the permit area shall be prevented to the extent possible using the best technology currently available.

(2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area, except as provided in paragraph (b)(5) or (e) of this section.

(3) Siltation structures for an area shall be constructed before beginning any underground mining activities in that area, and upon construction shall be certified by a qualified registered professional engineer, or in any State which authorizes land surveyors to prepare and certify plans in accordance with § 784.16(a) of this chapter a qualified registered professional land surveyor, to be constructed as designed and as approved in the reclamation plan.

(4) Any siltation structure which impounds water shall be designed, constructed and maintained in accordance with § 817.49 of this chapter.

(5) Siltation structures shall be maintained until removal is authorized by the regulatory authority and the disturbed area has been stabilized and revegetated. In no case shall the structure be removed sooner than 2 years after the last augmented seeding.

(6) When the siltation structure is removed, the land on which the siltation structure was located shall be regraded and revegetated in accordance with the reclamation plan and §§ 817.111 through 817.116 of this chapter. Sedimentation ponds approved by the regulatory authority for retention as permanent impoundments may be exempted from this requirement.

(7) Any point-source discharge of water from underground workings to surface waters which does not meet the effluent limitations of § 817.42 shall be passed through a siltation structure before leaving the permit area.

(c) Sedimentation ponds. (1) Sedimentation ponds, when used, shall--

(i) Be used individually or in series;

(ii) Be located as near as possible to the disturbed area and out of perennial streams unless approved by the regulatory authority; and

(iii) Be designed, constructed, and maintained to--

(A) Provide adequate sediment storage volume;

(B) Provide adequate detention time to allow the effluent from the ponds to meet State and Federal effluent limitations;

(C) Contain or treat the 10-year, 24-hour precipitation event (“design event”) unless a lesser design event is approved by the regulatory authority based on terrain, climate, other site-specific conditions and on a demonstration by the operator that the effluent limitations of § 817.42 will be met;

(D) Provide a nonclogging dewatering device adequate to maintain the detention time required under paragraph (c)(1)(iii)(B) of this section;
(E) Minimize, to the extent possible, short circuiting;
(F) Provide periodic sediment removal sufficient to maintain adequate volume for the design event; (G) Ensure against excessive settlement;
(H) Be free of sod, large roots, frozen soil, and acid- or toxic- forming coal-processing waste; and
(I) Be compacted properly.

(2) Spillways. A sedimentation pond shall include either a combination of principal and emergency spillways or single spillway configured as specified in § 817.49(a)(9).

(d) Other treatment facilities. (1) Other treatment facilities shall be designed to treat the 10-year, 24-hour precipitation even unless a lesser design event is approved by the regulatory authority based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of § 817.42 will met.
(2) Other treatment facilities shall be designed in accordance with the applicable requirements of paragraph (c) of this section.

(e) Exemptions. Exemptions to the requirements of this section may be granted if—
(1) The disturbed drainage area within the total disturbed area is small; and
(2) The operator demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed drainage areas to meet the effluent limitations under § 817.42 and the applicable State and Federal water quality standards for the receiving waters. [48 FR 44051, Sept. 26, 1983, as amended at 53 FR 43607, Oct. 27, 1988; 59 FR 53030, Oct. 20, 1994] Effective Date Note: At 51 FR 41962, Nov. 20, 1986, paragraph (b)(2) of § 817.46 was suspended, effective Dec. 22, 1986.

30 CFR 817.47 Hydrologic balance: Discharge structures. Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipaters, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

30 CFR 817.49 Impoundments. (a) General requirements. The requirements of this paragraph apply to both temporary and permanent impoundments.
(1) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs," shall comply with the, "Minimum Emergency Spillway Hydrologic Criteria," table in TR-60 and the requirements of this section. The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, order No. PB 87-157509-AS. Copies can be inspected at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, 1951 Constitution Avenue, NW, Washington, DC or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.
(2) An impoundment meeting the size or other criteria of § 77.216(a) of this title shall comply with the requirements of § 77.216 of this title and this section.

(3) **Design certification.** The design of impoundments shall be certified in accordance with § 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.

(4) **Stability.** (i) An Impoundment meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of § 77.216(a) of this title shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(ii) Impoundments not included in paragraph (a)(4)(i) of this section, except for a coal mine waste impounding structure, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of § 784.16(c)(3).

(5) **Freeboard.** Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the SCS Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the “Minimum Emergency Spillway Hydrologic Criteria” table in TR-60.

(6) **Foundation.** (i) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of § 77.216(a) of this title, foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

(ii) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(7) **Slope protection** shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(8) Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

(9) **Spillways.** An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in paragraph (a)(9)(i) of this section, designed and constructed to safely pass the applicable design precipitation event specified in paragraph (a)(9)(ii) of this section, except as set forth in paragraph (c)(2) of this section.

(i) The regulatory authority may approve a single open-channel spillway that is:

(A) Of nonerodible construction and designed to carry sustained flows; or

(B) Earth- or grass-lined and designed to carry short-term, infrequent flows at non- erosive velocities where sustained flows are not expected.

(ii) Except as specified in paragraph (c)(2) of this section, the required design precipitation event for an impoundment meeting the spillway requirements of paragraph (a)(9) of this section is:
(A) For an impoundment meeting the SCS Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the “Minimum Emergency Spillway Hydrologic Criteria” table in TR-60, or greater event as specified by the regulatory authority.

(B) For an impoundment meeting or exceeding the size or other criteria of § 77.216(a) of this title, a 100-year 6-hour event, or greater event as specified by the regulatory authority.

(C) For an impoundment not included in paragraph (a)(9)(ii)(A) and (B) of this section, a 25-year 6-hour event, or greater event as specified by the regulatory authority.

(10) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of highwall to provide adequate safety and access for the proposed water users.

(11) Inspections. Except as provided in paragraph (a)(11)(iv) of this section, a qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, shall inspect each impoundment as provided in paragraph (a)(11)(i) of this section. The professional engineer or specialist shall be experienced in the construction of impoundments.

(i) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(ii) The qualified registered professional engineer, or qualified registered professional land surveyor as specified in paragraph (a)(11)(iv) of this section, shall promptly after each inspection required in paragraph (a)(11)(i) of this section provide to the regulatory authority a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this chapter. The report shall include discussion of any appearance of instability, structural weakness or other hazardous condition, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.

(iii) A copy of the report shall be retained at or near the minesite.

(iv) In any State which authorizes land surveyors to prepare and certify plans in accordance with § 784.16(a) of this chapter, a qualified registered professional land surveyor may inspect any temporary or permanent impoundment that does not meet the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of § 77.216(a) of this title and certify and submit the report required by paragraph (a)(11)(ii) of this section, except that all coal mine waste impounding structures covered by § 817.84 of this chapter shall be certified by a qualified registered professional engineer. The professional land surveyor shall be experienced in the construction of impoundments.

(12) Impoundments meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of § 77.216 of this title must be examined in accordance with § 77.216-3 of this title. Impoundments not meeting the SCS Class B or C Criteria for dams in TR-60, or subject to § 77.216 of this title, shall be examined at least quarterly. A qualified person designated by the operator shall examine impoundments for the appearance of structural weakness and other hazardous conditions.

(13) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the regulatory authority of the finding and of the emergency procedures formulated for public protection and
remedial action. If adequate procedures cannot be formulated or implemented, the regulatory authority shall be notified immediately. The regulatory authority shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) Permanent impoundments. A permanent impoundment of water may be created, if authorized by the regulatory authority in the approved permit based upon the following demonstration:

(1) The size and configuration of such impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable State and Federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable State and Federal water quality standards.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provide for adequate safety and access for proposed water users.

(5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining land use.

(c) Temporary impoundments. (1) The regulatory authority may authorize the construction of temporary impoundments as part of underground mining activities.

(2) In lieu of meeting the requirements in paragraph (a)(9)(i) of this section, the regulatory authority may approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered professional land surveyor in accordance with § 784.16(a) of this chapter that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

   (i) Impoundments meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of § 77.216(a) of this title shall be designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event specified by the regulatory authority.

   (ii) Impoundments not included in paragraph (c)(2)(i) of this section shall be designed to control the precipitation of the 100-year 6-hour event, or greater event specified by the regulatory authority. [48 FR 44005, Sept. 26, 1983, as amended at 50 FR 16200, Apr. 24, 1985; 53 FR 43607, Oct. 27, 1988; 59 FR 53030, 53031, Oct. 20, 1994; 66 FR 14318, Mar. 12, 2001]

30 CFR 817.56 Postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities. Before abandoning a permit area or seeking bond release, the operator shall ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments, and treatment facilities meet the requirements of this chapter for permanent structures, have been maintained properly, and meet the requirements of the approved reclamation plan for permanent structures and
impoundments. The operator shall renovate such structures if necessary to meet the requirements of this chapter and to conform to the approved reclamation plan. [48 FR 44006, Sept. 26, 1983]

30 CFR 817.57 Hydrologic balance: Stream buffer zones. (a) No land within 100 feet of a perennial stream or an intermittent stream shall be disturbed by underground mining activities, unless the regulatory authority specifically authorizes underground mining activities closer to, or through, such a stream. The regulatory authority may authorize such activities only upon finding that--

(1) Underground mining activities will not cause or contribute to the violation of applicable State or Federal water quality standards and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

(2) If there will be a temporary or permanent stream-channel diversion, it will comply with § 817.43.

(b) The area not to be disturbed shall be designated as a buffer zone, and the operator shall mark it as specified in § 817.11. [48 FR 30328, June 30, 1983, as amended at 48 FR 44781, Sept. 30, 1983]

30 CFR 817.59 Coal recovery. Underground mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface coal mining operations is minimized.

30 CFR 817.61 Use of explosives: General requirements. (a) Sections 817.61–817.68 apply to surface blasting activities incident to underground coal mining, including, but not limited to, initial rounds of slopes and shafts.

(b) Each operator shall comply with all applicable State and Federal laws and regulations in the use of explosives.

(c) Blasters. (1) No later than 12 months after the blaster certification program for a State required by part 850 of this chapter has been approved under the procedures of subchapter C of this chapter, all surface blasting operations incident to underground mining in that State shall be conducted under the direction of a certified blaster. Before that time, all such blasting operations in that State shall be conducted by competent, experienced persons who understand the hazards involved.

(2) Certificates of blaster certification shall be carried by blasters or shall be on file at the permit area during blasting operations.

(3) A blaster and at least one other person shall be present at the firing of a blast.

(4) Any blaster who is responsible for conducting blasting operations at a blasting site shall:

(i) Be familiar with the site-specific performance standards; and

(ii) Give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

(d) Blast design. (1) An anticipated blast design shall be submitted if blasting operations will be conducted within--
(i) 1,000 feet of any building used as a dwelling, public building, school, church or community or institutional building; or
(ii) 500 feet of active or abandoned underground mines.

(2) The blast design may be presented as part of a permit application or at a time, before the blast, approved by the regulatory authority.

(3) The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground-vibration standards in § 817.67.

(4) The blast design shall be prepared and signed by a certified blaster.


30 CFR 817.62 Use of explosives: Preblasting survey. (a) At least 30 days before initiation of blasting, the operator shall notify, in writing, all residents or owners of dwellings or other structures located within ½ mile of the permit area how to request a preblasting survey.

(b) A resident or owner of a dwelling or structure within ½ mile of any part of the permit area may request a preblasting survey. This request shall be made, in writing, directly to the operator or to the regulatory authority, who shall promptly notify the operator. The operator shall promptly conduct a preblasting survey of the dwelling or structure and promptly prepare a written report of the survey. An updated survey of any additions, modifications, or renovations shall be performed by the operator if requested by the resident or owner.

(c) The operator shall determine the condition of the dwelling or structure and shall document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Structures such as pipelines, cables, transmission lines, and cisterns, wells, and other water systems warrant special attention; however, the assessment of these structures may be limited to surface conditions and other readily available data.

(d) The written report of the survey shall be signed by the person who conducted the survey. Copies of the report shall be promptly provided to the regulatory authority and to the person requesting the survey. If the person requesting the survey disagrees with the contents and/or recommendations contained therein, he or she may submit to both the operator and the regulatory authority a detailed description of the specific areas of disagreement.

(e) Any surveys requested more than 10 days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting. [48 FR 9809, Mar. 8, 1983]

30 CFR 817.64 Use of explosives: General performance standards. (a) The operator shall notify, in writing, residents within ½ mile of the blasting site and local governments of the proposed times and locations of blasting operations. Such notice of times that blasting is to be conducted may be announced weekly, but in no case less than 24 hours before blasting will occur.

(b) Unscheduled blasts may be conducted only where public or operator health and safety so requires and for emergency blasting actions. When an operator conducts an unscheduled surface blast incidental to underground coal mining operations, the operator, using audible
signals, shall notify residents within ½ mile of the blasting site and document the reason in accordance with § 817.68(p).

(c) All blasting shall be conducted between sunrise and sunset unless nighttime blasting is approved by the regulatory authority based upon a showing by the operator that the public will be protected from adverse noise and other impacts. The regulatory authority may specify more restrictive time periods for blasting. [48 FR 9809, Mar. 8, 1983]

30 CFR 817.66 Use of explosives: Blasting signs, warnings, and access control. (a) Blasting signs. Blasting signs shall meet the specifications of § 817.11. The operator shall—

(1) Conspicuously place signs reading “Blasting Area” along the edge of any blasting area that comes within 100 feet of any public-road right-of-way, and at the point where any other road provides access to the blasting area; and

(2) At all entrances to the permit area from public roads or highways, place conspicuous signs which state “Warning! Explosives in Use,” which clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use, and which explain the marking of blasting areas and charged holes awaiting firing within the permit area.

(b) Warnings. Warning and all-clear signals of different character or pattern that are audible within a range of ½ mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within ½ mile of the permit area shall be notified of the meaning of the signals in the blasting notification required in § 817.64(a).

(c) Access control. Access within the blasting areas shall be controlled to prevent presence of livestock or unauthorized persons during blasting and until an authorized representative of the operator has reasonably determined that—

(1) No unusual hazards, such as imminent slides or undetonated charges, exist; and

(2) Access to and travel within the blasting area can be safely resumed. [48 FR 9810, Mar. 8, 1983]

30 CFR 817.67 Use of explosives: Control of adverse effects. (a) General requirements. Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or ground water outside the permit area.

(b) Airblast – (1) Limits. (i) Airblast shall not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in paragraph (e) of this section.

<table>
<thead>
<tr>
<th>Lower frequency limit of measuring system, in Hz (± 3 dB)</th>
<th>Maximum level, in dB</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.1 Hz or lower – flat response¹</td>
<td>134 peak.</td>
</tr>
<tr>
<td>2 Hz or lower – flat response</td>
<td>133 peak.</td>
</tr>
<tr>
<td>6 Hz or lower – flat response</td>
<td>129 peak.</td>
</tr>
<tr>
<td>C-weighted – slow response¹</td>
<td>105 peak dBC.</td>
</tr>
</tbody>
</table>

¹Only when approved by the regulatory authority.
(ii) If necessary to prevent damage, the regulatory authority shall specify lower maximum allowable airblast levels than those of paragraph (b)(1)(i) of this section for use in the vicinity of a specific blasting operation.

(2) Monitoring. (i) The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The regulatory authority may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken.

(ii) The measuring systems shall have an upper-end flat-frequency response of at least 200 Hz.

(c) Flyrock. Flyrock traveling in the air or along the ground shall not be cast from the blasting site—

(1) More than one-half the distance to the nearest dwelling or other occupied structure;
(2) Beyond the area of control required under § 817.66(c); or
(3) Beyond the permit boundary.

(d) Ground vibration. (1) General. In all blasting operations, except as otherwise authorized in paragraph (e) of this section, the maximum ground vibration shall not exceed the values approved in the blasting plan required under § 780.13 of this chapter. The maximum ground vibration for protected structures listed in paragraph (d)(2)(i) of this section shall be established in accordance with either the maximum peak-particle-velocity limits of paragraph (d)(2), the scaled-distance equation of paragraph (d)(3), the blasting-level chart of paragraph (d)(4) of this section, or by the regulatory authority under paragraph (d)(5) of this section. All structures in the vicinity of the blasting area, not listed in paragraph (d)(2)(i) of this section, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines, shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator in the blasting plan and approved by the regulatory authority.

(2) Maximum peak particle velocity. (i) The maximum ground vibration shall not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area:

<table>
<thead>
<tr>
<th>Distance (D), from the blasting site, in feet</th>
<th>Maximum allowable peak particle velocity (V max) for ground vibration, in inches/second&lt;sup&gt;1&lt;/sup&gt;</th>
<th>Scaled-distance factor to be applied without seismic monitoring&lt;sup&gt;2&lt;/sup&gt; (Ds)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to 300 ..............................................</td>
<td>1.25</td>
<td>50</td>
</tr>
<tr>
<td>301 to 5,000 .........................................</td>
<td>1.00</td>
<td>55</td>
</tr>
<tr>
<td>5,001 and beyond ....................................</td>
<td>0.75</td>
<td>65</td>
</tr>
</tbody>
</table>

<sup>1</sup>Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

<sup>2</sup>Applicable to the scaled-distance equation of paragraph (d)(3)(i) of this section.

(ii) A seismographic record shall be provided for each blast.
(3) Scale-distance equation. (i) An operator may use the scaled-distance equation, $W = (D/D_s)^2$, to determine the allowable charge weight of explosives to be detonated in any 8-millisecond period, without seismic monitoring; where $W$ = the maximum weight of explosives, in pounds; $D$ = the distance, in feet, from the blasting site to the nearest protected structure; and $D_s$ = the scaled-distance factor, which may initially be approved by the regulatory authority using the values for scaled-distance factor listed in paragraph (d)(2)(i) of this section.

(ii) The development of a modified scaled-distance factor may be authorized by the regulatory authority on receipt of a written request by the operator, supported by seismographic records of blasting at the minesite. The modified scale-distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of paragraph (d)(2)(i) of this section, at a 95-percent confidence level.

(4) Blasting-level chart. (i) An operator may use the ground-vibration limits in Figure 1 to determine the maximum allowable ground vibration.

(ii) If the Figure 1 limits are used, a seismographic record including both particle velocity and vibration-frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the regulatory authority before application of this alternative blasting criterion.
(5) The maximum allowable ground vibration shall be reduced by the regulatory authority beyond the limits otherwise provided by this section, if determined necessary to provide damage protection.

(6) The regulatory authority may require an operator to conduct seismic monitoring of any or all blasts or may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(e) The maximum airblast and ground-vibration standards of paragraphs (b) and (d) of this section shall not apply at the following locations:

(1) At structures owned by the permittee and not leased to another person.

(2) At structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the regulatory authority before blasting. [48 FR 9810, Mar. 8, 1983, as amended at 48 FR 44781, Sept. 30, 1983]

30 CFR 817.68 Use of explosives: Records of blasting operations. The operator shall retain a record of all blasts for at least 3 years. Upon request, copies of these records shall be made available to the regulatory authority and to the public for inspection. Such records shall contain the following data:

(a) Name of the operator conducting the blast.

(b) Location, date, and time of the blast.

(c) Name, signature, and certification number of the blaster conducting the blast.

(d) Identification, direction, and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, community or institutional building outside the permit area, except those described in § 817.67 (e).

(e) Weather conditions, including those which may cause possible adverse blasting effects.

(f) Type of material blasted.

(g) Sketches of the blast pattern including number of holes, burden, spacing, decks, and delay pattern.

(h) Diameter and depth of holes.

(i) Types of explosives used.

(j) Total weight of explosives used per hole.

(k) The maximum weight of explosives detonated in an 8-millisecond period.

(l) Initiation system.

(m) Type and length of stemming.

(n) Mats or other protections used.

(o) Seismographic and airblast records, if required, which shall include:

(1) Type of instrument, sensitivity, and calibration signal or certification of annual calibration;

(2) Exact location of instrument and the date, time, and distance from the blast;

(3) Name of the person and firm taking the reading;

(4) Name of the person and firm analyzing the seismographic record; and

(5) The vibration and/or airblast level recorded.

(p) Reasons and conditions for each unscheduled blast. [48 FR 9811, Mar. 8, 1983]
**30 CFR 817.71 Disposal of excess spoil: General requirements.**

(a) **General.** Excess spoil shall be placed in designated disposal areas within the permit area, in a controlled manner to—

1. Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground waters;
2. Ensure mass stability and prevent mass movement during and after construction; and
3. Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

(b) **Design certification.** (1) The fill and appurtenant structures shall be designed using current, prudent engineering practices and shall meet any design criteria established by the regulatory authority. A qualified registered professional engineer experienced in the design of earth and rock fills shall certify the design of the fill and appurtenant structures.

(2) The fill shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill must be stable under all conditions of construction.

(c) **Location.** The disposal area shall be located on the most moderately sloping and naturally stable areas available, as approved by the regulatory authority, and shall be placed, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement.

(d) **Foundation.** (1) Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the fill and appurtenant structures.

(2) When the slope in the disposal area is in excess of 2.8h:lv (36 percent), or such lesser slope as may be designated by the regulatory authority based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to ensure stability of the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with § 784.19 of this chapter to determine the size of rock toe buttresses and keyway cuts.

(e) **Placement of excess spoil.** (1) All vegetative and organic materials shall be removed from the disposal area prior to placement of excess spoil. Topsoil shall be removed, segregated and stored or redistributed in accordance with § 817.22. If approved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

(2) Excess spoil shall be transported and placed in a controlled manner in horizontal lifts not exceeding 4 feet in thickness; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material in accordance with § 817.22 of this chapter. The regulatory authority may approve a design which incorporates placement of excess spoil in horizontal lifts other than 4 feet in thickness when it is demonstrated by the operator and certified by a qualified registered professional engineer that the design will ensure the stability of the fill and will meet all other applicable requirements.

(3) The final configuration of the fill shall be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the fill if required for stability, control of
erosion, to conserve soil moisture, or to facilitate the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:lv (50 percent).

(4) No permanent impoundments are allowed on the completed fill. Small depressions may be allowed by the regulatory authority if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation; and if they are not incompatible with the stability of the fill.

(5) Excess spoil that is acid- or toxic-forming or combustible shall be adequately covered with nonacid, nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with § 817.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

(f) Drainage control. (1) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.

(2) Diversions shall comply with the requirements of § 817.43.

(3) Underdrains shall consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices and meet any design criteria established by the regulatory authority. The underdrain system shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter. Rock underdrains shall be constructed of durable, nonacid-, nontoxic-forming rock (e.g., natural sand and gravel, sandstone, limestone, or other durable rock) that does not slake in water or degrade to soil materials, and which is free of coal, clay or other nondurable material. Perforated pipe underdrains shall be corrosion resistant and shall have characteristics consistent with the long-term life of the fill.

(g) Surface area stabilization. Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(h) Inspections. A qualified registered professional engineer or other qualified professional specialist under the direction of the professional engineer, shall periodically inspect the fill during construction. The professional engineer or specialist shall be experienced in the construction of earth and rock fills.

(1) Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum:

(i) Foundation preparation, including the removal of all organic material and topsoil;

(ii) placement of underdrains and protective filter systems;

(iii) installation of final surface drainage systems; and

(iv) the final graded and revegetated fill. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of fill materials.

(2) The qualified registered professional engineer shall provide a certified report to the regulatory authority promptly after each inspection that the fill has been constructed and maintained as designed and in accordance with the approved plan and this chapter. The report shall include appearances of instability, structural weakness, and other hazardous conditions.
(3)(i) The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately.

(ii) Where excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, in accordance with § 817.73, color photographs shall be taken of the underdrain as the underdrain system is being formed.

(iii) The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(4) A copy of each inspection report shall be retained at or near the mine site.

(i) Coal mine waste. Coal mine waste may be disposed of in excess spoil fills if approved by the regulatory authority and, if such waste is–

(1) Placed in accordance with § 817.83;

(2) Nontoxic and nonacid forming; and

(3) Of the proper characteristics to be consistent with the design stability of the fill.

(j) Underground disposal. Excess spoil may be disposed of in underground mine workings, but only in accordance with a plan approved by the regulatory authority and MSHA under § 784.25 of this chapter.

(k) Face-up operations. Spoil resulting from face-up operations for underground coal mine development may be placed at drift entries as part of a cut and fill structure, if the structure is less than 400 feet in horizontal length, and designed in accordance with § 817.71. [48 FR 32927, July 19, 1983, as amended at 48 FR 44781, Sept. 30, 1983]

30 CFR 817.74 Disposal of excess spoil: Preexisting benches. (a) The regulatory authority may approve the disposal of excess spoil through placement on a preexisting bench if the affected portion of the preexisting bench is permitted and the standards set forth in § 817.102 (c), (e) through (h), and (j), and the requirements of this section are met.

(b) All vegetation and organic materials shall be removed from the affected portion of the preexisting bench prior to placement of the excess spoil. Any available topsoil on the bench shall be removed, stored and redistributed in accordance with § 817.22 of this part. Substitute or supplemental materials may be used in accordance with § 817.22(b) of this part.

(c) The fill shall be designed and constructed using current, prudent engineering practices. The design will be certified by a registered professional engineer. The spoil shall be placed on the solid portion of the bench in a controlled manner and concurrently compacted as necessary to attain a long term static safety factor of 1.3 for all portions of the fill. Any spoil deposited on any fill portion of the bench will be treated as excess spoil fill under § 817.71.

(d) The preexisting bench shall be backfilled and graded to–

(1) Achieve the most moderate slope possible which does not exceed the angle of repose;

(2) Eliminate the highwall to the maximum extent technically practical;

(3) Minimize erosion and water pollution both on and off the site; and

(4) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.
(e) All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(f) Permanent impoundments may not be constructed on preexisting benches backfilled with excess spoil under this regulation.

(g) Final configuration of the backfill must be compatible with the natural drainage patterns and the surrounding area, and support the approved postmining land use.

(h) Disposal of excess spoil from an upper actively mined bench to a lower preexisting bench by means of gravity transport may be approved by the regulatory authority provided that--

1. The gravity transport courses are determined on a site-specific basis by the operator as part of the permit application and approved by the regulatory authority to minimize hazards to health and safety and to ensure that damage will be minimized between the benches, outside the set course, and downslope of the lower bench should excess spoil accidentally move;

2. All gravity transported excess spoil, including that excess spoil immediately below the gravity transport courses and any preexisting spoil that is disturbed, is rehandled and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and to prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and to ensure a minimum long-term static safety factor of 1.3. Excess spoil on the bench prior to the current mining operation that is not disturbed need not be rehandled except where necessary to ensure stability of the fill;

3. A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm, only that amount of excess spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm;

4. Excess spoil shall not be allowed on the downslope below the upper bench except on designated gravity transport courses properly prepared according to § 817.22. Upon completion of the fill, no excess spoil shall be allowed to remain on the designated gravity transport course between the two benches and each transport course shall be reclaimed in accordance with the requirements of this part. [48 FR 32929, July 19, 1983, as amended at 48 FR 44781, Sept. 30, 1983; 56 FR 65636, Dec. 17, 1991]

30 CFR 817.81 Coal mine waste: General requirements. (a) General. All coal mine waste disposed of in an area other than the mine workings or excavations shall be placed in new or existing disposal areas within a permit area, which are approved by the regulatory authority for this purpose. Coal mine waste shall be hauled or conveyed and placed for final placement in a controlled manner to--

1. Minimize adverse effects of leachate and surface-water runoff on surface and ground water quality and quantity;

2. Ensure mass stability and prevent mass movement during and after construction;

3. Ensure that the final disposal facility is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use;

4. Not create a public hazard; and

5. Prevent combustion.
(b) Coal mine waste materials from activities located outside a permit area may be disposed of in the permit area only if approved by the regulatory authority. Approval shall be based upon a showing that such disposal will be in accordance with the standards of this section.

(c) Design certification. (1) The disposal facility shall be designed using current, prudent engineering practices and shall meet any design criteria established by the regulatory authority. A qualified registered professional engineer, experienced in the design of similar earth and waste structures, shall certify the design of the disposal facility.

(2) The disposal facility shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments must be stable under all conditions of construction.

(d) Foundation. Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of the foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the disposal facility.

(e) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the regulatory authority shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the regulatory authority shall be notified immediately. The regulatory authority shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(f) Underground disposal. Coal mine waste may be disposed of in underground mine workings, but only in accordance with a plan approved by the regulatory authority and MSHA under § 784.25 of this chapter. [48 FR 44030, Sept. 26, 1983, as amended at 56 FR 65636, Dec. 17, 1991] Effective Date Note: At 51 FR 41962, Nov. 20, 1986, in § 817.81 paragraph (a) was suspended insofar as it allows end dumping or side dumping of coal mine waste.

30CFR 817.83 Coal mine waste: Refuse piles. Refuse piles shall meet the requirements of § 817.81, the additional requirements of this section, and the requirements of §§ 77.214 and 77.215 of this title.

(a) Drainage control. (1) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility and ensure stability.

(2) Uncontrolled surface drainage may not be diverted over the outslope of the refuse pile. Runoff from areas above the refuse pile and runoff from the surface of the refuse pile shall be diverted into stabilized diversion channels designed to meet the requirements of § 817.43 to safely pass the runoff from a 100-year, 6-hour precipitation event. Runoff diverted from undisturbed areas need not be commingled with runoff from the surface of the refuse pile.

(3) Underdrains shall comply with the requirements of § 817.71(f)(3).

(b) Surface area stabilization. Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(c) Placement. (1) All vegetative and organic materials shall be removed from the disposal area prior to placement of coal mine waste. Topsoil shall be removed, segregated and stored or redistributed in accordance with § 817.22. If approved by the regulatory authority,
organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

(2) The final configuration of the refuse pile shall be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the refuse pile if required for stability, control of erosion, conservation of soil moisture, or facilitation of the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (50 percent).

(3) No permanent impoundments shall be allowed on the completed refuse pile. Small depressions may be allowed by the regulatory authority if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation, and if they are not incompatible with stability of the refuse pile.

(4) Following final grading of the refuse pile, the coal mine waste shall be covered with a minimum of 4 feet of the best available, nontoxic and noncombustible material, in a manner that does not impede drainage from the underdrains. The regulatory authority may allow less than 4 feet of cover material based on physical and chemical analyses which show that the requirements of §§ 817.111 through 817.116 will be met.

(d) Inspections. A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall inspect the refuse pile during construction. The professional engineer or specialist shall be experienced in the construction of similar earth and waste structures.

(1) Such inspection shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum:

(i) Foundation preparation including the removal of all organic material and topsoil;
(ii) placement of underdrains and protective filter systems;
(iii) installation of final surface drainage systems; and
(iv) the final graded and revegetated facility. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of coal mine waste materials. More frequent inspections shall be conducted if a danger of harm exists to the public health and safety or the environment. Inspections shall continue until the refuse pile has been finally graded and revegetated or until a later time as required by the regulatory authority.

(2) The qualified registered professional engineer shall provide a certified report to the regulatory authority promptly after each inspection that the refuse pile has been constructed and maintained as designed and in accordance with the approved plan and this chapter. The report shall include appearances of instability, structural weakness, and other hazardous conditions.

(3) The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with coal mine waste. If the underdrain system is constructed in phases, each phase shall be certified separately. The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site. (4) A copy of each inspection report shall be retained at or near the minesite. [48 FR 44030, Sept. 26, 1983]
30 CFR 817.84 Coal mine waste: Impounding structures. New and existing impounding structures composed of coal mine waste or intended to impound coal mine waste shall meet the requirements of § 817.81.

(a) Coal mine waste shall not be used for construction of impounding structures unless it has been demonstrated to the regulatory authority that the stability of such a structure conforms to the requirements of this part and the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The stability of the structure and the potential impact of acid mine seepage through the impounding structure and shall be discussed in detail in the design plan submitted to the regulatory authority in accordance with § 780.25 of this chapter.

(b)(1) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste shall be designed, constructed and maintained in accordance with § 817.49 (a) and (c). Such structures may not be retained permanently as part of the approved postmining land use.

(2) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of § 77.216(a) of this title shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a 6-hour precipitation event, or greater event as specified by the regulatory authority.

(c) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(d) Drainage control. Runoff from areas above the disposal facility or runoff from the surface of the facility that may cause instability or erosion of the impounding structure shall be diverted into stabilized diversion channels designed to meet the requirements of § 817.43 and designed to safely pass the runoff from a 100-year, 6-hour design precipitation event.

(e) Impounding structures constructed of or impounding coal mine waste shall be designed so that at least 90 percent of the water stored during the design precipitation event can be removed within a 10-day period.

(f) For an impounding structure constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event. [48 FR 44031, Sept. 26, 1983, as amended at 53 FR 43608, Oct. 27, 1988]

30 CFR 817.87 Coal mine waste: Burning and burned waste utilization. (a) Coal mine waste fires shall be extinguished by the person who conducts the surface mining activities, in accordance with a plan approved by the regulatory authority and the Mine Safety and Health Administration. The plan shall contain, at a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedures to be used, shall be involved in the extinguishing operations.

(b) No burning or unburned coal mine waste shall be removed from a permitted disposal area without a removal plan approved by the regulatory authority. Consideration shall be given to potential hazards to persons working or living in the vicinity of the structure. [48 FR 44031, Sept. 26, 1983]
30 CFR 817.89 Disposal of noncoal mine wastes. (a) Noncoal mine wastes including, but not limited to grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface runoff do not degrade surface or ground water, that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(b) Final disposal of noncoal mine wastes shall be in a designated disposal site in the permit area or a State-approved solid waste disposal area. Disposal sites in the permit area shall be designed and constructed to ensure that leachate and drainage from the noncoal mine waste area does not degrade surface or underground water. Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of 2 feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with §§ 817.111 through 817.116. Operation of the disposal site shall be conducted in accordance with all local, State, and Federal requirements.

(c) At no time shall any noncoal mine waste be deposited in a refuse pile or impounding structure, nor shall any excavation for a noncoal mine waste disposal site be located within 8 feet of any coal outcrop or coal storage area. [48 FR 44031, Sept. 26, 1983, as amended at 56 FR 65636, Dec. 17, 1991]

30 CFR 817.95 Stabilization of surface areas. (a) All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

(b) Rills and gullies which form in areas that have been regraded and topsoiled and which either (1) disrupt the approved postmining land use or the reestablishment of the vegetative cover, or (2) cause or contribute to a violation of water quality standards for receiving streams; shall be filled, regraded, or otherwise stabilized; topsoil shall be replaced; and the areas shall be reseeded or replanted. [48 FR 1163, Jan. 10, 1983]

30 CFR 817.97 Protection of fish, wildlife, and related environmental values. (a) The operator shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and shall achieve enhancement of such resources where practicable.

(b) Endangered and threatened species. No underground mining activity shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or which is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The operator shall promptly report to the regulatory authority any State- or federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

(c) Bald and golden eagles. No underground mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The operator shall promptly report to the regulatory authority any golden or bald eagle nest
within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the State fish and wildlife agency and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

(d) Nothing in this chapter shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq., or the Bald Eagle Protection Act, as amended, 16 U.S.C. 668 et seq.

(e) Each operator shall, to the extent possible using the best technology currently available—

(1) Ensure that electric powerlines and other transmission facilities used for, or incidental to, underground mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the regulatory authority determines that such requirements are unnecessary;

(2) Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by State or Federal law;

(3) Design fences, overland conveyors, and other potential barriers to permit passage for large mammals except where the regulatory authority determines that such requirements are unnecessary; and

(4) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

(f) Wetlands and habitats of unusually high value for fish and wildlife. The operator conducting underground mining activities shall avoid disturbances to, enhance where practicable, restore, or replace, wetlands, and riparian vegetation along rivers and streams and bordering ponds and lakes. Underground mining activities shall avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.

(g) Where fish and wildlife habitat is to be a postmining land use, the plant species to be used on reclaimed areas shall be selected on the basis of the following criteria:

(1) Their proven nutritional value for fish or wildlife.

(2) Their use as cover for fish or wildlife.

(3) Their ability to support and enhance fish or wildlife habitat after the release of performance bonds. The selected plants shall be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits to fish and wildlife.

(h) Where cropland is to be the postmining land use, and where appropriate for wildlife- and crop-management practices, the operator shall intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals.

(i) Where residential, public service, or industrial uses are to be the postmining land use, and where consistent with the approved postmining land use, the operator shall intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife. [48 FR 30328, June 30, 1983, as amended at 52 FR 47360, Dec. 11, 1987]

30 CFR 817.99 Slides and other damage. At any time a slide occurs which may have a potential adverse effect on public, property, health, safety, or the environment, the person who
conducts the underground mining activities shall notify the regulatory authority by the fastest available means and comply with any remedial measures required by the regulatory authority.

30 CFR 817.100 Contemporaneous reclamation. Reclamation efforts, including but not limited to backfilling, grading, topsoil replacement, and revegetation, on all areas affected by surface impacts incident to an underground coal mine shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities issued under § 785.18 of this chapter. The regulatory authority may establish schedules that define contemporaneous reclamation. [48 FR 24652, June 1, 1983]

30 CFR 817.102 Backfilling and grading: General requirements. (a) Disturbed areas shall be backfilled and graded to—

(1) Achieve the approximate original contour, except as provided in paragraph (k) of this section;

(2) Eliminate all highwalls, spoil piles, and depressions, except as provided in paragraph (h) (small depressions) and in paragraph (k)(2) (previously mined highwalls) of this section;

(3) Achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides;

(4) Minimize erosion and water pollution both on and off the site; and

(5) Support the approved postmining land use.

(b) Spoil, except as provided in paragraph (l) of this section, and except excess spoil disposed of in accordance with §§ 817.71 through 817.74, shall be returned to the mined-out surface area.

(c) Spoil and waste materials shall be compacted where advisable to ensure stability or to prevent leaching of toxic materials.

(d) Spoil may be placed on the area outside the mined-out surface area in nonsteep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:

(1) All vegetative and organic material shall be removed from the area.

(2) The topsoil on the area shall be removed, segregated, stored, and redistributed in accordance with § 817.22.

(3) The spoil shall be backfilled and graded on the area in accordance with the requirements of this section.

(e) Disposal of coal processing waste and underground development waste in the mined-out surface area shall be in accordance with §§ 817.81 and 817.83, except that a long-term static safety factor of 1.3 shall be achieved.

(f) Exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be adequately covered with nontoxic and noncombustible materials, or treated, to control the impact on surface and ground water in accordance with § 817.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

(g) Cut-and-fill terraces may be allowed by the regulatory authority where—
(1) Needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes, if the terraces are compatible with the approved postmining land use; or
(2) Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land-use plan.

(h) Small depressions may be constructed if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.

(i) Permanent impoundments may be approved if they meet the requirements of §§ 817.49 and 817.56 and if they are suitable for the approved postmining land use.

(j) Preparation of final-graded surfaces shall be conducted in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage.

(k) The postmining slope may vary from the approximate original contour when approval is obtained from the regulatory authority for—
(1) A variance from approximate original contour requirements in accordance with § 785.16 of this chapter; or
(2) Incomplete elimination of highwalls in previously mined areas in accordance with § 817.106.

(l) Regrading of settled and revegetated fills to achieve approximate original contour at the conclusion of underground mining activities shall not be required if the conditions of paragraph (l)(1) or (l)(2) of this section are met.

(1)(i) Settled and revegetated fills shall be composed of spoil or non-acid- or non-toxic-forming underground development waste.

(ii) The spoil or underground development waste shall not be located so as to be detrimental to the environment, to the health and safety of the public, or to the approved postmining land use.

(iii) Stability of the spoil or underground development waste shall be demonstrated through standard geotechnical analysis to be consistent with backfilling and grading requirements for material on the solid bench (1.3 static safety factor) or excess spoil requirements for material not placed on a solid bench (1.5 static safety factor).

(iv) The surface of the spoil or underground development waste shall be vegetated according to § 817.116, and surface runoff shall be controlled in accordance with § 817.43.

(2) If it is determined by the regulatory authority that disturbance of the existing spoil or underground development waste would increase environmental harm or adversely affect the health and safety of the public, the regulatory authority may allow the existing spoil or underground development waste pile to remain in place. The regulatory authority may require stabilization of such spoil or underground development waste in accordance with the requirements of paragraphs (l)(1)(i) through (l)(1)(iv) of this section. [48 FR 23370, May 24, 1983, as amended at 48 FR 41735, Sept. 16, 1983]

30 CFR 817.106 Backfilling and grading: Previously mined areas. (a) Remining operations on previously mined areas that contain a preexisting highwall shall comply with the requirements of §§ 817.102 through 817.107 of this chapter, except as provided in this section.
(b) The requirements of § 817.102(a) (1) and (2) requiring that elimination of highwalls shall not apply to remining operations where the volume of all reasonably available spoil is demonstrated in writing to the regulatory authority to be insufficient to completely backfill the reaffected or enlarged highwall. The highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

1. All spoil generated by the remining operation and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil in the immediate vicinity of the remining operation shall be included within the permit area.
2. The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.
3. Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The operator shall demonstrate, to the satisfaction of the regulatory authority, that the highwall remnant is stable.
4. Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment. [48 FR 41735, Sept. 16, 1983, as amended at 51 FR 41737, Nov. 18, 1986]

30 CFR 817.111 Revegetation: General requirements. (a) The permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, as vegetative cover that is in accordance with the approved permit and reclamation plan and that is—

1. Diverse, effective, and permanent;
2. Comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the regulatory authority;
3. At least equal in extent of cover to the natural vegetation of the area; and
4. Capable of stabilizing the soil surface from erosion.
(b) The reestablished plant species shall—
1. Be compatible with the approved postmining land use;
2. Have the same seasonal characteristics of growth as the original vegetation;
3. Be capable of self-regeneration and plant succession;
4. Be compatible with the plant and animal species of the area; and
5. Meet the requirements of applicable State and Federal seed, poisonous and noxious plant, and introduced species laws or regulations.
(c) The regulatory authority may grant exception to the requirements of paragraphs (b) (2) and (3) of this section when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

(d) When the regulatory authority approves a cropland postmining land use, the regulatory authority may grant exceptions to the requirements of paragraphs (a) (1), (3), (b) (2),
and (3) of this section. The requirements of part 823 of this chapter apply to areas identified as prime farmland. [48 FR 40161, Sept. 2, 1983]

30 CFR 817.113 Revegetation: Timing. Disturbed areas shall be planted during the first normal period for favorable planting conditions after replacement of the plant-growth medium. The normal period for favorable planting is that planting time generally accepted locally for the type of plant materials selected. [48 FR 40161, Sept. 2, 1983]

30 CFR 817.114 Revegetation: Mulching and other soil stabilizing practices. Suitable mulch and other soil stabilizing practices shall be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The regulatory authority may waive this requirement if seasonal, soil, or slope factors result in a condition where mulch and other soil stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover. [48 FR 40161, Sept. 2, 1983]

30 CFR 817.116 Revegetation: Standards for success. (a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of § 817.111.

(1) Standards for success shall be selected by the regulatory authority and included in an approved regulatory program.

(2) Standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90- percent statistical confidence interval (i.e., a one-sided test with a 0.10 alpha error).

(b) Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

(1) For areas developed for use as grazing land or pasture land, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the regulatory authority.

(2) For areas developed for use as cropland, crop production on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the regulatory authority.

(3) For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

(i) Minimum stocking and planting arrangements shall be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may occur on either a program wide or a permit- specific basis.
(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for 60 percent of the applicable minimum period of responsibility.

(iii) Vegetative ground cover shall not be less than that required to achieve the approved postmining land use.

(4) For areas to be developed for industrial, commercial, or residential use less than 2 years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion.

(5) For areas previously disturbed by mining that were not reclaimed to the requirements of this subchapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion.

(c)(1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with paragraph (c)(4) of this section.

(2) In areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than:

(i) Five full years, except as provided in paragraph (c)(2)(ii) of this section. The vegetation parameters identified in paragraph (b) of this section for grazing land, pasture land, or cropland shall equal or exceed the approved success standard during the growing season of any 2 years of the responsibility period, except the first year. Areas approved for the other uses identified in paragraph (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(ii) Two full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than:

(i) Ten full years, except as provided in paragraph (c)(3)(ii) of this section. Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period.

(ii) Five full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the growing seasons of the last two consecutive years of the responsibility period.

(4) The regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from the Director in accordance with § 732.17 of this chapter that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond
liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting specifically necessitated by such actions. [48 FR 40161, Sept. 2, 1983, as amended at 53 FR 34643, Sept. 7, 1988; 60 FR 58492, Nov. 27, 1995]

30 CFR 817.121 Subsidence control. (a) Measures to prevent or minimize damage. (1) The permittee must either adopt measures consistent with known technology that prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands or adopt mining technology that provides for planned subsidence in a predictable and controlled manner.

(2) If a permittee employs mining technology that provides for planned subsidence in a predictable and controlled manner, the permittee must take necessary and prudent measures, consistent with the mining method employed, to minimize material damage to the extent technologically and economically feasible to non-commercial buildings and occupied residential dwellings and structures related thereto except that measures required to minimize material damage to such structures are not required if:

(i) The permittee has the written consent of their owners or
(ii) Unless the anticipated damage would constitute a threat to health or safety, the costs of such measures exceed the anticipated costs of repair.

(3) Nothing in this part prohibits the standard method of room-and-pillar mining.

(b) The operator shall comply with all provisions of the approved subsidence control plan prepared pursuant to § 784.20 of this chapter.

(c) Repair of damage—(1) Repair of damage to surface lands. The permittee must correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses that it was capable of supporting before subsidence damage.

(2) Repair or compensation for damage to non-commercial buildings and dwellings and related structures. The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. If repair option is selected, the permittee must fully rehabilitate, restore or replace the damaged structure. If compensation is selected, the permittee must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence-related damage. The permittee may provide compensation by the purchase, before mining, of a non-cancelable premium-prepaid insurance policy. The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

(3) Repair or compensation for damage to other structures. The permittee must, to the extent required under applicable provisions of State law, either correct material damage resulting from subsidence caused to any structures or facilities not protected by paragraph (c)(2) of this section by repairing the damage or compensate the owner of the structures or facilities for the
full amount of the decrease in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase before mining of a non-cancelable premium-prepaid insurance policy.

(4) Rebuttable presumption of causation by subsidence—(i) Rebuttable presumption of causation for damage within angle of draw. If damage to any non-commercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land, a rebuttable presumption exists that the permittee caused the damage. The presumption will normally apply to a 30-degree angle of draw. A State regulatory authority may amend its program to apply the presumption to a different angle of draw if the regulatory authority shows in writing that the angle has a more reasonable basis than the 30-degree angle of draw, based on geotechnical analysis of the factors affecting potential surface impacts of underground coal mining operations in the State.

(ii) Approval of site-specific angle of draw. A permittee or permit applicant may request that the presumption apply to an angle of draw different from that established in the regulatory program. The regulatory authority may approve application of the presumption to a site-specific angle of draw different than that contained in the State or Federal program based on a site-specific analysis submitted by an applicant. To establish a site-specific angle of draw, an applicant must demonstrate and the regulatory authority must determine in writing that the proposed angle of draw has a more reasonable basis than the standard set forth in the State or Federal program, based on a site-specific geotechnical analysis of the potential surface impacts of the mining operation.

(iii) No presumption where access for pre-subsidence survey is denied. If the permittee was denied access to the land or property for the purpose of conducting the pre-subsidence survey in accordance with § 784.20(a) of this chapter, no rebuttable presumption will exist.

(iv) Rebuttal of presumption. The presumption will be rebutted if, for example, the evidence establishes that: The damage predated the mining in question; the damage was proximately caused by some other factor or factors and was not proximately caused by subsidence; or the damage occurred outside the surface area within which subsidence was actually caused by the mining in question.

(v) Information to be considered in determination of causation. In any determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the regulatory authority.

(5) Adjustment of bond amount for subsidence damage. When subsidence-related material damage to land, structures or facilities protected under paragraphs (c)(1) through (c)(3) of this section occurs, or when contamination, diminution, or interruption to a water supply protected under § 817.41 (j) occurs, the regulatory authority must require the permittee to obtain additional performance bond in the amount of the estimated cost of the repairs if the permittee will be repairing, or in the amount of the decrease in value if the permittee will be compensating the owner, or in the amount of the estimated cost to replace the protected water supply if the permittee will be replacing the water supply, until the repair, compensation, or replacement is completed. If repair, compensation, or replacement is completed within 90 days of the occurrence of damage, no additional bond is required. The regulatory authority may extend the
90-day time frame, but not to exceed one year, if the permittee demonstrates and the regulatory authority finds in writing that subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonably anticipated changes have occurred affecting the protected water supply, and that therefore it would be unreasonable to complete within 90 days the repair of the subsidence-related material damage to lands or protected structures, or the replacement of protected water supply.

(d) Underground mining activities shall not be conducted beneath or adjacent to (1) public buildings and facilities; (2) churches, schools, and hospitals; or (3) impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, such features or facilities. If the regulatory authority determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above or to any aquifer or body of water that serves as a significant water source for any public water supply system, it may limit the percentage of coal extracted under or adjacent thereto.

(e) If subsidence causes material damage to any of the features or facilities covered by paragraph (d) of this section, the regulatory authority may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.

(f) The regulatory authority shall suspend underground mining activities under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

(g) Within a schedule approved by the regulatory authority, the operator shall submit a detailed plan of the underground workings. The detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measure taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the regulatory authority. Upon request of the operator, information submitted with the detailed plan may be held as confidential, in accordance with the requirements of §773.6(d) of this chapter. [48 FR 24652, June 1, 1983, as amended at 60 FR 16749, Mar. 31, 1995; 65 FR 79670, Dec. 19, 2000] Effective Date Note: At 64 FR 71653, Dec. 22, 1999, § 817.121, paragraphs (c)(4)(i) through (iv) were suspended effective Dec, 22, 1999.

30 CFR 817.122 Subsidence control: Public notice. At least 6 months prior to mining, or within that period if approved by the regulatory authority, the underground mine operator shall mail a notification to all owners and occupants of surface property and structures above the underground workings. The notification shall include, at a minimum, identification of specific areas in which mining will take place, dates that specific areas will be undermined, and the location or locations where the operator's subsidence control plan may be examined. [48 FR 24652, June 1, 1983]

30 CFR 817.131 Cessation of operations: Temporary. (a) Each person who conducts underground mining activities shall effectively support and maintain all surface access openings
to underground operations, and secure surface facilities in areas in which there are no current operations, but operations are to be resumed under an approved permit. Temporary abandonment shall not relieve a person of his or her obligation to comply with any provisions of the approved permit.

(b) Before temporary cessation of mining and reclamation operations for a period of thirty days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, each person who conducts underground mining activities shall submit to the regulatory authority a notice of intention to cease or abandon operations. This notice shall include a statement of the exact number of surface acres and the horizontal and vertical extent of subsurface strata which have been in the permit area prior to cessation or abandonment, the extent and kind of reclamation of surface area which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, underground opening closures and water treatment activities that will continue during the temporary cessation.

30 CFR 817.132 Cessation of operations: Permanent. (a) The person who conducts underground mining activities shall close or backfill or otherwise permanently reclaim all affected areas, in accordance with this chapter and according to the permit approved by the regulatory authority.

(b) All surface equipment, structures, or other facilities not required for continued underground mining activities and monitoring, unless approved as suitable for the postmining land use or environmental monitoring, shall be removed and the affected lands reclaimed.

30 CFR 817.133 Postmining land use. (a) General. All disturbed areas shall be restored in a timely manner to conditions that are capable of supporting—

(1) The uses they were capable of supporting before any mining; or
(2) Higher or better uses.

(b) Determining premining uses of land. The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported, if the land has not been previously mined and has been properly managed. The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the land use that existed prior to any mining: Provided that, if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

(c) Criteria for alternative postmining land uses. Higher or better uses may be approved by the regulatory authority as alternative postmining land uses after consultation with the landowner or the land management agency having jurisdiction over the lands, if the proposed uses meet the following criteria:

(1) There is a reasonable likelihood for achievement of the use.
(2) The use does not present any actual or probable hazard to public health and safety, or threat of water diminution or pollution.
(3) The use will not—
   (i) Be impractical or unreasonable;
(ii) Be inconsistent with applicable land use policies or plans;
(iii) Involve unreasonable delay in implementation; or
(iv) Cause or contribute to violation of Federal, State, or local law.

(d) Approximate original contour: Criteria for variance. Surface coal mining operations that meet the requirements of this paragraph may be conducted under a variance from the requirement to restore disturbed areas to their approximate original contour, if the following requirements are satisfied:

1. Deleted
2. The alternative postmining land use requirements of paragraph (c) of this section are met.
3. All applicable requirements of the Act and the regulatory program, other than the requirement to restore disturbed areas to their approximate original contour, are met.
4. After consultation with the appropriate land use planning agencies, if any, the potential use is shown to constitute an equal or better economic or public use.
5. The proposed use is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.
6. After approval, where required, of the appropriate State environmental agencies, the watershed of the permit and adjacent areas is shown to be improved.
7. The highwall is completely backfilled with spoil material, in a manner which results in a static factor of safety of at least 1.3, using standard geotechnical analysis.
8. Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of the Act and this chapter is placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with §§ 817.71 through 817.74 of this chapter.
9. The surface landowner of the permit area has knowingly requested, in writing, that a variance be granted, so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use (including recreational facilities).
10. Federal, State, and local government agencies with an interest in the proposed land use have an adequate period in which to review and comment on the proposed use. [48 FR 33905, Sept. 1, 1983]

30 CFR 817.150 Roads: General. (a) Road classification system. (1) Each road, as defined in § 701.5 of this chapter, shall be classified as either a primary road or an ancillary road.
   (2) A primary road is any road which is–
      (i) Used for transporting coal or spoil;
      (ii) Frequently used for access or other purposes for a period in excess of six months; or
      (iii) To be retained for an approval postmining land use.
   (3) An ancillary road is any road not classified as a primary road.
(b) Performance standards. Each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to:
   (1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust and dust occurring on other exposed surfaces, by measures such as
vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

(2) Control or prevent damage to fish, wildlife, or other habitat and related environmental values;

(3) Control or prevent additional contributions of suspended solids to streamflow or runoff outside the permit area;

(4) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standard applicable to receiving waters;

(5) Refrain from seriously altering the normal flow of water in streambeds or drainage channels;

(6) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Act of Congress; and

(7) Use nonacid- and nontoxic-forming substances in road surfacing.

(c) Design and construction limits and establishment of design criteria. To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices, and any necessary design criteria established by the regulatory authority.

(d) Location. (1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the regulatory authority in accordance with applicable §§ 817.41 through 817.43 and 817.57 of this chapter.

(2) Roads shall be located to minimize downstream sedimentation and flooding.

(e) Maintenance. (1) A road shall be maintained to meet the performance standards of this part and any additional criteria specified by the regulatory authority;

(2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.

(f) Reclamation. A road not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include:

(1) Closing the road to traffic;

(2) Removing all bridges and culverts unless approved as part of the postmining land use;

(3) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements;

(4) Reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain;

(5) Protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface runoff and erosion; and

(6) Scarifying or ripping the roadbed, replacing topsoil or substitute material and revegetating disturbed surfaces in accordance with §§ 817.22 and 817.111 through 817.116 of this chapter. [53 FR 45213, Nov. 8, 1988]
30 CFR 817.151 Primary roads. Primary roads shall meet the requirements of § 817.150 and the additional requirements of this section.

(a) Certification. The construction or reconstruction of primary roads shall be certified in a report to the regulatory authority by a qualified registered professional engineer, or in any State which authorizes land surveyors to certify the construction or reconstruction of primary roads, a qualified registered professional land surveyor, with experience in the design and construction of roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

(b) Safety factor. Each primary road embankment shall have a minimum static factor of 1.3 or meet the requirements established under § 784.24(c).

(c) Location. (1) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

(2) Fords of perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the regulatory authority as temporary routes during periods of road construction.

(d) Drainage control. In accordance with the approved plan–

(1) Each primary road shall be constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to bridges, ditches, cross drains, and ditch relief drains. The drainage control system shall be designed to safely pass the peak runoff from a 10-year, 6-hour precipitation event, or greater event as specified by the regulatory authority;

(2) Drainage pipes and culverts shall be installed as designed, and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets;

(3) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment;

(4) Culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road;

(5) Natural stream channels shall not be altered or relocated without the prior approval of the regulatory authority in accordance with applicable §§ 816.41 through 816.43 and 816.57 of this chapter; and

(6) Except as provided in paragraph (c)(2) of this section, structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low-water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The regulatory authority shall ensure that low-water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow.

(e) Surfacing. Primary roads shall be surfaced with material approved by the regulatory authority as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road. [53 FR 45213, Nov. 8, 1988]

30 CFR 817.180 Utility installations. All underground mining activities shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines, railroads; electric and telephone lines; and water
and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the regulatory authority. [48 FR 20401, May 5, 1983]

30 CFR 817.181 Support facilities. (a) Support facilities shall be operated in accordance with a permit issued for the mine or coal preparation plant to which it is incident or from which its operation results.

(b) In addition to the other provisions of this part, support facilities shall be located, maintained, and used in a manner that:

(1) Prevents or controls erosion and siltation, water pollution, and damage to public or private property; and

(2) To the extent possible using the best technology currently available:

(i) Minimizes damage to fish, wildlife, and related environmental values; and

(ii) Minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law. [48 FR 20401, May 5, 1983]

30 CFR 817.200 Interpretative rules related to general performance standards. The following interpretations of rules promulgated in part 817 of this chapter have been adopted by the Office of Surface Mining Reclamation and Enforcement.

(c) Interpretation of § 816.22(e) – Topsoil Removal. (1) Results of physical and chemical analyses of overburden and topsoil to demonstrate that the resulting soil medium is equal to or more suitable for sustaining revegetation than the available topsoil, provided that trials, and tests are certified by an approved laboratory in accordance with 30 CFR 816.22(e)(1)(ii), may be obtained from any one or a combination of the following sources:

(i) U.S. Department of Agriculture Soil Conservation Service published data based on established soil series;

(ii) U.S. Department of Agriculture Soil Conservation Service Technical Guides;

(iii) State agricultural agency, university, Tennessee Valley Authority, Bureau of Land Management or U.S. Department of Agriculture Forest Service published data based on soil series properties and behavior, or

(iv) Results of physical and chemical analyses, field site trials, or greenhouse tests of the topsoil and overburden materials (soil series) from the permit area.

(2) If the operator demonstrates through soil survey or other data that the topsoil and unconsolidated material are insufficient and substitute materials will be used, only the substitute materials must be analyzed in accordance with 30 CFR 816.22(e)(1)(i).

(d) Interpretation of § 817.133: Postmining land use. (1) The requirements of 30 CFR 784.15(a)(2), for approval of an alternative postmining land use, may be met by requesting approval through the permit revision procedures of 30 CFR 774.13 rather than requesting such approval through the permit application. The original permit application, however, must demonstrate that the land will be returned to its premining land use capability as required by 30 CFR 817.133(a).

An application for a permit revision of this type, (i) must be submitted in accordance with the filing deadlines of 30 CFR 774.13, (ii) shall constitute a significant alteration from the
mining operations contemplated by the original permit, and (iii) shall be subject to the requirements of 30 CFR part 773 and 775.


30 CFR 819.11 Auger mining: General. (a) Auger mining operations shall be conducted in accordance with the requirements of part 816 of this chapter, except as provided in this part.

(b) The regulatory authority may prohibit auger mining, if necessary to:

(1) Maximize the utilization, recoverability, or conservation of the solid-fuel resource, or

(2) Protect against adverse water-quality impacts.

30 CFR 819.13 Auger mining: Coal recovery. (a) Auger mining shall be conducted so as to maximize the utilization and conservation of the coal in accordance with § 816.59 of this chapter.

(b) Auger mining shall be planned and conducted to maximize recoverability of mineral reserves remaining after the operation and reclamation are complete.

(c) Each person who conducts auger mining operations shall leave areas of undisturbed coal, as approved by the regulatory authority, to provide access for future underground mining activities to coal reserves remaining after augering is completed, unless it is established that the coal reserves have been depleted or are so limited in thickness or extent that it will not be practicable to recover the remaining coal. This determination shall be made by the regulatory authority upon presentation of appropriate technical evidence by the operator.

30 CFR 819.15 Auger mining: Hydrologic balance. (a) Auger mining shall be planned and conducted to minimize disturbances of the prevailing hydrologic balance in accordance with the requirements of §§ 816.41 and 816.42 of this chapter.

(b) All auger holes, except as provided in paragraph (c) of this section, shall be–

(1) Sealed within 72 hours after completion with an impervious and noncombustible material, if the holes are discharging water containing acid-or toxic-forming material. If sealing is not possible within 72 hours, the discharge shall be treated commencing within 72 hours after completion to meet applicable effluent limitations and water-quality standards until the holes are sealed; and

(2) Sealed with an impervious noncombustible material, as contemporaneously as practicable with the augering operation, as approved by the regulatory authority, if the holes are not discharging water containing acid-or toxic-forming material.

(c) Auger holes need not be sealed with an impervious material so as to prevent drainage if the regulatory authority determines that–

(1) The resulting impoundment of water may create a hazard to the environment or public health or safety, and

(2) The drainage from the auger holes will–

(i) Not pose a threat of pollution to surface water, and

(ii) Comply with the requirements of §§ 816.41 and 816.42 of this chapter.
30 CFR 819.17 Auger mining: Subsidence protection. Auger mining shall be conducted in accordance with the requirements of § 817.121 (a) and (c) of this chapter.

30 CFR 819.19 Auger mining: Backfilling and grading. (a) General. Auger mining shall be conducted in accordance with the backfilling and grading requirements of §§ 816.102 and 816.104 through 816.106 of this chapter.

(b) Remining. Where auger mining operations affect previously mined areas that were not reclaimed to the standards of this chapter and the volume of all reasonably available spoil is demonstrated in writing to the regulatory authority to be insufficient to completely backfill the highwall, the highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

(1) The person who conducts the auger mining operation shall demonstrate to the regulatory authority that the backfill, designed by a qualified registered professional engineer, has a minimum static safety factor for the stability of the backfill of at least 1.3.

(2) All spoil generated by the auger mining operation and any associated surface coal mining and reclamation operation, and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil shall include spoil generated by the mining operation and other spoil located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to the public safety or significant damage to the environment. For this purpose, the permit area shall include spoil in the immediate vicinity of the auger mining operation.

(3) The coal seam mined shall be covered with a minimum of 4 feet of nonacid-, nontoxic-forming material and the backfill graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

(4) Any remnant of the highwall shall be stable and not pose a hazard to the public health and safety or to the environment.

(5) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

30 CFR 819.21 Auger mining: Protection of underground mining. Auger holes shall not extend closer than 500 feet (measured horizontally) to any abandoned or active underground mine workings, except as approved in accordance with § 816.79 of this chapter.

30 CFR 823.4 Responsibilities. (a) The U.S. Soil Conservation Service within each State shall establish specifications for prime farmland soil removal, storage, replacement, and reconstruction.

(b) The regulatory authority within each State shall use the soil-reconstruction specifications of paragraph (a) of this section to carry out its responsibilities under § 785.17 and subchapter J of this chapter.

30 CFR 823.11 Applicability. The requirements of this part shall not apply to--
(a) Coal preparation plants, support facilities, and roads of surface and underground mines that are actively used over extended periods of time and where such uses affect a minimal amount of land. Such uses shall meet the requirements of part 816 of this chapter for surface mining activities and of part 817 of this chapter for underground mining activities;

(b) Disposal areas containing coal mine waste resulting from underground mines that is not technologically and economically feasible to store in underground mines or on non-prime farmland. The operator shall minimize the area of prime farmland used for such purposes.

(c) Prime farmland that has been excluded in accordance with § 785.17(a) of this chapter.

[48 FR 21463, May 12, 1983, as amended at 53 FR 40839, Oct. 18, 1988] Effective Date Note: For a document suspending § 823.11(a) “insofar as it excludes from the requirements of part 823 those coal preparation plants, support facilities, and roads that are surface mining activities” see 50 FR 7278, Feb. 21, 1985.

30 CFR 823.12 Soil removal and stockpiling. (a) Prime farmland soils shall be removed from the areas to be disturbed before drilling, blasting, or mining.

(b) The minimum depth of soil and soil materials to be removed and stored for use in the reconstruction of prime farmland shall be sufficient to meet the requirements of § 823.14(b).

(c) Soil removal and stockpiling operations on prime farmland shall be conducted to:

(1) Separately remove the topsoil, or remove other suitable soil materials where such other soil materials will create a final soil having a greater productive capacity than that which exist prior to mining. If not utilized immediately, this material shall be placed in stockpiles separate from the spoil and all other excavated materials; and

(2) Separately remove the B or C soil horizon or other suitable soil material to provide the thickness of suitable soil required by § 823.14(b), except as approved by the regulatory authority where the B or C soil horizons would not otherwise be removed and where soil capabilities can be retained. If not utilized immediately, each horizon or other material shall be stockpiled separately from the spoil and all other excavated materials. Where combinations of such soil materials created by mixing have been shown to be equally or more favorable for plant growth than the B horizon, separate handling is not necessary.

(d) Stockpiles shall be placed within the permit area where they will not be disturbed or be subject to excessive erosion. If left in place for more than 30 days, stockpiles shall meet the requirements of § 816.22 or § 817.22 of this chapter. [48 FR 21463, May 12, 1983, as amended at 53 FR 40839, Oct. 18, 1988]

30 CFR 823.14 Soil replacement. (a) Soil reconstruction specifications established by the U.S. Soil Conservation Service shall be based upon the standards of the National Cooperative Soil Survey and shall include, as a minimum, physical and chemical characteristics of reconstructed soils and soil descriptions containing soil-horizon depths, soil densities, soil pH, and other specifications such that reconstructed soils will have the capability of achieving levels of yield equal to, or higher than, those of nonmined prime farmland in the surrounding area.

(b) The minimum depth of soil and substitute soil material to be reconstructed shall be 48 inches, or a lesser depth equal to the depth to a subsurface horizon in the natural soil that inhibits or prevents root penetration, or a greater depth if determined necessary to restore the original soil productive capacity. Soil horizons shall be considered as inhibiting or preventing root
penetration if their physical or chemical properties or water-supplying capacities cause them to restrict or prevent penetration by roots of plants common to the vicinity of the permit area and if these properties or capacities have little or no beneficial effect on soil productive capacity.

(c) The operator shall replace and regrade the soil horizons or other root-zone material with proper compaction and uniform depth.

(d) The operator shall replace the B horizon, C horizon, or other suitable material specified in § 823.12(c)(2) to the thickness needed to meet the requirements of paragraph (b) of this section. In those areas where the B or C horizons were not removed but may have been compacted or otherwise damaged during the mining operation, the operator shall engage in deep tilling or other appropriate means to restore pre-mining capabilities.

(e) The operator shall replace the topsoil or other suitable soil materials specified in § 823.12(c)(1) as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original surface soil layer, as determined by the soil survey. [48 FR 21463, May 12, 1983, as amended at 53 FR 40839, Oct. 18, 1988]

30 CFR 823.15 Revegetation and restoration of soil productivity. (a) Following prime farmland soil replacement, the soil surface shall be stabilized with a vegetative cover or other means that effectively controls soil loss by wind and water erosion.

(b) Prime farmland soil productivity shall be restored in accordance with the following provisions:

(1) Measurement of soil productivity shall be initiated within 10 years after completion of soil replacement.

(2) Soil productivity shall be measured on a representative sample or on all of the mined and reclaimed prime farmland area using the reference crop determined under paragraph (b)(6) of this section. A statistically valid sampling technique at a 90-percent or greater statistical confidence level shall be used as approved by the regulatory authority in consultation with the U.S. Soil Conservation Service.

(3) The measurement period for determining average annual crop production (yield) shall be a minimum of 3 crop years prior to release of the operator's performance bond.

(4) The level of management applied during the measurement period shall be the same as the level of management used on nonmined prime farmland in the surrounding area.

(5) Restoration of soil productivity shall be considered achieved when the average yield during the measurement period equals or exceeds the average yield of the reference crop established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices.

(6) The reference crop on which restoration of soil productivity is proven shall be selected from the crops most commonly produced on the surrounding prime farmland. Where row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth shall be chosen as one of the reference crops.

(7) Reference crop yields for a given crop season are to be determined from—

(i) The current yield records of representative local farms in the surrounding area, with concurrence by the U.S. Soil Conservation Service; or

(ii) The average county yields recognized by the U.S. Department of Agriculture, which have been adjusted by the U.S. Soil Conservation Service for local yield variation within the
county that is associated with differences between nonmined prime farmland soil and all other soils that produce the reference crop.

(8) Under either procedure in paragraph (b)(7) of this section, the average reference crop yield may be adjusted, with the concurrence of the U.S. Soil Conservation Service, for—

(i) Disease, pest, and weather-induced seasonal variations; or

(ii) Differences in specific management practices where the overall management practices of the crops being compared are equivalent.

30 CFR 827.11 General requirements. Each person who operates a coal preparation plant subject to this part shall obtain a permit in accordance with § 785.21 of this chapter, obtain a bond in accordance with subchapter J of this chapter, and operate that plant in accordance with the requirements of this part.

30 CFR 827.12 Coal preparation plants: Performance standards. Except as provided in § 827.13 of this part, the construction, operation, maintenance, modification, reclamation, and removal activities at coal preparation plants shall comply with the following:

(a) Signs and markers for the coal preparation plant, coal processing waste disposal area, and water-treatment facilities shall comply with § 816.11 of this chapter.

(b) Any stream channel diversion shall comply with § 816.43 of this chapter.

(c) Drainage from any disturbed area related to the coal preparation plant shall comply with §§ 816.45 through 816.47 of this chapter, and all discharges from these areas shall meet the requirements of §§ 816.41 and 816.42 of this chapter and any other applicable State or Federal law.

(d) Permanent impoundments associated with coal preparation plants shall meet the requirements of §§ 816.49 and 816.56 of this chapter. Dams constructed of, or impounding, coal processing waste shall comply with § 816.84 of this chapter.

(e) Disposal of coal processing waste, noncoal mine waste, and excess spoil shall comply with §§ 816.81, 816.83, 816.84, 816.87, 816.89, and 816.71 through 816.74 of this chapter, respectively.

(f) Fish, wildlife, and related environmental values shall be protection in accordance with § 816.97 of this chapter.

(g) Support facilities related to the coal preparation plant shall comply with § 816.181 of this chapter.

(h) Roads shall comply with §§ 816.150 and 816.151 of this chapter.

(i) Cessation of operations shall be in accordance with §§ 816.131 and 816.132 of this chapter.

(j) Erosion and air pollution attendant to erosion shall be controlled in accordance with § 816.95 of this chapter.

(k) Adverse effects upon, or resulting from, nearby underground coal mining activities shall be minimized by appropriate measures including, but not limited to, compliance with § 816.79 of this chapter.

(l) Reclamation shall follow proper topsoil handling, backfilling and grading, revegetation, and postmining land use procedures in accordance with §§ 816.22, 816.100.
816.102, 816.104, 816.106, 816.111, 816.113, 816.114, 816.116, and 816.133 of this chapter, respectively. [48 FR 20401, May 5, 1983, as amended at 52 FR 17730, May 11, 1987]

30 CFR 827.13 Coal preparation plants: Interim performance standards. (a) Persons operating or who have operated coal preparation plants after July 6, 1984, which were not subject to this chapter before July 6, 1984, shall comply with the applicable interim or permanent program performance standards of the State in which such plants are located, as follows:
   (1) If located in a State in which either interim or permanent program performance standards apply to such plants, the applicable program standards of the State program shall apply;
   (2) If located in a State with a State program which must be amended in order to regulate such plants, the interim program performance standards in subchapter B of this chapter shall apply; and
   (3) If located in a State with a Federal program, all such plants shall be subject to the interim program performance standards in subchapter B of this chapter.

(b) After a person described in paragraph (a) of this section obtains a permit to operate a coal preparation plant, the performance standards specified in § 827.12 shall be applicable to the operation of that plant instead of those specified in paragraph (a) of this section. [52 FR 17730, May 11, 1987]

30 CFR 828.11 In situ processing: Performance standards. (a) The person who conducts in situ processing activities shall comply with 30 CFR 817 and this section.
   (b) In situ processing activities shall be planned and conducted to minimize disturbance to the prevailing hydrologic balance by:
      (1) Avoiding discharge of fluids into holes or wells, other than as approved by the regulatory authority;
      (2) Injecting process recovery fluids only into geologic zones or intervals approved as production zones by the regulatory authority;
      (3) Avoiding annular injection between the wall of the drill hole and the casing; and
      (4) Preventing discharge of process fluid into surface waters.
   (c) Each person who conducts in situ processing activities shall submit for approval as part of the application for permit under 30 CFR 785.22, and follow after approval, a plan that ensures that all acid-forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety, or environmental hazard and caused by the mining and recovery process are promptly treated, confined, or disposed of, in a manner that prevents contamination of ground and surface waters, damage to fish, wildlife and related environmental values, and threats to the public health and safety.
   (d) Each person who conducts in situ processing activities shall prevent flow of the process recovery fluid:
      (1) Horizontally beyond the affected area identified in the permit; and
      (2) Vertically into overlying or underlying aquifers.
   (e) Each person who conducts in situ processing activities shall restore the quality of affected ground water in the permit area and adjacent area, including ground water above and below the production zone, to the approximate premining levels or better, to ensure that the

30 CFR 828.12 In situ processing: Monitoring. (a) Each person who conducts in situ processing activities shall monitor the quality and quantity of surface and ground water and the subsurface flow and storage characteristics, in a manner approved by the regulatory authority under 30 CFR 817.41, to measure changes in the quantity and quality of water in surface and ground water systems in the permit area and in adjacent areas.

(b) Air and water quality monitoring shall be conducted in accordance with monitoring programs approved by the regulatory authority as necessary according to appropriate Federal and State air and water quality standards. (Pub. L. 95-87, 30 U.S.C. 1201 et seq.) [44 FR 15455, Mar. 13, 1979, as amended at 48 FR 14822, Apr. 5, 1983; 48 FR 44781, Sept. 30, 1983]

K.A.R. 47-9-4 Interim performance standards; adoption by reference. (a) The following regulations as in effect on July 1, 2001 are adopted by reference, except as indicated in this regulation:

1. Definitions, 30 CFR 710.5, except that in subsection (2)(i), the word “Act” shall refer to the federal government’s surface mining control and reclamation act;
2. applicability, 30 CFR 710.11 (a), deleting subsection (a)(1) and the phrase “except as provided in § 710.12 of this part”;
3. signs and markers, 30 CFR 715.12;
4. postmining use of land, 30 CFR 715.13, deleting the last sentence in (d);
5. backfilling and grading, 30 CFR 715.14, deleting subsections (b)(3) and (c);
6. disposal of excess spoil, 30 CFR 715.15, deleting subsection (c);
7. topsoil handling, 30 CFR 715.16;
8. protection of the hydrologic system, 30 CFR 715.17, deleting subsection (j);
9. dams constructed of or impounding waste material, 30 CFR 715.18;
10. revegetation, 30 CFR 715.20;
11. interpretative rules related to general performance standards, 30 CFR 715.200; and
12. prime farmland, 30 CFR 716.7.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the federal regulations adopted by reference in this regulation:

1. “This part,” “§ 716.2 of this chapter,” “part 715 of this chapter,” “this section,” and “this chapter” shall be replaced by “these regulations.”
2. “Act” shall be replaced by “state act.”
3. “Subchapter B of this chapter” shall be replaced by “K.A.R. 47-9-4.”
4. “Subchapter K of this chapter” shall be replaced by “K.A.R. 47-9-1.”
5. “§ 715.17,” “§ 715.17 of this part,” “§ 715.17(a),” and “§ 715.17(c)” shall be replaced by “K.A.R. 47-9-4 (a)(8).”
6. “§ 715.16,” “§ 715.16(c),” “§ 715.16(a)(4),” and “30 CFR 715.16(a)(4)(i)” shall be replaced by “K.A.R. 47-9-4 (a)(7).”
7. “§ 715.13” shall be replaced by “K.A.R. 47-9-4 (a)(4).”
8. “§ 715.20” and “§ 715.20(g)” shall be replaced by “K.A.R. 47-9-4 (a)(10).”
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(9) “§ 715.14,” “§ 715.14(b)(2),” and “§ 715.14(j)” shall be replaced by “K.A.R. 47-9-4 (a)(5).”

(10) “§§ 715.14 and § 715.20” shall be replaced by “K.A.R. 47-9-4 (a)(5) and (10).”

(11) “§ 715.12” shall be replaced by “K.A.R. 47-9-4 (a)(3).”

(12) “§§ 715.14, 715.16, and 715.20” shall be replaced by “K.A.R. 47-9-4 (a)(5), (7), and (10).”

(13) “§ 715.18” shall be replaced by “K.A.R. 47-9-4 (a)(9).”

(14) “§§ 715.13 and § 715.14” shall be replaced by “K.A.R. 47-9-4 (a)(4) and (5).”

(15) “§ 716.7” shall be replaced by “K.A.R. 47-9-4 (a)(12).”

(16) “§ 715.15 of this part” shall be replaced by “K.A.R. 47-9-4 (a)(6).”

(c) Each operator shall comply with the interim performance standards in an interim permit area, unless the secretary has approved, in writing, that operator's request to adhere to an applicable permanent program performance standard or other applicable substantive regulation.

(Authorized by and implementing K.S.A. 49-405; effective May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended December 1, 2006.)

30 CFR 710.5 Definitions. As used throughout the initial regulatory program the following terms have the specified meanings unless otherwise indicated:

Acid drainage means water with a pH of less than 6.0 discharged from active or abandoned mines and from areas affected by coal mining operations.

Acid-forming materials means earth materials that contain sulfide mineral or other materials which, if exposed to air, water, or weathering processes, will cause acids that may create acid drainage.

Alluvial valley floors means unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits.

Approximate original contour means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the regulatory authority determines that they are in compliance with § 715.17.

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

Combustible material means organic material that is capable of burning either by fire or through a chemical process (oxidation) accompanied by the evolution of heat and a significant temperature rise.

Compaction means the reduction of pore spaces among the particles of soil or rock, generally done by running heavy equipment over the earth materials.

Disturbed area means those lands that have been affected by surface coal mining and reclamation operations.
**Diversion** means a channel, embankment, or other manmade structure constructed for the purpose of diverting water from one area to another.

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

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

**Essential hydrologic functions** means, with respect to alluvial valley floors, the role of the valley floor in collecting, storing, and regulating the natural flow of surface water and ground water, and in providing a place for irrigated and subirrigated farming, by reason of its position in the landscape and the characteristics of its underlying material.

**Flood irrigation** means irrigation through natural overflow or the temporary diversion of high flows in which the entire surface of the soil is covered by a sheet of water.

**Ground water** means subsurface water that fills available openings in rock or soil materials such that they may be considered water-saturated.

**Head-of-hollow fill** means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the fill measured at the steepest point are greater that 20 deg. or the profile of the hollow from the toe of the fill to the top of the fill is greater than 10 deg. In fills with less than 250.00 cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

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

**Hydrologic balance** means the relationship between the quality and quantity of inflow to, outflow from, and storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the quantity and quality relationships between precipitation, runoff, evaporation, and the change in ground and surface water storage.

**Hydrologic regime** means the entire state of water movement in a given area. It is a function of the climate, and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form and falls as precipitation, moves thence along or into the ground surface, and returns to the atmosphere a vapor by means of evaporation and transpiration.

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

**Intermittent or perennial stream** means a stream or part of a stream that flows continuously during all (perennial) or for at least one month (intermittent) of the calendar year as a result of ground-water discharge or surface runoff. The term does not include an ephemeral stream which is one that flows for less than one month of a calendar year and only in direct response to precipitation in the immediate watershed and whose channel bottom is always above the local water table.

**Leachate** means a liquid that has percolated through soil, rock, or waste and has extracted dissolved or suspended materials.
**Noxious plants** means species that have been included on official State lists of noxious plants for the State in which the operation occurs.

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

**Outslope** means the exposed area sloping away from a bench or terrace being constructed as a part of a surface coal mining and reclamation operation.

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

**Recharge capacity** means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

**Roads** means access and haul roads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations, including use by coal-hauling vehicles leading to transfer, processing, or storage areas. The term includes any such road used and not graded to approximate original contour within 45 days of construction other than temporary roads used for topsoil removal and coal haulage roads within the pit area. Roads maintained with public funds such as all Federal, State, county, or local roads are excluded.

**Recurrence interval** means the precipitation event expected to occur, on the average, once in a specified interval. For example, the 10-year 24-hour precipitation event would be that 24-hour precipitation event expected to be exceeded on the average once in 10 years. Magnitude of such events are as defined by the National Weather Service Technical Paper No. 40, “Rainfall Frequency Atlas of the U.S.,” May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom.

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

**Safety factor** means the ratio of the available shear strength to the developed shear stress on a potential surface of sliding determined by accepted engineering practice.

**Sediment** means undissolved organic and inorganic material transported or deposited by water.

**Sedimentation pond** means any natural or artificial structure or depression used to remove sediment from water and store sediment or other debris.

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

**Soil horizons** means contrasting layers of soil lying one below the other, parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are–

(a) **A horizon.** The uppermost layer in the soil profile often called the surface soil. It is the part of the soil in which organic matter is most abundant, and where leaching of soluble or suspended particles is the greatest.

(b) **B horizon.** The layer immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.

(c) **C horizon.** The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

**Spoil** means overburden that has been removed during surface mining.
**Stabilize** means any method used to control movement of soil, spoil piles, or areas of disturbed earth and includes increasing bearing capacity, increasing shear strength, draining, compacting, or revegetating.

**Subirrigation** means irrigation of plants with water delivered to the roots from underneath.

**Surface water** means water, either flowing or standing, on the surface of the earth.

**Suspended solids** means organic or inorganic materials carried or held in suspension in water that will remain on a 0.45 micron filter.

**Toxic-forming materials** means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

**Toxic-mine drainage** means water that is discharged from active or abandoned mines and other areas affected by coal mining operations and which contains a substance which through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

**Valley fill** means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the fill measured at the steepest point are greater than 20° or the profile of the hollow from the toe of the fill to the top of the fill is greater than 10°.

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

**Water table** means upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone. [42 FR 62677, Dec. 13, 1977, as amended at 44 FR 30628, May 25, 1979]

**30 CFR 710.11 Applicability.** (a) Operations on lands on which such operations are regulated by a State. (1) The requirements of the initial regulatory program do not apply to surface mining and reclamation operations which occur on lands within a State which does not regulate any part of such operations.

(2) General obligations. (i) A person conducting coal mining operations shall have a permit if required by the State in which he is mining and shall comply with State laws and regulations that are not inconsistent with the Act and this chapter.

(ii) A person conducting coal mining operations shall not engage in any operations which result in a condition or constitute a practice that creates an imminent danger to the health or safety of the public.

(iii) A person conducting coal mining operations shall not engage in any operations which result in a condition or constitute a practice that causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(3) Performance standards obligations. (i) A person who conducts any coal mining operations under an initial permit issued by a State on or after February 3, 1978, shall comply with the requirements of the initial regulatory program. Such permits shall contain terms that comply with the relevant performance standards of the initial regulatory program.
(ii) On and after May 3, 1978, any person conducting coal mining operations shall comply with the initial regulatory program, except as provided in § 710.12 of this part.

(iii) A person shall comply with the obligations of this section until he has received a permit to operate under a permanent State or Federal regulatory program.

(b) Operations on Indian lands. Any person who conducts surface coal mining and reclamation operations on Indian lands on or after December 16, 1977, in accordance with section 750.11(c) of this chapter, or who was otherwise subject to 25 CFR Part 216, Subpart B prior to September 22, 1994; shall comply with the performance standards of this subchapter.

(c) Operations on Federal lands. (1) A person conducting coal mining operations on Federal lands under a permit approved on or after February 3, 1978, shall comply with the performance standards of this chapter.

(2) Any person conducting coal mining operations on Federal lands on and after May 3, 1978, shall comply with the performance standards of this chapter.

(d) Operations on all lands. (1) The requirements of this chapter apply to operations conducted after the effective date of these regulations on lands from which the coal has not yet been removed and to any other lands used, disturbed, or redisturbed in connection with or to facilitate mining or to comply with the requirements of the Act or these regulations.

(2) Any pre-existing, nonconforming structure or facility which is used in connection with or to facilitate mining after the effective date of these regulations shall comply with the requirements of the regulations, unless–

(i) The permittee submits to the regulatory authority by March 1, 1978, a statement in writing demonstrating that it is physically impossible to bring the structure or facility into compliance by May 4, 1978. The statement shall include the steps to be taken to reconstruct the structure or facility in conformance with applicable performance standards and a schedule for reconstruction including the estimated date of completion;

(ii) The regulatory authority finds in writing that it is physically impossible to bring the structure or facility into compliance by May 4, 1978;

(iii) The construction work is to be performed in accordance with plans designed by a professional engineer; and

(iv) The construction work is to be started and completed as soon as possible and in no event is to be started later than May 4, 1978 and completed later than November 4, 1978.

(3) Notwithstanding paragraph (d)(2) of this section, any sedimentation pond, or related pre-existing, non-conforming structure or facility which is used in connection with or to facilitate mining after the effective date of these regulations shall comply with the requirements of the regulations unless–

(i) The permittee submits to the regulatory authority and to the Director by May 3, 1978, a statement in writing demonstrating that it is physically impossible to bring the structure or facility into compliance by May 3, 1978. The statement shall include the steps to be taken to reconstruct the structure or facility in conformance with applicable performance standards and a schedule for reconstruction including the estimated date of completion;

(ii) The regulatory authority finds in writing that it is physically impossible to bring the structure or facility into compliance by May 3, 1978;

(iii) The construction work is to be performed in accordance with plans designed by a professional engineer;
(iv) The construction work is to be started and completed as soon as possible and in no event is to be started later than June 3, 1978 and completed later than November 4, 1978; and
(v) The Director approves of any schedules which contain an estimated date of completion beyond October 3, 1978.

(4) The Director shall be deemed to have approved such schedules referred to in paragraph (d)(3)(v) of this section, unless written disapproval is received by the operator on or before June 3, 1978.


30 CFR 715.12 Signs and markers. (a) Specifications. All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material. The signs and other markers shall be maintained during all operations to which they pertain and shall conform to local ordinances and codes.

(b) Mine and permit identification signs. Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways. Signs shall show the name, business address, and telephone number of the permittee and identification numbers of current mining and reclamation permits or other authorizations to operate. Such signs shall not be removed until after release of all bonds.

(c) Perimeter markers. The perimeter of the permit area shall be clearly marked by durable and easily recognized markers, or by other means approved by the regulatory authority.

(d) Buffer zone markers. Buffer zones as defined in § 715.17 shall be marked in a manner consistent with the perimeter markers along the interior boundary of the buffer zone.

(e) Blasting signs. If blasting is necessary to conduct surface coal mining operations, signs reading “Blasting Area” shall be displayed conspicuously at the edge of blasting areas along access and haul roads within the mine property. Signs reading “Blasting Area” and explaining the blasting warning and all-clear signals shall be posted at all entrances to the permit area.

(f) Topsoil markers. Where topsoil or other vegetation-supporting material is segregated and stockpiled according to § 715.16(c), the stockpiled material shall be marked. Markers shall remain in place until the material is removed.

30 CFR 715.13 Postmining use of land. (a) General. All disturbed areas shall be restored in a timely manner (1) to conditions that are capable of supporting the uses which they were capable of supporting before any mining, or (2) to higher or better uses achievable under criteria and procedures of paragraph (d) of this section.

(b) Determining premining use of land. The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported if the land had not been previously mined and had been properly managed.
(1) The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the highest and best use that can be achieved and is compatible with surrounding areas.

(2) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.

(3) If the premining use of the land was changed within 5 years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

(c) Land-use categories. Land use is categorized in the following groups. Change from one to another land use category in premining to postmining constitutes an alternate land use and the permittee shall meet the requirements of paragraph (d) of this section and all other applicable environmental protection performance standards of this chapter.

(1) Heavy industry. Manufacturing facilities, powerplants, airports or similar facilities.

(2) Light industry and commercial services. Office buildings, stores, parking facilities, apartment housed, motels, hotels, or similar facilities.

(3) Public services. Schools, hospitals, churches, libraries, water-treatment facilities, solid-waste disposal facilities, public parks and recreation facilities, major transmission lines, major pipelines, highways, underground and surface utilities, and other servicing structures and appurtenances.

(4) Residential. Single- and multiple-family housing (other than apartment houses) with necessary support facilities. Support facilities may include commercial services incorporated in and comprising less than 5 percent of the total land area of housing capacity, associated open space, and minor vehicle parking and recreation facilities supporting the housing.

(5) Cropland. Land used primarily for the production of cultivated and close-growing crops for harvest alone or in association with sod crops. Land used for facilities in support of farming operations are included.

(6) Rangeland. Includes rangelands and forest lands which support a cover of herbaceous or scrubby vegetation suitable for grazing or browsing use.

(7) Hayland or pasture. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or cut and cured for livestock feed.

(8) Forest land. Land with at least a 25 percent tree canopy or land at least 10 percent stocked by forest trees of any size, including land formerly having had such tree cover and that will be naturally or artificially reforested.

(9) Impoundments of water. Land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, recreation, or water supply.

(10) Fish and wildlife habitat and recreation lands. Wetlands, fish and wildlife habitat, and areas managed primarily for fish and wildlife or recreation.

(11) Combined uses. Any appropriate combination of land uses where one land use is designated as the primary land use and one or more other land uses are designated as secondary land uses.

(d) Criteria for approving alternative postmining use of land. An alternative postmining land use shall be approved by the regulatory authority, after consultation with the landowner or the land-management agency having jurisdiction over State or Federal lands, if the following
criteria are met. Proposals to remove an entire coal seam running through the upper part of a
mountain, ridge, or hill must also meet these criteria in addition to the requirements of § 716.3 of
this chapter.

(1) The proposed land use is compatible with adjacent land use and, where applicable,
with existing local, State or Federal land use policies and plans. A written statement of the views
of the authorities with statutory responsibilities for land use policies and plans shall accompany
the request for approval. The permittee shall obtain any required approval of local, State or
Federal land management agencies, including any necessary zoning or other changes necessarily
required for the final land use.

(2) Specific plans have been prepared which show the feasibility of the proposed land use
as related to needs, projected land use trends, and markets and that include a schedule showing
how the proposed use will be developed and achieved within a reasonable time after mining and
be sustained. The regulatory authority may require appropriate demonstrations to show that the
planned procedures are feasible, reasonable, and integrated with mining and reclamation, and
that the plans will result in successful reclamation.

(3) Provision of any necessary public facilities is assured as evidenced by letters of
commitment from parties other than the permittee, as appropriate, to provide them in a manner
compatible with the permittee's plans.

(4) Specific and feasible plans for financing attainment and maintenance of the
postmining land use including letters of commitment from parties other than the permittee as
appropriate, if the postmining land use is to be developed by such parties.

(5) The plans are designed under the general supervision of a registered professional
engineer, or other appropriate professional, who will ensure that the plans conform to applicable
accepted standards for adequate land stability, drainage, and vegetative cover, and aesthetic
design appropriate for the postmining use of the site.

(6) The proposed use or uses will neither present actual or probable hazard to public
health or safety nor will they pose any actual or probable threat of water flow diminution or
pollution.

(7) The use or uses will not involve unreasonable delays in reclamation.

(8) Necessary approval of measures to prevent or mitigate adverse effects on fish and
wildlife has been obtained from the regulatory authority and appropriate State and Federal fish
and wildlife management agencies.

(9) Proposals to change premining land uses of range, fish and wildlife habitat, forest
land, hayland, or pasture to a postmining cropland use, where the cropland would require
continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar
practices to be practicable or to comply with applicable Federal, State, and local laws, shall be
reviewed by the regulatory authority to assure that–

(i) There is a firm written commitment by the permittee or by the landowner or land
manager to provide sufficient crop management after release of applicable performance bonds to
assure that the proposed postmining cropland use remains practical and reasonable;

(ii) There is sufficient water available and committed to maintain crop production; and

(iii) Topsoil quality and depth are shown to be sufficient to support the proposed use.
(10) The regulatory authority has provided by public notice not less than 45 days nor more than 60 days for interested citizens and local, State and Federal agencies to review and comment on the proposed land use. [42 FR 62680, Dec. 13, 1977; 43 FR 2721, Jan. 19, 1978]

30 CFR 715.14 Backfilling and grading. In order to achieve the approximate original contour, the permittee shall, except as provided in this section, transport, backfill, compact (where advisable to ensure stability or to prevent leaching of toxic materials), and grade all spoil material to eliminate all highwalls, spoil piles, and depressions. Cut-and-fill terraces may be used only in those situations expressly identified in this section. The postmining graded slopes must approximate the premining natural slopes in the area as defined in paragraph (a).

(a) **Slope measurements.** (1) To determine the natural slopes of the area before mining, sufficient slopes to adequately represent the land surface configuration, and as approved by the regulatory authority in accordance with site conditions, must be accurately measured and recorded. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed; or, where this is impractical, at locations specified by the regulatory authority. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances as determined by the regulatory authority to be representative of the premining configuration of the land. Slope measurements shall take into account natural variations in slope so as to provide accurate representation of the range of natural slopes and shall reflect geomorphic differences of the area to be disturbed. Slope measurements may be made from topographic maps showing contour lines, having sufficient detail and accuracy consistent with the submitted mining and reclamation plan.

(2) After the disturbed area has been graded, the final graded slopes shall be measured at the beginning and end of lines established on the prevailing slope at locations representative of premining slope conditions and approved by the regulatory authority. These measurements must not be made so as to allow unacceptably steep slopes to be constructed.

(b) **Final graded slopes.** (1) The final graded slopes shall not exceed either the approximate premining slopes as determined according to paragraph (a)(1) and approved by the regulatory authority or any lesser slope specified by the regulatory based on consideration of soil, climate, or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform. The requirements of this paragraph may be modified by the regulatory authority where the mining is reaffecting previously mined lands that have not been restored to the standards of this section and sufficient spoil is not available to return to the slope determined according to paragraph (a)(1). Where such modifications are approved, the permittee shall, as a minimum, be required to—

(i) Retain all overburden and spoil on the solid portion of existing or new benches; and
(ii) Backfill and grade to the most moderate slope possible to eliminate the highwall which does not exceed the angle of repose or such lesser slopes as is necessary to assure stability.

(2) On approval by the regulatory authority and in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed if the terraces are compatible with the postmining land use approved under § 715.13, and are
appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(i) Where specialized grading, foundation conditions, or roads are required for the approved postmining land use, the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land use plan.

(ii) The vertical distance between terraces shall be as specified by the regulatory authority to prevent excessive erosion and to provide long-term stability.

(iii) The slope of the terrace outslope shall not exceed 1v:2h (50 percent). Outslopes which exceed 1v:2h (50 percent) may be approved if they have a minimum static safety factor of more than 1.5 and provide adequate control over erosion and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(iv) Culverts and underground rock drains shall be used on the terrace only when approved by the regulatory authority.

(3) All operations on steep slopes of 20 degrees or more or on such lesser slopes as the regulatory authority defines as a steep slope shall meet the provisions of § 716.2 of this chapter.

(c) Mountaintop removal. The requirements of this paragraph and of § 716.3 shall apply to surface mining operations which remove entire coal seams in the upper part of a mountain, ridge, or hill by removing all of the overburden, and where the requirements for achieving the approximate original contour of this section cannot be met. Final graded top plateau slopes on the mined area shall be less than 1v:5h so as to create a level plateau or gently rolling configuration and the outslopes of the plateau shall not exceed 1v:2h, except where engineering data substantiates and the regulatory authority finds that a minimum static safety factor of 1.5 (or higher factors specified by the regulatory authority) will be attained. Although the area need not be restored to approximate original contour, all highwalls, spoil piles, and depressions except as provided in paragraphs (d) and (e) of this section shall be eliminated. All mountaintop removal operations shall in addition meet the provisions of § 716.3 of this chapter.

(d) Small depressions. The requirement of this section to achieve approximate original contour does not prohibit construction of small depressions if they are approved by the regulatory authority to minimize erosion, conserve soil moisture or promote revegetation. These depressions shall be compatible with the approved postmining land use and shall not be inappropriate substitutes for construction of lower grades on the reclaimed lands. Depressions approved under this section shall have a holding capacity of less than 1 cubic yard of water or, if it is necessary that they be larger, shall not restrict normal access throughout the area or constitute a hazard. Large, permanent impoundments shall be governed by paragraph (e) of this section and by § 715.17.

(e) Permanent impoundments. Permanent impoundments may be retained in mined and reclaimed areas provided all highwalls are eliminated by grading to appropriate contour and the provisions for postmining land use (§ 715.13) and protection of the hydrologic balance (§ 715.17) are met. No impoundments shall be constructed on top of areas in which excess materials are deposited pursuant to § 715.15 of this part. Impoundments shall not be used to meet the requirements of paragraph (j) of this section.

(f) Definition of thin and thick restored overburden. The thin overburden provisions of paragraph (g) of this section may apply only where the final thickness is less than 0.8 of the
initial thickness. The thick overburden provisions of paragraph (h) of this section may apply only where the final thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness. Final thickness is the product of the overburden thickness times the bulking factor to be determined for each mine area. The provisions of paragraphs (g) and (h) apply only when operations cannot be carried out to comply with the requirements of paragraph (a) of this section to achieve the approximate original contour.

(g) Thin overburden. In surface coal mining operations carried out continuously in the same limited pit area for more than 1 year from the day coal-removal operations begin and where the volume of all available spoil and suitable waste materials is demonstrated to be insufficient to achieve approximate original contour, surface coal mining operations shall be conducted to meet, at a minimum, the following standards:

1. Transport, backfill, and grade, using all available spoil and suitable waste materials from the entire mine area, to attain the lowest practicable stable grade, which may not exceed the angle of repose, and to provide adequate drainage and long-term stability of the regraded areas.
2. Eliminate highwalls by grading or backfilling to stable slopes not exceeding 1v:2h (50 percent), or such lesser slopes as the regulatory authority may specify to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use.
3. Transport, backfill, grade, and revegetate to achieve an ecologically sound land use compatible with the prevailing land use in unmined areas surrounding the permit area.
4. Transport, backfill, and grade to ensure the impoundments are constructed only where it has been demonstrated to the regulatory authority's satisfaction that all requirements of § 715.17 have been met and that the impoundments have been approved by the regulatory authority as meeting the requirements of this part and all other applicable Federal and State regulations.

(h) Thick overburden. In surface coal mining operations where the volume of spoil is demonstrated to be more than sufficient to achieve the approximate original contour surface coal mining operations shall be conducted to meet at a minimum the following standards:

1. Transport, backfill, and grade all spoil and wastes not required to achieve approximate original contour in the surface mining area to the lowest practicable grade.
2. Deposit, backfill, and grade excess spoil and wastes only within the permit area and dispose of such materials in conformance with this part.
3. Transport, backfill, and grade excess spoil and wastes to maintain the hydrologic balance in accordance with this part and to provide long-term stability.
4. Transport, backfill, grade, and revegetate wastes and excess spoil to achieve an ecologically sound land use compatible with the prevailing land uses in unmined areas surrounding the permit area.
5. Eliminate all highwalls and depressions except as stated in paragraph (e) of this section by backfilling with spoil and suitable waste materials.

(i) Regrading or stabilizing rills and gullies. When rills or gullies deeper than 9 inches form in areas that have been regraded and the topsoil replaced but vegetation has not yet been established the permittee shall fill, grade, or otherwise stabilize the rills and gullies and reseed or replant the areas according to § 715.20. The regulatory authority shall specify that rills or gullies of lesser size be stabilized if the rills or gullies will be disruptive to the approved postmining land use or may result in additional erosion and sedimentation.
(j) Covering coal and acid-forming, toxic-forming, combustible, and other waste materials; stabilizing backfilled materials; and using waste material for fill—(1) Cover. All exposed coal seams remaining after mining and any acid-forming, toxic-forming, combustible materials, or any other waste materials identified by the regulatory authority that are exposed, used, or produced during mining shall be covered with a minimum of 4 feet of nontoxic and noncombustible material; or, if necessary, treated to neutralize toxicity in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land uses. Where necessary to protect against upward migration of salts, exposure by erosion, to provide an adequate depth for plant growth, or to otherwise meet local conditions, the regulatory authority shall specify thicker amounts of cover using nontoxic material. Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution or otherwise violate the provisions of § 715.17 of this part.

(2) Stabilization. Backfilled materials shall be selectively placed and compacted wherever necessary to prevent leaching of toxic-forming materials into surface or subsurface waters in accordance with § 715.17 and wherever necessary to ensure the stability of the backfilled materials. The method of compacting material and the design specifications shall be approved by the regulatory authority before the toxic materials are covered.

(3) Use of waste materials as fill. Before waste materials from a coal preparation or conversion facility or from other activities conducted outside the permit area such as municipal wastes are used for fill material, it must be demonstrated to the regulatory authority by hydrogeological means and chemical and physical analyses that use of these materials will not adversely affect water quality, water flow, and vegetation; will not present hazards to public health and safety; and will not cause instability in the backfilled area.

(k) Grading along the contour. All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil, in accordance with § 715.16, shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation or placement along the contour would be hazardous to equipment operators then grading, preparation or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage. [42 FR 62680, Dec. 13, 1977; 43 FR 2721, Jan. 19, 1978, as amended at 47 FR 18553, Apr. 29, 1982]

30 CFR 715.15 Disposal of excess spoil. (a) General requirements. (1) Spoil not required to achieve the approximate original contour within the area where overburden has been removed shall be hauled or conveyed to and placed in designated disposal areas within a permit area, if the disposal areas are authorized for such purposes in the approved permit application in accordance with paragraphs (a) through (d) of this section. The spoil shall be placed in a controlled manner to ensure—

(i) That leachate and surface runoff from the fill will not degrade surface or ground waters or exceed the effluent limitations of § 715.17(a)

(ii) Stability of the fill; and

(iii) That the land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.
(2) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the regulatory authority.

(3) All vegetative and organic materials shall be removed from the disposal area and the topsoil shall be removed, segregated, and stored or replaced under § 715.16. If approved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(4) Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of § 715.17(c). All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(5) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the regulatory authority. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.

(6) The spoil shall be hauled or conveyed and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long-term static safety factor of 1.5.

(7) The final configuration of the fill must be suitable for postmining land uses approved in accordance with § 715.13, except that no depressions or impoundments shall be allowed on the completed fill.

(8) Terraces may be utilized to control erosion and enhance stability if approved by the regulatory authority and consistent with § 715.14(b)(2).

(9) Where the slope in the disposal area exceeds 1v:2.8h (36 percent), or such lesser slope as may be designated by the regulatory authority based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed to determine the size of rock toe buttresses and key way cuts.

(10) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist experienced in the construction of earth and rockfill embankments at least quarterly throughout construction and during the following critical construction periods:

(i) Removal of all organic material and topsoil,
(ii) placement of underdrainage systems,
(iii) installation of surface drainage systems,
(iv) placement and compaction of fill materials, and
(v) revegetation. The registered engineer or other qualified professional specialist shall provide to the regulatory authority a certified report within 2 weeks after each inspection that the fill has been constructed as specified in the design approved by the regulatory authority. A copy of the report shall be retained at the minesite.

(11) Coal processing wastes shall not be disposed of in head-of- hollow or valley fills, and may only be disposed of in other excess spoil fills, if such waste is--

(i) Demonstrated to be nontoxic and nonacid forming; and
(ii) Demonstrated to be consistent with the design stability of the fill.

(12) If the disposal area contains springs, natural or manmade watercourses, or wet-weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet
areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.

(13) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials shall be performed in order to determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(14) Excess spoil may be returned to underground mine workings, but only in accordance with a disposal program approved by the regulatory authority and MSHA.

(15) Disposal of excess spoil from an upper actively mined bench to a lower pre-existing bench by means of gravity transport is permitted provided that:

(i) The operator receives the prior written approval of the regulatory authority upon demonstration by the operator that the spoil to be disposed of by gravity transport is not necessary for elimination of the highwall and return of the upper bench to approximate original contour;

(ii) The following conditions and performance standards in addition to the environmental performance standards of this part are met:

(A) The highwall of the lower bench intersects (meets) the upper actively mined bench with no natural slope between them;

(B) The gravity transport points are determined on a site specific basis by the operator and approved by the regulatory authority to minimize hazards to health and safety and to ensure that damage will be minimized should spoil accidentally move down-slope of the lower bench;

(C) The excess spoil is placed only on solid portions of the lower pre-existing bench;

(D) All excess spoil on the lower solid bench, including that spoil immediately below the gravity transport points, is rehandled and placed in a controlled manner to eliminate as much of the lower highwall as practicable. Rehandling and placing the excess spoil on the lower solid bench shall consist of placing the excess spoil in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings to ensure a long term static safety factor of 1.3. Spoil on the bench prior to the current mining operation need not be rehandled except to ensure stability of the fill.

(E) A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm, only that amount of spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm. The safety berm must be removed by the operator by final grading operations;

(F) The area of the lower bench used to facilitate the disposal of excess spoil is considered a disturbed area.

(b) Valley fills. Valley fills shall meet all of the requirements of paragraph (a) of this section and the additional requirements of this section.

(1) The fill shall be designed to attain a long-term static safety factor of 1.5 based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.
(2) A subdrainage system for the fill shall be constructed in accordance with the following:
   (i) A system of underdrains constructed of durable rock shall meet the requirements of paragraph (2)(iv) of this section and:
        (A) Be installed along the natural drainage system;
        (B) Extend from the toe to the head of the fill; and
        (C) Contain lateral drains to each area of potential drainage or seepage.
   (ii) A filter system to insure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.
   (iii) In constructing the underdrains, no more than 10 percent of the rock may be less than 12 inches in size and no single rock may be larger than 25 percent of the width of the drain. Rock used in underdrains shall meet the requirements of paragraph (2)(iv) of this section. The minimum size of the main underdrain shall be:

<table>
<thead>
<tr>
<th>Total amount of fill material</th>
<th>Predominant type of fill material</th>
<th>Minimum size of drain, in feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1,000,000 yd³</td>
<td>Sandstone.........................</td>
<td>Width 10</td>
</tr>
<tr>
<td>Do....................</td>
<td>Shale..............................</td>
<td>Height 4</td>
</tr>
<tr>
<td>More than 1,000,000 yd³</td>
<td>Sandstone.........................</td>
<td>Width 16</td>
</tr>
<tr>
<td>Do....................</td>
<td>Shale..............................</td>
<td>Height 8</td>
</tr>
</tbody>
</table>

   (iv) Underdrains shall consist of nondegradable, non-acid or toxic forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay or shale.
   (3) Spoil shall be hauled or conveyed and placed in a controlled manner and concurrently compacted as specified by the regulatory authority, in lifts no greater than 4 feet or less if required by the regulatory authority to—
        (i) Achieve the densities designed to ensure mass stability;
        (ii) Prevent mass movement;
        (iii) Avoid contamination of the rock underdrain or rock core; and
        (iv) Prevent formation of voids.
   (4) Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from a 100-year, 24-hour precipitation event or larger event specified by the regulatory authority. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill which will safely pass the runoff from a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of § 715.17(c).
   (5) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1v:20h (5 percent). The vertical distance between terraces shall not exceed 50 feet.
   (6) Drainage shall not be directed over the outslope of the fill.
   (7) The outslope of the fill shall not exceed 1v:2h (50 percent). The regulatory authority may require a flatter slope.
(c) **Head-of-hollow fills.** Disposal of spoil in the head-of-hollow fill shall meet all standards set forth in paragraphs (a) and (b) and the additional requirements of this section.

1. The fill shall be designed to completely fill the disposal site to the approximate elevation of the ridgeline. A rock-core chimney drain may be utilized instead of the subdrain and surface diversion system required for valley fills. If the crest of the fill is not approximately at the same elevation as the low point of the adjacent ridgeline, the fill must be designed as specified in paragraph (b), with diversion of runoff around the fill. A fill associated with contour mining and placed at or near the coal seam, and which does not exceed 250,000 cubic yards may use the rock-core chimney drain.

2. The alternative rock-core chimney drain system shall be designed and incorporated into the construction of head-of-hollow fills as follows:
   
   i. The fill shall have, along the vertical projection of the main buried stream channel or rill a vertical core of durable rock at least 16 feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of paragraph (b)(2)(iv).

   ii. A filter system to ensure the proper functioning of the rock core shall be designed and constructed using standard geotechnical engineering methods.

   iii. The grading may drain surface water away from the outslope of the fill and toward the rock core. The maximum slope of the top of the fill shall be 1v:33h (3 percent). Instead of the requirements of paragraph (a)(7) of this section, a drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a 3- to 5-percent grade toward the fill and a 1-percent slope toward the rock core.

3. The drainage control system shall be capable of passing safely the runoff from a 100-year, 24-hour precipitation event, or larger event specified by the regulatory authority.

(d) **Durable rock fills.** In lieu of the requirements of paragraphs (b) and (c) of this section the regulatory authority may approve alternate methods for disposal of hard rock spoil, including fill placement by dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of this paragraph and paragraph (a) are met. For this section, hard rock spoil shall be defined as rockfill consisting of at least 80 percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the regulatory authority.

1. Spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the fill.

   i. The method of spoil placement shall be designed to ensure mass stability and prevent mass movement in accordance with the additional requirements of this section.

   ii. Loads of noncemented clay shale and/or clay spoil in the fill shall be mixed with hard rock spoil in a controlled manner to limit on a unit basis concentrations of noncemented clay.
shale and clay in the fill. Such materials shall comprise no more than 20 percent of the fill volume as determined by tests performed by a registered engineer and approved by the regulatory authority.

(2)(i) Stability analyses shall be made by the registered professional engineer. Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations, including borings, and laboratory tests.

(ii) The embankment which constitutes the valley fill or head-of- hollow fill shall be designed with the following factors of safety:

<table>
<thead>
<tr>
<th>Case</th>
<th>Design condition</th>
<th>Minimum factor of safety</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>End of construction</td>
<td>1.5</td>
</tr>
<tr>
<td>II</td>
<td>Earthquake</td>
<td>1.1</td>
</tr>
</tbody>
</table>

(3) The design of a head-of-hollow fill shall include an internal drainage system which will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

(i) Anticipated discharge from springs and seeps and due to precipitation shall be based on records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

(ii) All granular material used for the drainage system shall be free of clay and consist of durable particles such as natural sands and gravels, sandstone, limestone or other durable rock which will not slake in water.

(iii) The internal drain shall be protected by a properly designed filter system.

(4) Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to pass safely the runoff from a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of § 715.17(c).

(5) The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper than 1v:20h (5 percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill.

(6) Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will pass safely a 100- year, 24-hour precipitation event. Diversion design shall comply with the requirements of § 715.17(c).

(7) Terraces shall be constructed on the outslope if required for control of erosion or for roads included in the approved postmining land use plan. Terraces shall meet the following requirements:

(i) The slope of the outslope between terrace benches shall not exceed 1v:2h (50 percent.).

(ii) To control surface runoff, each terrace bench shall be graded to a slope of 1v:20h (5 percent) toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.
(iii) Terrace ditches shall have a 5-percent slope toward the channels specified in paragraph (d)(6) of this section, unless steeper slopes are necessary in conjunction with approved roads. (e) Preexisting benches.

1. The regulatory authority may approve the disposal of excess spoil through placement on preexisting benches: Provided, That the standards set forth in paragraphs (a)(1)-(a)(5) and (a)(7)-(a)(14) of this section and the requirements of this paragraph (e) are met.

2. All spoil shall be placed on the solid portion of the preexisting bench.

3. The fill shall be designed, using standard geotechnical analysis, to attain a long-term static safety factor of 1.3 for all portions of the fill.

4. The preexisting bench shall be backfilled and graded to:

   (i) Achieve the most moderate slope possible which does not exceed the angle of repose, and


30 CFR 715.16 Topsoil handling. To prevent topsoil from being contaminated by spoil or waste materials, the permittee shall remove the topsoil as a separate operation from areas to be disturbed. Topsoil shall be immediately redistributed according to the requirements of paragraph (b) of this section on areas graded to the approved postmining configuration. The topsoil shall be segregated, stockpiled, and protected from wind and water erosion and from contaminants which lessen its capability to support vegetation if sufficient graded areas are not immediately available for redistribution.

(a) Topsoil removal. All topsoil to be salvaged shall be removed before any drilling for blasting, mining, or other surface disturbance.

1. All topsoil shall be removed unless use of alternative materials is approved by the regulatory authority in accordance with paragraph (a)(4) of this section. Where the removal of topsoil results in erosion that may cause air or water pollution, the regulatory authority shall limit the size of the area from which topsoil may be removed at any one time and specify methods of treatment to control erosion of exposed overburden.

2. All of the A horizon of the topsoil as identified by soil surveys shall be removed according to paragraph (a) and then replaced on disturbed areas as the surface soil layers. Where the A horizon is less than 6 inches, a 6-inch layer that includes the A horizon and the unconsolidated material immediately below the A horizon (or all unconsolidated material if the total available is less than 6 inches) shall be removed and the mixture segregated and replaced as the surface soil layer.

3. Where necessary to obtain soil productivity consistent with postmining land use, the regulatory authority may require that the B horizon or portions of the C horizon or other underlying layers demonstrated to have comparable quality for root development be segregated and replaced as subsoil.

4. Selected overburden materials may be used instead of, or as a supplement to, topsoil where the resulting soil medium is equal to or more suitable for vegetation, and if all the following requirements are met:

   (i) The permittee demonstrates that the selected overburden materials or an overburden-topsoil mixture is more suitable for restoring land capability and productivity by the results of
chemical and physical analyses. These analyses shall include determinations of pH, percent organic material, nitrogen, phosphorus, potassium, texture class, and water-holding capacity, and such other analyses as required by the regulatory authority. The regulatory authority also may require that results of field-site trials or greenhouse tests be used to demonstrate the feasibility of using such overburden materials.  

(ii) The chemical and physical analyses and the results of field-site trials and greenhouse tests are accompanied by a certification from a qualified soil scientist or agronomist.  

(iii) The alternative material is removed, segregated, and replaced in conformance with this section.  

(b) Topsoil redistribution. (1) After final grading and before the topsoil is replaced, regraded land shall be scarified or otherwise treated to eliminate slippage surfaces and to promote root penetration. (2) Topsoil shall be redistributed in a manner that—  

(i) Achieves an approximate uniform thickness consistent with the postmining land uses;  
(ii) Prevents excess compaction of the spoil and topsoil; and  
(iii) Protects the topsoil from wind and water erosion before it is seeded and planted.  

(c) Topsoil storage. If the permit allows storage of topsoil, the stockpiled topsoil shall be placed on a stable area within the permit area where it will not be disturbed or be exposed to excessive water, wind erosion, or contaminants which lessen its capability to support vegetation before it can be redistributed on terrain graded to final contour. Stockpiles shall be selectively placed and protected from wind and water erosion, unnecessary compaction, and contamination by undesirable materials either by a vegetative cover as defined in § 715.20(g) or by other methods demonstrated to provide equal protection such as snow fences, chemical binders, and mulching. Unless approved by the regulatory authority, stockpiled topsoil shall not be moved until required for redistribution on a disturbed area.  

(d) Nutrients and soil amendments. Nutrients and soil amendments in the amounts and analyses as determined by soil tests shall be applied to the surface soil layer so that it will support the postmining requirements of § 715.13 and the revegetation requirements of § 715.20.  

30 CFR 715.17 Protection of the hydrologic system. The permittee shall plan and conduct coal mining and reclamation operations to minimize disturbance to the prevailing hydrologic balance in order to prevent long-term adverse changes in the hydrologic balance that could result from surface coal mining and reclamation operations, both on- and off-site. Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized such that the postmining land use of the disturbed land is not adversely affected and applicable Federal and State statutes and regulations are not violated. The permittee shall conduct operations so as to minimize water pollution and shall, where necessary, use treatment methods to control water pollution. The permittee shall emphasize surface coal mining and reclamation practices that will prevent or minimize water pollution and changes in flows in preference to the use of water treatment facilities. Practices to control and minimize pollution include, but are not limited to, stabilizing disturbed areas through grading, diverting runoff, achieving quick growing stands of temporary vegetation, lining drainage channels with rock or vegetation, mulching, sealing acid-forming and toxic-forming materials, and selectively placing waste materials in backfill areas. If pollution can be controlled only by treatment, the permittee
shall operate and maintain the necessary water-treatment facilities for as long as treatment is required.

(a) *Water quality standards and effluent limitations.* All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded, or planted, shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area. Sedimentation ponds shall be retained until drainage from the disturbed areas has met the water quality requirements of this section and the revegetation requirements of § 715.20 have been met. The regulatory authority may grant exemptions from this requirement only when the disturbed drainage area within the total disturbed area is small and if the permittee shows that sedimentation ponds are necessary to meet the effluent limitations of this paragraph and to maintain water quality in downstream receiving waters. For purpose of this section only, disturbed area shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this section and the upstream area is not otherwise disturbed by the permittee. Sedimentation ponds required by this paragraph shall be constructed in accordance with paragraph (e) of this section in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water in accordance with this paragraph. Discharges from areas disturbed by surface coal mining and reclamation operations must meet all applicable Federal and State laws and regulations and, at a minimum, the following numerical effluent limitations:

**EFFLUENT LIMITATIONS IN MILLIGRAMS PER LITER, MG/L, EXCEPT FOR pH**

<table>
<thead>
<tr>
<th>Effluent characteristics</th>
<th>Maximum allowable</th>
<th>Average of daily values for 30 consecutive discharge days(^1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iron, total</td>
<td>7.0</td>
<td>3.5</td>
</tr>
<tr>
<td>Manganese, total</td>
<td>4.0</td>
<td>2.0</td>
</tr>
<tr>
<td>Total suspended solids(^2)</td>
<td>70.0</td>
<td>35.0</td>
</tr>
<tr>
<td>pH(^3)</td>
<td>((^4))</td>
<td>((^4))</td>
</tr>
</tbody>
</table>

\(^1\) Based on representative sampling.

\(^2\) In Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, and Wyoming, total suspended solids limitations will be determined on a case-by-case basis, but they must not be greater than 45 mg/l (maximum allowable) and 30 mg/l (average of daily value for 30 consecutive discharge days) based on a representative sampling.

\(^3\) Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitation set forth, the regulatory authority may allow the pH level in the discharge to exceed to a small extent the upper limit of 9.0 in order that the manganese limitations will be achieved.

\(^4\) Within the range 6.0 to 9.0.
(1) Any overflow or other discharge of surface water from the disturbed area within the permit area demonstrated by the permittee to result from a precipitation event larger than a 10-year, 24-hours frequency event will not be subject to the effluent limitations of paragraph (a).

(2) The permittee shall install, operate, and maintain adequate facilities to treat any water discharged from the disturbed area that violates applicable federal or State laws or regulations or the limitations of paragraph (a). If the pH of waters to be discharged from the disturbed area is normally less than 6.0, an automatic line feeder or other neutralization process approved by the regulatory authority shall be installed, operated, and maintained. If, the regulatory authority finds

(i) that small and infrequent treatment requirements to meet applicable standards do not necessitate use of an automatic neutralization process, and

(ii) that the mine normally produces less than 500 tons of coal per day, then the regulatory authority may approve the use of a manual system if the permittee ensures consistent and timely treatment.

(3) The effluent limitations for manganese shall be applicable only to acid drainage.

(b) Surface-water monitoring. (1) The permittee shall submit for approval by the regulatory authority a surface-water monitoring program which meets the following requirements:

(i) Provides adequate monitoring of all discharge from the disturbed area.

(ii) Provides adequate data to describe the likely daily and seasonal variation in discharges from the disturbed area in terms of water flow, pH, total iron, total manganese, and total suspended solids and, if requested by the regulatory authority, any other parameter characteristic of the discharge.

(iii) Provides monitoring at appropriate frequencies to measure normal and abnormal variations in concentrations.

(iv) Provides an analytical quality control system including standard methods of analysis such as those specified in 40 CFR 136.

(v) Within sixty (60) days of the end of each sixty (60) day sample collection period, a report of all samples shall be made to the regulatory authority, unless the discharge for which water monitoring reports are required is subject to regulation by a National Pollution Discharge Elimination System (NPDES) permit issued in compliance with the Clean Water Act of 1977 (33 U.S.C. 1251-1378), (A) which includes equivalent reporting requirements, and (B) which requires filing of the water monitoring report within 90 days or less of sample collection. For such discharges, the reporting requirements of this paragraph may be satisfied by submitting to the regulatory authority on the same time schedule as required by the NPDES permit or within ninety (90) days following sample collection, whichever is earlier, either (1) a copy of the completed reporting form filed to meet the NPDES permit requirements, or (2) a letter identifying the State or Federal government official with whom the reporting form was filed to meet the NPDES permit requirements and the date of filing. In all cases in which analytical results of the sample collections indicate a violation of a permit condition or applicable standard has occurred, the operator shall notify the regulatory authority immediately. Where an NPDES permit effluent limitation requirement has been violated, the permittee should forward a copy of the Discharge Monitoring Report, EPA Form 3320-1, concurrently with notification of the violation.
(2) After disturbed areas have been regraded and stabilized in accordance with this part, the permittee shall monitor surface water flow and quality. Data from this monitoring shall be used to demonstrate that the quality and quantity of runoff without treatment will be consistent with the requirement of this section to minimize disturbance to the prevailing hydrologic balance and with the requirements of this part to attain the approved postmining land use. These data shall provide a basis for approval by the regulatory authority for removal of water quality or flow control systems and for determining when the requirements of this section are met. The regulatory authority shall determine the nature of data, frequency of collection, and reporting requirements.

(3) Equipment, structures, and other measures necessary to accurately measure and sample the quality and quantity of surface water discharges from the disturbed area of the permit area shall be properly installed, maintained, and operated and shall be removed when no longer required.

(c) Diversion and conveyance of overland flow away from disturbed areas. In order to minimize erosion and to prevent or remove water from contacting toxic-producing deposits, overland flow from undisturbed areas may, if required or approved by the regulatory authority, be diverted away from disturbed areas by means of temporary or permanent diversion structures. The following requirements shall be met:

(1) Temporary diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a one year recurrence interval, or a larger event as specified by the regulatory authority. The design criteria must assure adequate protection of the environment and public during the existence of the temporary diversion structure.

(2) Permanent diversion structures are those remaining after mining and reclamation and approved for retention by the regulatory authority and other appropriate State and Federal agencies. To protect fills and property and to avoid danger to public health and safety, permanent diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a 100-year recurrence interval, or a larger event as specified by the regulatory authority. Permanent diversion structures shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall not be used unless specifically required to prevent seepage or to provide stability and are approved by the regulatory authority.

(3) Diversions shall be designed, constructed, and maintained in a manner to prevent additional contributions of suspended solids to streamflow or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable State or Federal law. Appropriate sediment control measures for these diversions shall include, but not be limited to, maintenances of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.

(d) Stream channel diversions. (1) Flow from perennial and intermittent streams within the permit area may be diverted only when the diversions are approved by the regulatory authority and they are in compliance with local, State, and Federal statutes and regulations. When streamflow is allowed to be diverted, the new stream channel shall be designed and constructed to meet the following requirements:

(i) The average stream gradient shall be maintained and the channel designed, constructed, and maintained to remain stable and to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using
the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable State or Federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used only when approved by the regulatory agency for temporary diversions where necessary or for permanent diversions where they are stable and will require only infrequent maintenance.

(ii) Channel, bank, and flood-plain configurations shall be adequate to safely pass the peak runoff of a precipitation event with a 10-year recurrence interval for temporary diversions and a 100-year recurrence interval for permanent diversions, or larger events as specified by the regulatory authority.

(iii) Fish and wildlife habitat and water and vegetation of significant value for wildlife shall be protected in consultation with appropriate State and Federal fish and wildlife management agencies.

(2) All temporary diversion structures shall be removed and the affected land regraded and revegetated consistent with the requirements of §§ 715.14 and 715.20. At the time such diversions are removed, the permittee shall ensure that downstream water treatment facilities previously protected by the diversion are modified or removed to prevent overtopping or failure of the facilities.

(3) Buffer zone. No land within 100 feet of an intermittent or perennial stream shall be disturbed by surface coal mining and reclamation operations unless the regulatory authority specifically authorizes surface coal mining and reclamation operations through such a stream. The area not to be disturbed shall be designated a buffer zone and marked as specified in § 715.12.

(e) Sedimentation ponds—(1) General requirements. Sedimentation ponds shall be used individually or in series and shall–

(i) Be constructed before any disturbance of the undisturbed area to be drained into the pond;

(ii) Be located as near as possible to the disturbed area and out of perennial streams; unless approved by the regulatory authority;

(iii) Meet all the criteria of this section.

(2) Sediment storage volume. Sedimentation ponds shall provide a minimum sediment storage volume.

(3) Detention time. Sedimentation ponds shall provide the required theoretical detention time for the water inflow or runoff entering the pond from a 10-year, 24-hour precipitation event (design event).

(4) Dewatering. The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a conduit spillway approved by the regulatory authority. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sedimentation storage volume.

(5) Each person who conducts surface mining activities shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.

(6) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this section shall not relieve the person from compliance with applicable effluent limitations as contained in paragraph (a) of this section.
(7) There shall be no out-flow through the emergency spillway during the passage of the runoff resulting from the 10-year, 24-hour precipitation event or lesser events through the sedimentation pond.

(8) Sediment shall be removed from sedimentation ponds.

(9) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff from a 25-year, 24-hour precipitation event, or larger event specified by the regulatory authority. The elevation of the crest of the emergency spillway shall be a minimum of 1.0 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the regulatory authority.

(10) The minimum elevation at the top of the settled embankment shall be 1.0 foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1.0 foot minimum elevation requirement shall apply at all times, including the period after settlement.

(11) The constructed height of the dam shall be increased a minimum of 5 percent over the design height to allow for settlement, unless it has been demonstrated to the regulatory authority that the material used and the design will ensure against all settlement.

(12) The minimum top width of the embankment shall not be less than the quotient of \((H+35)/5\), where \(H\) is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(13) The combined upstream and downstream side slopes of the settled embankment shall not be less than 1v:5h, with neither slope steeper than 1v:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(14) The embankment foundation areas shall be cleared of all organic matter, all surfaces sloped to no steeper than 1v:1h, and the entire foundation surface scarified.

(15) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in on case shall coal-processing waste be used.

(16) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirements of this section. Compaction shall be conducted as specified in the design approved by the regulatory authority.

(17) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met:

(i) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff resulting from a 100-year, 24-hour precipitation event, or a larger event specified by the regulatory authority.

(ii) The embankment shall be designed and constructed with a static safety factor of at least 1.5, or a higher safety factor as designated by the regulatory authority to ensure stability.

(iii) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(iv) The criteria of the Mine Safety and Health Administration as published in 30 CFR 77.216 shall be met.
(18) Each pond shall be designed and inspected during construction under the supervision of, and certified after construction by, a registered professional engineer.

(19) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with § 715.20.

(20) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions, and reports and modifications shall be made to the regulatory authority, in accordance with 30 CFR 77.216-3. With the approval of the regulatory authority, dams not meeting these criteria (30 CFR 77.216(a)) shall be examined four times per year.

(21) Sedimentation ponds shall not be removed until the disturbed area has been restored, and the vegetation requirements of § 715.20 are met and the drainage entering the pond has met the applicable State and Federal water quality requirements for the receiving stream. When the sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with §§ 715.14, 715.16, and 715.20, unless the pond has been approved by the regulatory authority for retention as being compatible with the approved postmining land use. If the regulatory authority approves retention, the sedimentation pond shall meet all the requirements for permanent impoundments of paragraph (k) of this section.

(22)(i) Where surface mining activities are proposed to be conducted on steep slopes, as defined in § 716.2 of this chapter, special sediment control measures may be followed if the person has demonstrated to the regulatory authority that a sedimentation pond (or series of ponds) constructed according to paragraph (e) of this section—

(A) Will jeopardize public health and safety; or
(B) Will result in contributions of suspended solids to streamflow in excess of the incremental sediment volume trapped by the additional pond size required.

(ii) Special sediment control measures shall include but not be limited to—

(A) Designing, constructing, and maintaining a sedimentation pond as near as physically possible to the disturbed area which complies with the design criteria of this section to the maximum extent possible.
(B) A plan and commitment to employ sufficient onsite sedimentation control measures including bench sediment storage, filtration by natural vegetation, mulching, and prompt revegetation which, in conjunction with the required sediment pond, will achieve and maintain applicable effluent limitations. The plan submitted pursuant to this paragraph shall include a detailed description of all onsite control measures to be employed, a quantitative analysis demonstrating that onsite sedimentation control measures, in conjunction with the required sedimentation pond, will achieve and maintain applicable effluent limitations, and maps depicting the location of all onsite sedimentation control measures.

(f) Discharge structures. Discharges from sedimentation ponds and diversions shall be controlled, where necessary, using energy dissipaters, surge ponds, and other devices to reduce erosion and prevent deepening or enlargement of stream channels and to minimize disturbances to the hydrologic balance.
(g) Acid and toxic materials. Drainage from acid-forming and toxic-forming mine waste materials and soils into ground and surface water shall be avoided by—

1. Identifying, burying, and treating where necessary, spoil or other materials that, in the judgment of the regulatory authority, will be toxic to vegetation or that will adversely affect water quality if not treated or buried. Such material shall be disposed of in accordance with the provision of § 715.14(j);

2. Preventing or removing water from contact with toxic-producing deposits;

3. Burying or otherwise treating all toxic or harmful materials within 30 days, if such materials are subject to wind and water erosion, or within a lesser period designated by the regulatory authority. If storage of such materials is approved, the materials shall be placed on impermeable material and protected from erosion and contact with surface water. Coal waste ponds and other coal waste materials shall be maintained according to paragraph (g)(4) of this section, and § 715.18 shall apply;

4. Burying or otherwise treating waste materials from coal preparation plants no later than 90 days after the cessation of the filling of the disposal area. Burial or treatment shall be in accordance with § 715.14(j);

5. Casing, sealing or otherwise managing boreholes, shafts, wells, and auger holes or other more or less horizontal holes to prevent pollution of surface or ground water and to prevent mixing of ground waters of significantly different quality. All boreholes that are within the permit area but are outside the surface coal mining area or which extend beneath the coal to be mined and into water bearing strata shall be plugged permanently in a manner approved by the regulatory authority, unless the boreholes have been approved for use in monitoring;

6. Taking such other actions as required by the regulatory authority.

(h) Ground water. (1) Recharge capacity of reclaimed lands. The disturbed area shall be reclaimed to restore approximate premining recharge capacity through restoration of the capability of the reclaimed areas as a whole to transmit water to the ground water system. The recharge capacity should be restored to support the approved postmining land use and to minimize disturbances to the prevailing hydrologic balance at the mined area and in associated offsite areas. The permittee shall be responsible for monitoring according to paragraph (h)(3) of this section to ensure operations conform to this requirement.

(2) Ground water systems. Backfilled materials shall be placed to minimize adverse effects on ground water flow and quality, to minimize offsite effects, and to support the approved postmining land use. The permittee shall be responsible for performing monitoring according to paragraph (h)(3) of this section to ensure operations conform to this requirement.

(3) Monitoring. Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the regulatory authority to determine the effects of surface coal mining and reclamation operations on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground water systems at the mine area and in associated offsite areas. When operations are conducted in such a manner that may affect the ground water system, ground water levels and ground water quality shall be periodically monitored using wells that can adequately reflect changes in ground water quantity and quality resulting from such operations. Sufficient water wells must be used by the permittee. The regulatory authority may require drilling and development of additional wells if needed to adequately monitor the ground water system. As specified and approved by the
regulatory authority, additional hydrologic tests, such as infiltration tests and aquifer tests, must be undertaken by the permittee to demonstrate compliance with paragraph (h) (1) and (2) of this section.

(i) Water rights and replacement. The permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from surface coal mine operation by the permittee.

(j) Alluvial valley floors west of the 100th meridian west longitude. (1) Surface coal mining operations conducted in or adjacent to alluvial valley floors shall be planned and conducted so as to preserve the essential hydrologic functions of these alluvial valley floors throughout the mining and reclamation process. These functions shall be preserved by maintaining or reestablishing those hydrologic and biologic characteristics of the alluvial valley floor that are necessary to support the functions. The permittee shall provide information to the regulatory authority as required in paragraph (j)(3) of this section to allow identification of essential hydrologic functions and demonstrate that the functions will be preserved. The characteristics of an alluvial valley floor to be considered include, but are not limited to—

(i) The longitudinal profile (gradient), cross-sectional shape, and other channel characteristics of streams that have formed within the alluvial valley floor and that provide for maintenance of the prevailing conditions of surface flow;

(ii) Aquifers (including capillary zones and perched water zones) and confining beds within the mined area which provide for storage, transmission, and regulation of natural ground water and surface water that supply the alluvial valley floors;

(iii) Quantity and quality of surface and ground water that supply alluvial valley floors;

(iv) Depth to and seasonal fluctuations of ground water beneath alluvial valley floors;

(v) Configuration and stability of the land surface in the flood plain and adjacent low terraces in alluvial valley floors as they allow or facilitate irrigation with flood waters or subirrigation and maintain erosional equilibrium; and

(vi) Moisture-holding capacity of soils (or plant growth medium) within the alluvial valley floors, and physical and chemical characteristics of the subsoil which provide for sustained vegetation growth or cover through dry months.

(2) Surface coal mining operations located west of the 100th meridian west longitude shall not interrupt, discontinue, or preclude farming on alluvial valley floors and shall not materially damage the quantity or quality of surface or ground water that supplies these valley floors unless the premining land use has been undeveloped rangeland which is not significant to farming on the alluvial valley floors or unless the area of affected alluvial valley floor is small and provides negligible support for the production from one or more farms. This paragraph (j)(2) does not apply to those surface coal mining operations that—

(i) Were in production in the year preceding August 3, 1977, were located in or adjacent to an alluvial valley floor, and produced coal in commercial quantities during the year preceding August 3, 1977; or

(ii) Had specific permit approval by the State regulatory authority before August 3, 1977, to conduct surface coal mining operations for an area within an alluvial valley floor.
(3)(i) Before surface mining and reclamation operations authorized under paragraph (j)(2) of this section may be issued a new revised or amended permit, the permittee shall submit, for regulatory authority approval, detailed surveys and baseline data to establish standards against which the requirements of paragraph (j)(1) of this section may be measured and from which the degree of material damage to the quantity and quality of surface and ground water that supply the alluvial valley floors may be assessed. The surveys and date shall include—

(A) A map at a scale determined by the regulatory authority, showing the location and configuration of the alluvial valley floor;

(B) Baseline data covering a full water year for each of the hydrologic functions identified in paragraph (j)(1) of this section;

(C) Plans showing how the operation will avoid, during mining and reclamation, interruption, discontinuance, or preclusion of farming on the alluvial valley floors and will not materially damage the quantity or quality of water in surface and ground water systems that supply such valley floors;

(D) Historic land use data for the proposed permit area and for farms to be affected; and

(E) Such other data as the regulatory authority may require.

(ii) Surface mining operations which qualify for the exceptions in paragraph (j)(2) of this section are not required to submit the plans prescribed in paragraph (j)(3)(i)(C) of this section.

(4) The holder of a Federal coal lease or the fee holder of any coal deposit located within or adjacent to an alluvial valley floor west of the 100th meridian west from which coal was not produced in commercial quantities between August 3, 1976, and August 3, 1977, and for which no specific permit by the appropriate State or Federal regulatory authority to conduct surface coal mining operations in the alluvial valley floors has been obtained, may be entitled to an exchange of the Federal coal lease for a lease of other Federal coal deposits under section 510(b)(5) of the Act, or to the conveyance by the Secretary of fee title to other available Federal coal deposits in exchange for the fee title to such deposits under section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743), if the Secretary determines that substantial financial and legal commitments were made by the operator prior to January 1, 1977, in connection with surface coal mining operations on such lands.

(k) **Permanent impoundments.** The permittee may construct, if authorized by the regulatory agency pursuant to this paragraph and § 715.13, permanent water impoundments on mining sites as a part of reclamation activities only when they are adequately demonstrated to be in compliance with §§ 715.13 and 715.14 in addition to the following requirements:

1. The size of the impoundment is adequate for its intended purposes.

2. The impoundment dam construction is designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Pub. L. 83-566 (16 U.S.C. 1006).

3. The quality of the impounded water will be suitable on a permanent basis for its intended use and discharges from the impoundment will not degrade the quality of receiving waters below the water quality standards established pursuant to applicable Federal and State law.

4. The level of water will be reasonably stable.

5. Final grading will comply with the provisions of § 715.14 and will provide adequate safety and access for proposed water users.
(6) Water impoundments will not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(i) Hydrologic impact of roads. (1) General. Access and haul roads and associated bridges, culverts, ditches, and road rights-of-way shall be constructed, maintained, and reclaimed to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall the contributions be in excess of requirements set by applicable State or Federal law. All access and haul roads shall be removed and the land affected regraded and revegetated consistent with the requirements of §§ 715.14 and 715.20, unless retention of a road is approved as part of a postmining land use under § 715.13 as being necessary to support the postmining land use or necessary to adequately control erosion and the necessary maintenance is assured.

(2) Construction. (i) All roads, insofar as possible, shall be located on ridges or on the available flatter and more stable slopes to minimize erosion. Stream fords are prohibited unless they are specifically approved by the regulatory authority as temporary routes across dry streams that will not adversely affect sedimentation and that will not be used for coal haulage. Other stream crossings shall be made using bridges, culverts or other structures designed and constructed to meet the requirements of this paragraph. Roads shall not be located in active stream channels nor shall they be constructed or maintained in a manner that increases erosion or causes significant sedimentation or flooding. However, nothing in this paragraph will be construed to prohibit relocation of stream channels in accordance with paragraph (d) of this section.

(ii) In order to minimize erosion and subsequent disturbances of the hydrologic balance, roads shall be constructed in compliance with the following grade restrictions or other grades determined by the regulatory authority to be necessary to control erosion:

(A) The overall sustained grade shall not exceed 1v:10h (10 percent).
(B) The maximum grade greater than 10 percent shall not exceed 1v:6.5h (15 percent) for more than 300 feet.
(C) There shall not be more than 300 feet of grade exceeding 10 percent within each 1,000 feet.

(iii) All access and haul roads shall be adequately drained using structures such as, but not limited to, ditches, water barriers, cross drains, and ditch relief drains. For access and haul roads that are to be maintained for more than 1 year, water-control structures shall be designed with a discharge capacity capable of passing the peak runoff from a 10-year, 24-hour precipitation event. Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets. Drainage ditches shall be provided at the toe of all cut slopes formed by construction of roads. Trash racks and debris basins shall be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment control structures. Ditch relief and cross drains shall be spaced according to grade. Effluent limitations of paragraph (a) of this section shall not apply to drainage from access and hauls roads located outside the disturbed area as defined in this section unless otherwise specified by the regulatory authority.
(iv) Access and haul roads shall be surfaced with durable material. Toxic- or acid-forming substances shall not be used. Vegetation may be cleared only for the essential width necessary for road and associated ditch construction and to serve traffic needs.

(3) Maintenance. (i) Access and haul roads shall be routinely maintained by means such as, but not limited to, wetting, scraping or surfacing.

(ii) Ditches, culverts, drains, trash racks, debris basins and other structures serving to drain access and haul roads shall not be restricted or blocked in any manner that impedes drainage or adversely affects the intended purpose of the structure.

(m) Hydrologic impacts of other transport facilities. Railroad loops, spurs, sidings and other transport facilities shall be constructed, maintained and reclaimed to control diminution or degradation of water quality and quantity and to prevent additional contributions of suspended solids to streamflow, or to run-off outside the permit area to the extent possible, using the best technology currently available. In no event shall contributions be in excess of requirements set by applicable State or Federal law.


30 CFR 715.18 Dams constructed of or impounding waste material. (a) General. No waste material shall be used in or impounded by existing or new dams without the approval of the regulatory authority. The permittee shall design, locate, construct, operate, maintain, modify, and abandon or remove all dams (used either temporarily or permanently) constructed of waste materials, in accordance with the requirements of this section.

(b) Construction of dams. (1) Waste shall not be used in the construction of dams unless demonstrated through appropriate engineering analysis, to have no adverse effect on stability.

(2) Plans for dams subject to this section, and also including those dams that do not meet the size or other criteria of § 77.216(a) of this title, shall be approved by the regulatory authority before construction and shall contain the minimum plan requirements established by the Mining Enforcement and Safety Administration pursuant to § 77.216-2 of this title.

(3) Construction requirements are as follows:

(i) Design shall be based on the flood from the probable maximum precipitation event unless the permittee shows that the failure of the impounding structure would not cause loss of life or severely damage property or the environment, in which case depending on site conditions, a design based on a precipitations event of no less than 100-year frequency may be approved by the regulatory authority.

(ii) The design freeboard distance between the lowest point on the embankment crest and the maximum water elevation shall be at least 3 feet to avoid overtopping by wind and wave action.
(iii) Dams shall have minimum safety factors as follows:

<table>
<thead>
<tr>
<th>Case</th>
<th>Loading condition</th>
<th>Minimum safety factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>End of construction ...........................................</td>
<td>1.3</td>
</tr>
<tr>
<td>II</td>
<td>Partial pool with steady seepage saturation.</td>
<td>1.5</td>
</tr>
<tr>
<td>III</td>
<td>Steady seepage from spillway or decant crest.</td>
<td>1.5</td>
</tr>
<tr>
<td>IV</td>
<td>Earthquake (cases II and III with seismic loading).</td>
<td>1.0</td>
</tr>
</tbody>
</table>

(iv) The dam, foundation, and abutments shall be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the factors of safety of the dam for all loading conditions in paragraph (b)(3)(iii) of this section and for all increments of construction.

(v) Seepage through the dam, foundation, and abutments shall be controlled to prevent excessive uplift pressures, internal erosion, sloughing, removal of material by solution, or erosion of material by loss into cracks, joints, and cavities. This may require the use of impervious blankets, pervious drainage zones or blankets, toe drains, relief wells, or dental concreting of jointed rock surface in contact with embankment materials.

(vi) Allowances shall be made for settlement of the dams and the foundation so that the freeboard will be maintained.

(vii) Impoundments created by dams of waste materials shall be subject to a minimum drawdown criteria that allows the facility to be evacuated by spillways or decants of 90 percent of the volume of water stored during the design precipitation event within 10 days.

(viii) During construction of dams subject to this section, the structures shall be periodically inspected by a registered professional engineer to ensure construction according to the approved design. On completion of construction, the structure shall be certified by a registered professional engineer experienced in the field of dam construction as having been constructed in accordance with accepted professional practice and the approved design.

(ix) A permanent identification marker, at least 6 feet high that shows the dam number assigned pursuant to § 77.216-1 of this title and the name of the person operating or controlling the dam, shall be located on or immediately adjacent to each dam within 30 days of certification of design pursuant to this section.

(4) All dams, including those not meeting the size or other criteria of § 77.216 (a) of this title, shall be routinely inspected by a registered professional engineer, or someone under the supervision of a registered professional engineer, in accordance with Mining Enforcement and Safety Administration regulations pursuant to § 77.216-3 of this title.

(5) All dams shall be routinely maintained. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible materials present on the surface, other than that used for surface stability such as mulch or dry vegetation, shall be removed and any other appropriate maintenance procedures followed.
(6) All dams subject to this section shall be certified annually as having been constructed and modified in accordance with current prudent engineering practices to minimize the possibility of failures. Any changes in the geometry of the impounding structure shall be highlighted and included in the annual certification report. These certifications shall include a report on existing and required monitoring procedures and instrumentation, the average and maximum depths and elevations of any impounded waters over the past year, existing storage capacity of impounding structures, any fires occurring in the material over the past year and any other aspects of the structures affecting their stability.

(7) Any enlargements, reductions in size, reconstruction or other modification of the dams shall be approved by the regulatory authority before construction begins.

(8) All dams shall be removed and the disturbed areas regraded, revegetated, and stabilized before the release of bond unless the regulatory authority approves retention of such dams as being compatible with an approved postmining land use (§ 715.13).

30 CFR 715.20 Revegetation. (a) General. (1) The permittee shall establish on all land that has been disturbed, a diverse, effective, and permanent vegetative cover of species native to the area of disturbed land or species that will support the planned postmining uses of the land approved according to § 715.13. For areas designated as prime farmland, the reclamation procedures of § 716.7 shall apply.

(2) Revegetation shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with approved land uses. The vegetative cover shall be capable of stabilizing the soil surface with respect to erosion. All disturbed lands, except water areas and surface areas of roads that are approved as a part of the postmining land use, shall be seeded or planted to achieve a vegetative cover of the same seasonal variety native to the area of disturbed land. If both the pre- and postmining land use is intensive agriculture, planting of the crops normally grown will meet the requirement. Vegetative cover will be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the intended land use when compared with the utility of naturally occurring vegetation during each season of the year.

(3) On Federal lands, the surface management agency shall be consulted for approval prior to revegetation regarding what species are selected, and following revegetation, to determine when the area is ready to be used.

(b) Use of introduced species. Introduced species may be substituted for native species only if appropriate field trials have demonstrated that the introduced species are of equal or superior utility for the approved postmining land use, or are necessary to achieve a quick, temporary, and stabilizing cover. Such species substitution shall be approved by the regulatory authority. Introduced species shall meet applicable State and Federal seed or introduced species statutes, and shall not include poisonous or potentially toxic species.

(c) Timing of revegetation. Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected to meet specific site conditions and climate. Any disturbed areas, except water areas and surface areas or roads that are approved under § 715.13 as part of the postmining land use, which have been graded shall be seeded with a temporary cover of small
grains, grasses, or legumes to control erosion until an adequate permanent cover is established. When rills or gullies, that would preclude the successful establishment of vegetation or the achievement of the postmining land use, form in regraded topsoil and overburden materials as specified in § 715.14, additional regrading or other stabilization practices will be required before seeding and planting.

(d) Mulching. Mulch shall be used on all regraded and topsoiled areas to control erosion, to promote germination of seeds, and to increase the moisture retention of the soil. Mulch shall be anchored to the soil surface where appropriate, to insure effective protection of the soil and vegetation. Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth, and do not interfere with the postmining use of the land. Annual grains such as oats, rye and wheat may be used instead of mulch when it is shown to the satisfaction of the regulatory authority that the substituted grains will provide adequate stability and that they will later be replaced by species approved for the postmining use.

(e) Methods of revegetation. (1) The permittee shall use technical publications or the results of laboratory and field tests approved by the regulatory authority to determine the varieties, species, seeding rates, and soil amendment practices essential for establishment and self-regeneration of vegetation. The regulatory authority shall approve species selection and planting plans.

(2) Where hayland, pasture, or range is to be the postmining land use, the species of grasses, legumes, browse, trees, or forbes for seeding or planting and their pattern of distribution shall be selected by the permittee to provide a diverse, effective, and permanent vegetative cover with the seasonal variety, succession, distribution, and regenerative capabilities native to the area. Livestock grazing will not be allowed on reclaimed land until the seedlings are established and can sustain managed grazing. The regulatory authority, in consultation with the permittee and the landowner or in concurrence with the governmental land managing agency having jurisdiction over the surface, shall determine when the revegetated area is ready for livestock grazing.

(3) Where forest is to be the postmining land use, the permittee shall plant trees adapted for local site conditions and climate. Trees shall be planted in combination with an herbaceous cover of grains, grasses, legumes, forbes, or woody plants to provide a diverse, effective, and permanent vegetation cover with the seasonal variety, succession, and regeneration capabilities native to the area.

(4) Where wildlife habitat is to be included in the postmining land use, the permittee shall consult with appropriate State and Federal wildlife and land management agencies and shall select those species that will fulfill the needs of wildlife, including food, water, cover, and space. Plant groupings and water resources shall be spaced and distributed to fulfill the requirements of wildlife.

(f) Standards for measuring success of revegetation. (1) Success of revegetation shall be measured on the basis of reference areas approved by the regulatory authority. Reference areas mean land units of varying size and shape identified and maintained under appropriate management for the purpose of measuring ground cover, productivity and species diversity that are produced naturally. The reference areas must be representative of geology, soils, slope, aspect, and vegetation in the permit area. Management of the reference area shall be comparable
to that which will be required for the approved postmining land use of the area to be mined. The regulatory authority shall approve the estimating techniques that will be used to determine the degree of success in the revegetated area.

(2) The ground cover of living plants on the revegetated area shall be equal to the ground cover of living plants of the approved reference area for a minimum of two growing seasons. The ground cover shall not be considered equal if it is less than 90 percent of the ground cover of the reference area for any significant portion of the mined area. Exceptions may be authorized by the regulatory authority for:
   (i) Previously mined areas that were not reclaimed to the standards required by this chapter prior to the effective date of these regulations. The ground cover of living plants for such areas shall not be less than required to control erosion, and in no case less than that existing before redisturbance.
   (ii) Areas to be developed immediately for industrial or residential use. The ground cover of living plants shall not be less than required to control erosion. As used in this paragraph, immediately means less than 2 years after regrading has been completed for the area to be used; and
   (iii) Areas to be used for agricultural cropland purposes. Success in revegetation of cropland shall be determined on the basis of crop production from the mined area compared to the reference area. Crop production from the mined area shall be equal to that of the approved reference area for a minimum of two growing seasons. Production shall not be considered equal if it is less than 90 percent of the production of the reference area for any significant portion of the mined area.

(3) Species diversity, distribution, seasonal variety, and vigor shall be evaluated on the basis of the results which could reasonably be expected using the methods of revegetation approved under paragraph (e) of this section.

(g) Seeding of stockpiled topsoil. Topsoil stockpiled in compliance with § 715.16 must be seeded or planted with an effective cover of nonnoxious, quick growing annual and perennial plants during the first normal period for favorable planting conditions or protected by other approved measures as specified in § 715.16.

30 CFR 715.200 Interpretative rules related to general performance standards. The following interpretations of rules promulgated in part 715 of this chapter have been adopted by the Office of Surface Mining Reclamtion and Enforcement.
   (a)-(b) [Reserved]
   (c) Interpretation of § 715.16(a)(4)–Topsoil Removal. (1) Results of physical and chemical analyses of topsoil and selected overburden materials to demonstrate that the selected overburden materials or overburden materials/topsoil mixture is more suitable for restoring land capability and productivity than the available topsoil, provided the analyses, trials, or tests are certified by a qualified soil scientist or agronomist, may be obtained from any one or a combination of the following sources:
      (i) U.S. Department of Agriculture Soil Conservation Service published data based on established soil series;
      (ii) U.S. Department of Agriculture Soil Conservation Service Technical Guides;
(iii) State agricultural agency, university, Tennessee Valley Authority, Bureau of Land Management or U.S. Department of Agriculture Forest Service published data based on soil series properties and behavior; or

(iv) Results of physical and chemical analyses, field site trials, or greenhouse tests of the topsoil and overburden materials (soil series) from the permit area.

(2) If the operator demonstrates through soil survey or other data that the topsoil and unconsolidated material are insufficient and substitute materials will be used, only the substitute materials must be analyzed in accordance with 30 CFR 715.16(a)(4)(i). (501, 502, 504, 508, 515, 516, Pub. L. 95-87, 91 Stat. 467, 468, 471, 478, 492, 496 (30 U.S.C. 1251, 1252, 1254, 1258, 1265, 1266)) [45 FR 26000, Apr. 16, 1980 and 45 FR 39447, June 10, 1980, as amended at 45 FR 73946, Nov. 7, 1980]

30 CFR 716.7 Prime farmland. (a) Applicability. (1) Permittees of surface coal mining and reclamation operations conducted on prime farmland shall comply with the general performance standards of part 715 of this chapter in addition to the special requirements of this section.

(2) Except as otherwise provided in this paragraph, the requirements of the section are applicable to any lands covered by a permit application filed on or after August 3, 1977. This section does not apply to:

(i) Lands on which surface coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977; or

(ii) Lands on which surface coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977; or

(iii) Lands included in any existing surface coal mining operations for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

(A) Such lands are part of a single continuous surface coal mining operation begun under a permit issued before August 3, 1977; and

(B) The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract, or lease but not including an option to buy, lease, or contract; and

(C) The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be part of a single continuous surface coal mining operation) begun under a permit issued prior to August 3, 1977.

(3) For purposes of this section:

(i) “Renewal” of a permit shall mean a decision by the regulatory authority to extend the time by which the permittee may complete mining within the boundaries of the original permit, and “revision” of the permit shall mean a decision by the regulatory authority to allow changes in the method of mining operations within the original permit area, or the decision of the regulatory authority to allow incidental boundary changes to the original permit;

(ii) A pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad, or powerline or similar crossing;

(iii) A single continuous surface coal mining operation is presumed to consist only of a single continuous mining pit under a permit issued prior to August 3, 1977, but may include non-contiguous parcels if the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the contiguous parcels were part of a single permitted operation. For the purposes of this paragraph, clear and convincing evidence includes, but is not limited to,
contracts, leases, deeds or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one surface coal mining operation.

(b) Definitions. For purposes of this section, the following definitions are applicable.

(1) Prime farmland means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been historically used for cropland.

(2) Historically used for cropland means (i) lands that have been used for cropland for any 5 years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations; (ii) lands that the regulatory authority determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, or (iii) lands that would likely have been used as cropland for any 5 out of the last 10 years immediately preceding such acquisition but for some fact of ownership or control of the land unrelated to the productivity of the land, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be protected.

(3) Cropland means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar speciality crops.

(4) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow food, feed, fiber, forage, and oilseed crops common to the area to be grown.

(5) The soils can be managed so that in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep, during part of each year the conductivity of saturation extract is less than 4 mmhos/cm and the exchangeable sodium percentage (ESP) is less than 15.

(6) The soils are not flooded frequently during the growing season (less often than once in 2 years).

(7) The soils have a product of K (erodibility factor) x percent slope of less than 2.0 and a product of I (soil erodibility) x C (climatic factor) not exceeding 60.

(8) The soils have a permeability rate of at least 0.06 inch per hour in the upper 20 inches and the mean annual soil temperature at a depth of 20 inches is less than 59 degrees F.; the permeability rate is not a limiting factor if the mean annual soil temperature is 59 degrees F. or higher.

(9) Less than 10 percent of the surface layer (upper 6 inches) in these soils consists of rock fragments coarser than 3 inches.

(c) Identification of prime farmland. Prime farmland shall be identified on the basis of soil surveys submitted by the applicant. The regulatory authority also may require data on irrigation, drainage, flood control, and subsurface water management. The requirement for submission of soil surveys may be waived by the regulatory authority, if the applicant can demonstrate according to the procedures in paragraph (d) of this section that no prime farmlands are involved. Soil surveys shall be conducted according to standards of the National Cooperative Soil Survey, which include the procedures set forth in U.S. Department of Agriculture Handbooks 436 (Soil Taxonomy) and 18 (Soil Survey Manual), and shall include—

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(1) Data on moisture availability, temperature regime, flooding, water table, erosion characteristics, permeability, or other information that is needed to determine prime farmland in accordance with paragraph (b) of this section;
(2) A map designating the exact location and extent of the prime farmland; and
(3) A description of each soil mapping unit.
(d) Negative determination of prime farmland. The land shall not be considered as prime farmland where the applicant can demonstrate one or more of the following situations:
   (1) Lands within the proposed permit boundaries have not been historically used for cropland.
   (2) The slope of all land within the permit area is 10 percent or greater.
   (3) Land within the permit area is not irrigated or naturally subirrigated, has no developed water supply that is dependable and of adequate quality, and the average annual precipitation is 14 inches or less.
   (4) Other factors exist, such as a very rocky surface, or the land is frequently flooded, which clearly place all land within the area outside the purview of prime farmland.
   (5) A written notification based on scientific findings and soil surveys that land within the proposed mining area does not meet the applicability requirements in paragraph (a) of this section is submitted to the regulatory authority by a qualified person other than the applicant, and is approved by the regulatory authority.
(e) Plan for restoration of prime farmland. The applicant shall submit to the regulatory authority a plan for the mining and restoration of any prime farmland within the proposed permit boundaries. This plan shall be used by the regulatory authority in judging the technological capability of the applicant to restore prime farmlands. The plan shall include:
   (1) A description of the original undisturbed soil profile, as determined from a soil survey, showing the depth and thickness of each of the soil horizons that collectively constitute the root zone of the locally adapted crops and are to be removed, stored, and replaced;
   (2) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil in accordance with paragraph (g) of this section;
   (3) The location of areas to be used for the separate stockpiling of the soil and plans for soil stabilization before redistribution;
   (4) If applicable, documentation such as agricultural school studies or other scientific data from comparable areas that supports the use of other suitable material, instead of the A, B or C soil horizon to obtain on the restored area equivalent or higher levels of yield as non-mined prime farmlands in the surrounding area under equivalent levels of management; and
   (5) Plans for seeding or cropping the final graded mine land and the conservation practices to control erosion and sedimentation during the first 12 months after regrading is completed. Proper adjustments for seasons must be made so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions; and
   (6) Available agricultural school studies, company data, or other scientific data for comparable areas that demonstrate that the applicant using his proposed method of reclamation will achieve, within a reasonable time equivalent or higher levels of yield after mining as existed before mining.
(f) Consultation with Secretary of Agriculture and issuance of permit. (1) The regulatory authority may grant a permit which shall incorporate the plan submitted under paragraph (e) of this section, if it finds in writing that the applicant—
   (i) Has the technological capability to restore the prime farmland within the proposed permit area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management; and
   (ii) Will achieve compliance with the standards of paragraph (g) of this section.

(2) Before any permit is issued for areas that include prime farmlands, the regulatory authority shall consult with the Secretary of Agriculture. The Secretary of Agriculture will provide a review of the proposed method of soil reconstruction and comment on possible revisions that will result in a more complete and adequate restoration. The Secretary of Agriculture has assigned his responsibilities under this paragraph to the Administrator of the U.S. Soil Conservation Service and the U.S. Soil Conservation Service will carry out the consultation and review through their State Conservationist, located in each State.

(g) Special requirements. For all prime farmlands to be mined and reclaimed, the applicant shall meet the following special requirements: (1) All soil horizons to be used in the reconstruction of the soil shall be removed before drilling, blasting, or mining to prevent contaminating the soil horizons with undesirable materials. Where removal of soil horizons result in erosion that may cause air and water pollution, the regulatory authority shall specify methods of treatment to control erosion of exposed overburden. The permittee shall—
   (i) Remove separately the entire A horizon or other suitable soil materials which will create a final soil having an equal or greater productive capacity than that which existed prior to mining in a manner that prevents mixing or contamination with other material before replacement;
   (ii) Remove separately the B horizon of the natural soil or a combination of B horizon and underlying C horizon or other suitable soil material that will create a reconstructed root zone of equal or greater productivity capacity than that which existed prior to mining in a manner that prevents mixing or contamination with other material; and
   (iii) Remove separately the underlying C horizons or other strata, or a combination of such horizons or other strata, to be used instead of the B horizon that are of equal or greater thickness and that can be shown to be equal or more favorable for plant growth than the B horizon, and that when replaced will create in the reconstructed soil a final root zone of comparable depth and quality to that which existed in the natural soil.

(2) If stockpiling of soil horizons is allowed by the regulatory authority in lieu of immediate replacement, the A horizon and B horizon must be stored separately from each other. The stockpiles must be placed within the permit area and where they will not be disturbed or exposed to excessive erosion by water or wind before the stockpiled horizons can be redistributed on terrain graded to final contour. Stockpiles in place for more than 30 days must meet the requirements of § 715.16(c).

(3) Scarify the final graded land before the soil horizons are replaced.

(4) Replace the material from the B horizon, or other suitable material specified in paragraph (g)(1)(ii) or (g)(1)(iii) of this section in such a manner as to avoid excessive compaction of overburden and to a thickness comparable to the root zone that existed in the soil before mining.
(5) Replace the A horizon or other suitable soil materials, which will create a final soil having an equal or greater productive capacity than existed prior to mining, as the final surface soil layer to the thickness of the original soil as determined in paragraph (g)(1)(i) of this section in a manner that—

(i) Prevents excess compaction of both the surface layer and underlying material and reduction of permeability to less than 0.06 inch per hour in the upper 20 inches of the reconstructed soil profile; and

(ii) Protects the surface layer from wind and water erosion before it is seeded or planted.

K.A.R. 47-10-1. Adoption by reference: underground mining. (a) The following federal regulations, as in effect on July 1, 2001, are adopted by reference, except as otherwise indicated in this regulation:

(1) Underground mining permit applications – minimum requirements for information on environmental resources, 30 CFR Part 783:
   (A) Responsibilities, 30 CFR 783.4;
   (B) general requirements, 30 CFR 783.11;
   (C) general environmental resources information, 30 CFR 783.12;
   (D) climatological information, 30 CFR 783.18;
   (E) vegetation information, 30 CFR 783.19;
   (F) soil resources information, 30 CFR 783.21;
   (G) maps: general requirements, 30 CFR 783.24; and
   (H) cross sections, maps, and plans, 30 CFR 783.25;

(2) underground mining permit applications – minimum requirements for reclamation and operation plan, 30 CFR Part 784:
   (A) Responsibilities, 30 CFR 784.4;
   (B) operation plan: general requirements, 30 CFR 784.11;
   (C) operation plan: existing structures, 30 CFR 784.12;
   (D) reclamation plan: general requirements, 30 CFR 784.13;
   (E) hydrologic information, 30 CFR 784.14;
   (F) reclamation plan: land use information, 30 CFR 784.15;
   (G) reclamation plan: siltation structures, impoundments, banks, dams, and embankments, 30 CFR 784.16;
   (H) protection of public parks and historic places, 30 CFR 784.17;
   (I) relocation or use of public roads, 30 CFR 784.18;
   (J) underground development waste, 30 CFR 784.19;
   (K) subsidence control plan, 30 CFR 784.20, deleting the phrase “as described in § 817.121(c)(4) of this chapter”;
   (L) fish and wildlife information, 30 CFR 784.21;
   (M) geologic information, 30 CFR 784.22;
   (N) operation plan: maps and plans, 30 CFR 784.23;
   (O) road systems, 30 CFR 784.24;
   (P) return of coal processing waste to abandoned underground workings, 30 CFR 784.25;
   (Q) air pollution control plan, 30 CFR 784.26;
   (R) diversions, 30 CFR 784.29;
   (S) support facilities, 30 CFR 784.30; and
   (T) interpretive rules related to general performance standards, 30 CFR 784.200.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1) “Subchapter K of this chapter” and "subchapter K (Permanent Program Standards) of
this chapter" shall be replaced by “K.A.R. 47-9-1.”

(2) “Subchapter B (Interim Program Standards) of this chapter ” shall be replaced by “K.A.R. 47-9-4.”

(3) “Sections 515 and 516 of the Act” shall be replaced by “K.S.A. 49-405a, 49-408 through 49-413, and 49-429.”

(4) “Subchapter J of this chapter” shall be replaced by “article 8 of these regulations.”

(5) “This chapter,” “this section,” “subchapter,” and “this part” shall be replaced by “these regulations.”

(6) “30 CFR Parts 773 and 775” shall be replaced by “K.A.R. 47-3-42 (a) (46) through (64), K.A.R. 47-6-6, K.S.A. 49-407 (d), K.S.A. 49-416a, and K.S.A. 49-422a, and amendments thereto, and article 4 of these regulations.”

(7) “30 CFR 784.21” shall be replaced by “K.A.R. 47-10-1 (a)(2)(L).”

(8) “30 CFR 817.22,” “§ 817.22 of the chapter,” and “§ 817.22(b) of this chapter” shall be replaced by “K.A.R. 47-9-1 (d)(5).”

(9) “§ 817.133,” “30 CFR 817.133,” and “§ 817.133(a)” shall be replaced by “K.A.R. 47-9-1 (d)(43).”

(10) “30 CFR 784.13 through 784.26” shall be replaced by “K.A.R. 47-10-1 (a)(2)(D) through (Q).”

(11) “30 CFR 817.102 through 817.107” shall be replaced by “K.A.R. 47-9-1 (d)(33) and (34).”

(12) “30 CFR 817.111 through 817.116” shall be replaced by “K.A.R. 47-9-1 (d)(35) and (38).”

(13) “30 CFR 817.116” shall be replaced by “K.A.R. 47-9-1 (d)(38).”

(14) “30 CFR 817.59” shall be replaced by “K.A.R. 47-9-1 (d)(15).”

(15) “30 CFR 817.89 and 817.102” shall be replaced by “K.A.R. 47-9-1 (d)(28) and (33).”

(16) “30 CFR 817.13–817.15” shall be replaced by “K.A.R. 47-9-1 (d)(2) and (4).”

(17) “Part 817 of this chapter” shall be replaced by “K.A.R. 47-9-1 (d).”

(18) “§§ 817.41 to 817.43” shall be replaced by “K.A.R. 47-9-1 (d)(6) through (8).”

(19) “§§ 817.81 through 817.84 of this chapter” and “30 CFR 817.81 through 817.84” shall be replaced by “K.A.R. 47-9-1 (d)(24) through (26).”

(20) “§ 761.16 of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(6).”

(21) “§ 761.17(d) of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(7).”

(22) “§ 761.14 of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(4).”

(23) “30 CFR 817.71 through 817.74” shall be replaced by “K.A.R. 47-9-1 (d)(22) and (23).”

(24) “30 CFR 780.35” shall be replaced by “K.A.R. 47-3-42 (a)(36).”

(25) “§ 817.121(c) of this chapter” and “§ 817.121 of this chapter” shall be replaced by “K.A.R. 47-9-1 (d)(39).”

(26) “§§ 817.41(j) and 817.121(c) of this chapter” shall be replaced by “K.A.R. 47-9-1 (d)(6) and (39).”

(27) “§ 817.97 of this chapter” shall be replaced by “K.A.R. 47-9-1 (d)(30).”

(28) “§ 784.20” shall be replaced by “K.A.R. 47-10-1 (a)(2)(K).”

(29) “§ 783.25 of this chapter” shall be replaced by “K.A.R. 47-10-1 (a)(1)(H).”

(30) “30 CFR 783.24 and 783.25” shall be replaced by “K.A.R. 47-10-1 (a)(1)(G) and (H).”
(31) “§ 784.15" and “§ 784.15(a)(2)" shall be replaced by “K.A.R. 47-10-1 (a)(2)(F)."
(32) “30 CFR 784.16" shall be replaced by “K.A.R. 47-10-1 (a)(2)(G)."
(33) “30 CFR 784.19" shall be replaced by “K.A.R. 47-10-1 (a)(2)(J)."
(34) “§§ 784.16(a)(2), 784.16(a)(3), 784.19, 817.71(b), 817.73(c), 817.74(c), and 817.81(c) of this chapter" shall be replaced by “K.A.R. 47-10-1 (a)(2)(G) and (J), and K.A.R. 47-9-1 (d)(22), (23), and (24)."
(35) “§ 701.5 of this chapter" shall be replaced by “K.A.R. 47-2-75 (b)."
(36) “§ 817.150(d)(1) of this chapter" shall be replaced by “K.A.R. 47-9-1 (d)(44)."
(37) “§ 817.151(c)(2) of this chapter, “§ 817.151(d)(5) of this chapter," “§ 817.151(d)(6) of this chapter," and “§ 817.151(b) of this chapter" shall be replaced by "K.A.R. 47-9-1 (d)(45)."
(38) “30 CFR 817.81(f)" shall be replaced by “K.A.R. 47-9-1 (d)(24)."
(39) “30 CFR 817.95" shall be replaced by “K.A.R. 47-9-1 (d)(29)."
(40) “30 CFR 817.81(f)" shall be replaced by "K.A.R. 47-9-1 (d)(24)."
(41) “§ 817.43 of this chapter” shall be replaced by “K.A.R. 47-9-1 (d)(47)."
(42) “§ 817.181 of this chapter" shall be replaced by “K.A.R. 47-9-1 (d)(47)."
(43) “Part 784 of this chapter" shall be replaced by “K.A.R. 47-10-1 (a)(2)."
(44) “§ 774.13" shall be replaced by “K.A.R. 47-6-2." 
(45) “§ 817.49 of this chapter" and “§ 817.49(a)(4)(ii) of this chapter" shall be replaced by "K.A.R. 47-9-1 (d)(12)."
(46) “§ 817.46 of this chapter" shall be replaced by “K.A.R. 47-9-1 (d)(10)."

30 CFR 783.4 Responsibilities. (a) It is the responsibility of the applicant to provide, except where specifically exempted in this part, all information required by this part in the application. 
(b) It is the responsibility of State and Federal Government agencies to provide information for applications as specifically required by this part.

30 CFR 783.11 General requirements. Each permit application shall include a description of the existing, premining environmental resources within the proposed permit area and adjacent areas that may be affected or impacted by the proposed underground mining activities. [44 FR 15363, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980]

30 CFR 783.12 General environmental resources information. Each application shall describe and identify-
(a) The lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought; and 
(b) The nature of cultural historic and archeological resources listed or eligible for listing on the National Register of Historic Places and known archeological sites within the proposed permit and adjacent areas.
(1) The description shall be based on all available information, including, but not limited to, information from the State Historic Preservation Officer and local archeological, historical, and cultural preservation groups.
(2) The regulatory authority may require the applicant to identify and evaluate important
historic and archeological resources that may be eligible for listing on the National Register of Historic Places, through the—
   (i) Collection of additional information,
   (ii) Conduct of field investigations, or

30 CFR 783.18 Climatological information. (a) When requested by the regulatory authority, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including—
   (1) The average seasonal precipitation;
   (2) The average direction and velocity of prevailing winds; and
   (3) Seasonal temperature ranges.
   (b) The regulatory authority may request such additional data as deemed necessary to ensure compliance with the requirements of this subchapter. [44 FR 15363, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980]

30 CFR 783.19 Vegetation information. (a) The permit application shall, if required by the regulatory authority, contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.
   (b) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife for those species of fish and wildlife identified under 30 CFR 784.21. [44 FR 15363, Mar. 13, 1979, as amended at 52 FR 47359, Dec. 11, 1987]

30 CFR 783.21 Soil resources information. (a) The applicant shall provide adequate soil survey information on those portions of the permit area to be affected by surface operations or facilities consisting of the following:
   (1) A map delineating different soils;
   (2) Soil identification;
   (3) Soil description; and
   (4) Present and potential productivity of existing soils.
   (b) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials and tests required under 30 CFR 817.22.

30 CFR 783.24 Maps: General requirements. The permit application shall include maps showing:
   (a) All boundaries of lands and names of present owners of record of those lands, both surface and sub-surface, included in or contiguous to the permit area;
   (b) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin underground mining activities;
   (c) The boundaries of all areas proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence and timing of the mining of
sub-areas for which it is anticipated that additional permits will be sought;
   (d) The location of all buildings in and within 1000 feet of the proposed permit area, with
   identification of the current use of the buildings;
   (e) The location of surface and sub-surface man-made features within, passing through,
   or passing over the proposed permit area, including, but not limited to, major electric
   transmission lines, pipelines, and agricultural drainage tile fields;
   (f) The location and boundaries of any proposed reference areas for determining the
   success of revegetation;
   (g) The locations of water supply intakes for current users of surface waters flowing into,
   out of, and within a hydrologic area defined by the regulatory authority, and those surface waters
   which will receive discharges from affected areas in the proposed permit area;
   (h) Each public road located in or within 100 feet of the proposed permit area;
   (i) The boundaries of any public park and locations of any cultural or historical resources
   listed or eligible for listing in the National Register of Historic Places and known archeological
   sites within the permit and adjacent areas.
   (j) Each cemetery that is located in or within 100 feet of the proposed permit area.
   (k) Any land within the proposed permit area which is within the boundaries of any units
   of the National System of Trails or the Wild and Scenic Rivers System, including study rivers
   designated under section 5(a) of the Wild and Scenic Rivers Act; and
   (l) Other relevant information required by the regulatory authority. [44 FR 15363, Mar.
   13, 1979; 44 FR 49685, Aug. 24, 1979, as amended at 45 FR 51550, Aug. 4, 1980; 48 FR 14822,
   Apr. 5, 1983; 52 FR 4263, Feb. 10, 1987]

30 CFR 783.25 Cross sections, maps, and plans. (a) The application shall include cross
sections, maps, and plans showing–
   (1) Elevations and locations of test borings and core samplings;
   (2) Elevations and locations of monitoring stations used to gather data on water quality
   and quantity, fish and wildlife, and air quality, if required, in preparation of the application.
   (3) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams
   above the seam to be mined, each stratum of the overburden, and the stratum immediately below
   the lowest coal seam to be mined;
   (4) All coal crop lines and the strike and dip of the coal to 9, as amended at 45 FR 51550,

30 CFR 784.4 Responsibilities. (a) It is the responsibility of the applicant to provide to the
regulatory authority all of the information required by this part, except where specifically
exempted in this part.
   (b) It is the responsibility of State and Federal governmental agencies to provide
information to the regulatory authority where specifically required in this part.

30 CFR 784.11 Operation plan: General requirements. Each application shall contain a
description of the mining operations proposed to be conducted during the life of the mine within
the proposed permit area, including, at a minimum, the following:
   (a) A narrative description of the type and method of coal mining procedures and
   proposed engineering techniques, anticipated annual and total production of coal, by tonnage,
   and the major equipment to be used for all aspects of those operations; and
(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facility is necessary for postmining land use as specified in § 817.133):

1. Dams, embankments, and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning, and transportation areas and structures;
4. Spoil, coal processing waste, mine development waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;
5. Mine facilities; and

30 CFR 784.12 Operation plan: Existing structures. (a) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

1. Location;
2. Plans of the structure which describe its current condition;
3. Approximate dates on which construction of the existing structure was begun and completed; and
4. A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of subchapter K (Permanent Program Standards) of this chapter or, if the structure does not meet the performance standards of subchapter K of this chapter, a showing whether the structure meets the performance standards of subchapter B (Interim Program Standards) of this chapter.

(b) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

1. Design specifications for the modification or reconstruction of the structure to meet the design and performance standards of subchapter K of this chapter;
2. A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;
3. Provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards of subchapter K of this chapter are met; and
4. A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

30 CFR 784.13 Reclamation plan: General requirements. (a) Each application shall contain a plan for the reclamation of the lands within the proposed permit area, showing how the applicant will comply with sections 515 and 516 of the Act, subchapter K of this chapter, and the environmental protection performance standards of the regulatory program. The plan shall include, at a minimum, all information required under 30 CFR 784.13 through 784.26.

(b) Each plan shall contain the following information for the proposed permit area:

1. A detailed timetable for the completion of each major step in the reclamation plan;
2. A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under subchapter J of this chapter, with supporting
calculations for the estimates;

(3) A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 30 CFR 817.102 through 817.107;

(4) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of § 817.22 of this chapter. A demonstration of the suitability of topsoil substitutes or supplements under §§ 817.22(b) of this chapter shall be based upon analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, and areal extent of the different kinds of soils. The regulatory authority may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of the topsoil substitutes or supplements.

(5) A plan for revegetation as required in 30 CFR 817.111 through 817.116, including, but not limited to, descriptions of the-
   (i) Schedule of revegetation;
   (ii) Species and amounts per acre of seeds and seedlings to be used;
   (iii) Methods to be used in planting and seeding;
   (iv) Mulching techniques;
   (v) Irrigation, if appropriate, and pest and disease control measures, if any;
   (vi) Measures proposed to be used to determine the success of revegetation as required in 30 CFR 817.116; and,
   (vii) A soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation.

(6) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 30 CFR 817.59;

(7) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 30 CFR 817.89 and 817.102 and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(8) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area, in accordance with 30 CFR 817.13–817.15; and


30 CFR. 784.14 Hydrologic information. (a) Sampling and analysis. All water quality analyses performed to meet the requirements of this section shall be conducted according to the methodology in the 15th edition of “Standard Methods for the Examination of Water and Wastewater,” which is incorporated by reference, or the methodology in 40 CFR parts 136 and 434. Water quality sampling performed to meet the requirements of this section shall be conducted according to either methodology listed above when feasible. “Standard Methods for the Examination of Water and Wastewater," is a joint publication of the American Public Health Association, the American Water Works Association, and the Water Pollution Control
Baseline information. The application shall include the following baseline hydrologic information, and any additional information required by the regulatory authority.

(1) Ground-water information. The location and ownership for the permit and adjacent areas of existing wells, springs, and other ground-water resources, seasonal quality and quantity of ground water, and usage. Water quality descriptions shall include, at a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, and total manganese. Ground-water quantity descriptions shall include, at a minimum, approximate rates of discharge or usage and depth to the water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.

(2) Surface-water information. The name, location, ownership and description of all surface-water bodies such as streams, lakes, and impoundments, the location of any discharge into any surface-water body in the proposed permit and adjacent areas, and information on surface-water quality and quantity sufficient to demonstrate seasonal variation and water usage. Water quality descriptions shall include, at a minimum, baseline information on total suspended solids, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, and total manganese. Baseline acidity and alkalinity information shall be provided if there is a potential for acid drainage from the proposed mining operation. Water quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates.

(3) Supplemental information. If the determination of the probable hydrologic consequences (PHC) required by paragraph (e) of this section indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water supplies, then information supplemental to that required under paragraphs (b) (1) and (2) of this section shall be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

Baseline cumulative impact area information. (1) Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining on surface- and ground-water systems as required by paragraph (f) of this section shall be provided to the regulatory authority if available from appropriate Federal or State agencies.
(2) If this information is not available from such agencies, then the applicant may gather and submit this information to the regulatory authority as part of the permit application.

(3) The permit shall not be approved until the necessary hydrologic and geologic information is available to the regulatory authority.

(d) **Modeling.** The use of modeling techniques, interpolation or statistical techniques may be included as part of the permit application, but actual surface- and ground-water information may be required by the regulatory authority for each site even when such techniques are used.

(e) **Probable hydrologic consequences determination.** (1) The application shall contain a determination of the probable hydrologic consequences (PHC) of the proposed operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

(2) The PHC determination shall be based on baseline hydrologic, geologic, and other information collected for the permit application and may include data statistically representative of the site.

(3) The PHC determination shall include findings on:
   (i) Whether adverse impacts may occur to the hydrologic balance;
   (ii) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface or ground water supplies;
   (iii) What impact the proposed operation will have on:
      (A) Sediment yield from the disturbed area;
      (B) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;
      (C) flooding or streamflow alteration;
      (D) ground water and surface water availability; and
      (E) other characteristics as required by the regulatory authority;
   (iv) Whether the underground mining activities conducted after October 24, 1992 may result in contamination, diminution or interruption of a well or spring in existence at the time the permit application is submitted and used for domestic, drinking, or residential purposes within the permit or adjacent areas.

(4) An application for a permit revision shall be reviewed by the regulatory authority to determine whether a new or updated PHC shall be required.

(f) **Cumulative hydrologic impact assessment.** (1) The regulatory authority shall provide an assessment of the probable cumulative hydrologic impacts (CHIA) of the proposed operation and all anticipated mining upon surface- and ground-water systems in the cumulative impact area. The CHIA shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The regulatory authority may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

(2) An application for a permit revision shall be reviewed by the regulatory authority to determine whether a new or updated CHIA shall be required.

(g) **Hydrologic reclamation plan.** The application shall include a plan, with maps and descriptions, indicating how the relevant requirements of part 817 of this chapter, including §§817.41 to 817.43, will be met. The plan shall be specific to the local hydrologic conditions. It shall contain the steps to be taken during mining and reclamation through bond release to minimize disturbance to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; and to meet applicable Federal and State water quality
laws and regulations. The plan shall include the measures to be taken to: avoid acid or toxic drainage; prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide water treatment facilities when needed; and control drainage. The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under paragraph (e) of this section and shall include preventive and remedial measures.

(h) *Ground-water monitoring plan.* (1) The application shall include a ground-water monitoring plan based upon the PHC determination required under paragraph (e) of this section and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in paragraph (g) of this section. It shall identify the quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, total manganese, and water levels shall be monitored and data submitted to the regulatory authority at least every 3 months for each monitoring location. The regulatory authority may require additional monitoring.

(2) If an applicant can demonstrate by the use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the regulatory authority.

(i) *Surface-water monitoring plan.* (1) The application shall include a surface-water monitoring plan based upon the PHC determination required under paragraph (e) of this section and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in paragraph (g) of this section as well as the effluent limitations found at 40 CFR part 434.

(2) The plan shall identify the surface-water quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance.

(i) At all monitoring locations in streams, lakes, and impoundments, that are potentially impacted or into which water will be discharged and at upstream monitoring locations, the total dissolved solids or specific conductance corrected at 25°C, total suspended solids, pH, total iron, total manganese, and flow shall be monitored.

(ii) For point-source discharges, monitoring shall be conducted in accordance with 40 CFR parts 122, 123 and 434 and as required by the National Pollutant Discharge Elimination System permitting authority.

30 CFR 784.15 Reclamation plan: Land use information. (a) The plan shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(1) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within 5 years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described. In the case of previously mined land, the use of the land prior to any mining shall also be described to the extent such information is available.

(2) A narrative of land capability and productivity, which analyzes the land-use description under paragraph (a) of this section in conjunction with other environmental resources information. The narrative shall provide analyses of:

(i) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the proposed permit area; and

(ii) The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, State agricultural universities, or appropriate State natural resource or agricultural agencies.

(b) Each plan shall contain a detailed description of the proposed use, following reclamation, of the land within the proposed permit area including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain:

(1) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use; and

(2) Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under 30 CFR 817.133.

(3) The consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable State and local land use plans and programs.

(c) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the State and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation. [59 FR 27937, May 27, 1994]

30 CFR 784.16 Reclamation plan: Siltation structures, impoundments, banks, dams, and embankments. (a) General. Each application shall include a general plan and a detailed design plan for each proposed siltation structure, 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;
   (ii) Contain a description, map, and cross section of the structure and its location;
   (iii) Contain preliminary hydrologic and geologic information required to assess the
       hydrologic impact of the structure;
   (iv) Contain a survey describing the potential effect on the structure from subsidence of
       the subsurface strata resulting from past underground mining operations if underground mining
       has occurred; and
   (v) Contain a certification statement which includes a schedule setting forth the dates
       when any detailed design plans for structures that are not submitted with the general plan will be
       submitted to the regulatory authority. The regulatory authority shall have approved, in writing,
       the detailed design plan for a structure before construction of the structure begins.

    (2) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of
“Earth Dams and Reservoirs,” Technical Release No. 60 (TR-60) shall comply with the
requirements of this section for structures that meet or exceed the size or other criteria of the
Mine Safety and Health Administration (MSHA). The technical release is hereby incorporated
by reference. This incorporation by reference was approved by the Director of the Federal
Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from
the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia
22161, order No. PB 87- 157509/AS. Copies can be inspected at the OSM Headquarters Office,
Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800
North Capitol Street, Washington, DC or at the Office of the Federal Register, 800 North Capitol
Street, NW., suite 700, Washington, DC. Each detailed design plan for a structure that meets or
exceeds the size or other criteria of MSHA, § 77.216(a) of this chapter shall:
   (i) Be prepared by, or under the direction of, and certified by a qualified registered
       professional engineer with assistance from experts in related fields such as geology, land
       surveying, and landscape architecture;
   (ii) Include any geotechnical investigation, design, and construction requirements for the
       structure;
   (iii) Describe the operation and maintenance requirements for each structure; and
   (iv) Describe the timetable and plans to remove each structure, if appropriate.

    (3) Each detailed design plan for structures not included in paragraph (a)(2) of this
section 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 §§ 817.81 through 817.84 of this chapter shall be certified
by a qualified, registered, professional engineer;
   (ii) Include any design and construction requirements for the structure, including any
       required geotechnical information;
   (iii) Describe the operation and maintenance requirements for each structure; and
   (iv) Describe the timetable and plans to remove each structure, if appropriate.

    (b) Siltation structures. Siltation structures shall be designed in compliance with the
requirements of § 817.46 of this chapter.
(c) Permanent and temporary impoundments. (1) Permanent and temporary impoundments shall be designed to comply with the requirements of § 817.49 of this chapter.

(2) Each plan for an impoundment meeting the size of other criteria of the Mine Safety and Health Administration shall comply with the requirements of §§ 77.216-1 and 77.216-2 of this title. The plan required to be submitted to the District Manager of MSHA under § 77.216 of this title shall be submitted to the regulatory authority as part of the permit application in accordance with paragraph (a) of this section.

(3) For impoundments not included in paragraph (a)(2) of this section the regulatory authority may establish through the State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in § 817.49(a)(4)(ii) of this chapter.

(d) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 30 CFR 817.81 through 817.84.

(e) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 30 CFR 817.81 through 817.84. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(1) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(f) If the structure meets the Class B or C criteria for dams in TR-60 or meets the size or other criteria of § 77.216(a) of this chapter, each plan under paragraphs (b), (c), and (e) of this section shall include a stability analysis of the structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods. [44 FR 15366, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980; 48 FR 44780, Sept. 30, 1983; 50 FR 16199, Apr. 24, 1985; 53 FR 43605, Oct. 27, 1988; 53 FR 48614, Dec. 1, 1988; 59 FR 52028, Oct. 20, 1994]

30 CFR 784.17 Protection of publicly owned parks and historic places. (a) For any publicly owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used.

(1) To prevent adverse impacts, or
(2) If a person has valid existing rights, as determined under § 761.16 of this chapter, or if joint agency approval is to be obtained under § 761.17(d) of this chapter, to minimize adverse impacts.

(b) The regulatory authority may require the applicant to protect historic and archaeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation. [52 FR 4263, Feb. 10, 1987, as amended at 64 FR 70838, Dec. 17, 1999]

30 CFR 784.18 Relocation or use of public roads. Each application shall describe, with appropriate maps and cross sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under § 761.14 of this chapter, the applicant seeks to have the regulatory authority approve—

(a) Conducting the proposed surface coal mining operations within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(b) Relocating a public road. [44 FR 15366, Mar. 13, 1979, as amended at 64 FR 70838, Dec. 17, 1999]

30 CFR 784.19 Underground development waste. Each plan shall contain descriptions, including appropriate maps and cross-section drawings of the proposed disposal methods and sites for placing underground development waste and excess spoil generated at surface areas affected by surface operations and facilities, according to 30 CFR 817.71 through 817.74. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate, of the structures and be prepared according to 30 CFR 780.35.

30 CFR 784.20 Subsidence control plan. (a) Pre-subsidence survey. Each application must include:

(1) A map of the permit and adjacent areas at a scale of 1:12,000, or larger if determined necessary by the regulatory authority, showing the location and type of structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence, and showing the location and type of drinking, domestic, and residential water supplies that could be contaminated, diminished, or interrupted by subsidence.

(2) A narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish, or interrupt drinking, domestic, or residential water supplies.

(3) A survey of the condition of all non-commercial buildings or occupied residential dwellings and structures related thereto, that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the area encompassed by the applicable angle of draw; as well as a survey of the quantity and quality of all drinking, domestic, and residential water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the applicant cannot make this survey
because the owner will not allow access to the site, the applicant will notify the owner, in writing, of the effect that denial of access will have as described in § 817.121(c)(4) of this chapter. The applicant must pay for any technical assessment or engineering evaluation used to determine the pre-mining condition or value of such non-commercial buildings or occupied residential dwellings and structures related thereto and the quantity and quality of drinking, domestic, or residential water supplies. The applicant must provide copies of the survey and any technical assessment or engineering evaluation to the property owner and regulatory authority. However, the requirements to perform a survey of the condition of all noncommercial buildings or occupied residential dwellings and structures related thereto, that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the areas encompassed by the applicable angle of draw is suspended per court order.

(b) Subsidence control plan. If the survey conducted under paragraph (a) of this section shows that no structures, or drinking, domestic, or residential water supplies, or renewable resource lands exist, or that no material damage or diminution in value or reasonably foreseeable use of such structures or lands, and no contamination, diminution, or interruption of such water supplies would occur as a result of mine subsidence, and if the regulatory authority agrees with this conclusion, no further information need be provided under this section. If the survey shows that structures, renewable resource lands, or water supplies exist and that subsidence could cause material damage or diminution in value or reasonably foreseeable use, or contamination, diminution, or interruption of protected water supplies, or if the regulatory authority determines that damage, diminution in value or foreseeable use, or contamination, diminution, or interruption could occur, the application must include a subsidence control plan that contains the following information:

(1) A description of the method of coal removal, such as longwall mining, room-and-pillar removal or hydraulic mining, including the size, sequence and timing of the development of underground workings;

(2) A map of the underground workings that describes the location and extent of the areas in which planned-subsidence mining methods will be used and that identifies all areas where the measures described in paragraphs (b)(4), (b)(5), and (b)(7) of this section will be taken to prevent or minimize subsidence and subsidence-related damage; and, when applicable, to correct subsidence-related material damage;

(3) A description of the physical conditions, such as depth of cover, seam thickness and lithology of overlaying strata, that affect the likelihood or extent of subsidence and subsidence-related damage;

(4) A description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce or correct material damage in accordance with § 817.121(c) of this chapter;

(5) Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage, such as, but not limited to:

(i) Backstowing or backfilling of voids;

(ii) Leaving support pillars of coal;

(iii) Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving coal in place; and

(iv) Taking measures on the surface to prevent or minimize material damage or
diminution in value of the surface;

(6) A description of the anticipated effects of planned subsidence, if any;

(7) For those areas where planned subsidence is projected to be used, a description of
methods to be employed to minimize damage from planned subsidence to non-commercial
buildings and occupied residential dwellings and structures related thereto; or the written consent
of the owner of the structure or facility that minimization measures not be taken; or, unless the
anticipated damage would constitute a threat to health or safety, a demonstration that the costs of
minimizing damage exceed the anticipated costs of repair;

(8) A description of the measures to be taken in accordance with §§ 817.41(j) and
817.121(c) of this chapter to replace adversely affected protected water supplies or to mitigate or
remedy any subsidence-related material damage to the land and protected structures; and

(9) Other information specified by the regulatory authority as necessary to demonstrate
that the operation will be conducted in accordance with § 817.121 of this chapter. [60 FR 16748,

30 CFR 784.21 Fish and wildlife information. (a) Resource information. Each application shall
include fish and wildlife resource information for the permit area and adjacent area.

(1) The scope and level of detail for such information shall be determined by the
regulatory authority in consultation with State and Federal agencies with responsibilities for fish
and wildlife and shall be sufficient to design the protection and enhancement plan required under
paragraph (b) of this section.

(2) Site-specific resource information necessary to address the respective species or
habitats shall be required when the permit area or adjacent area is likely to include:

(i) Listed or proposed endangered or threatened species of plants or animals or their
critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended
(16 U.S.C. 1531 et seq.), or those species or habitats protected by similar State statutes;

(ii) Habitats of unusually high value for fish and wildlife such as important streams,
wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection,
migration routes, or reproduction and wintering areas; or

(iii) Other species or habitats identified through agency consultation as requiring special
protection under State or Federal law.

(b) Protection and enhancement plan. Each application shall include a description of
how, to the extent possible using the best technology currently available, the operator will
minimize disturbances and adverse impacts on fish and wildlife and related environmental
values, including compliance with the Endangered Species Act, during the surface coal mining
and reclamation operations and how enhancement of these resources will be achieved where
practicable. This description shall--

(1) Be consistent with the requirements of § 817.97 of this chapter;

(2) Apply, at a minimum, to species and habitats identified under paragraph (a) of this
section; and

(3) Include--

(i) Protective measures that will be used during the active mining phase of operation.
Such measures may include the establishment of buffer zones, the selective location and special
design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(ii) Enhancement measures that will be used during the reclamation and postmining
phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the placement of perches and nest boxes. Where the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(c) Fish and Wildlife Service review. Upon request, the regulatory authority shall provide the resource information required under paragraph (a) of this section and the protection and enhancement plan required under paragraph (b) of this section to the U.S. Department of the Interior, Fish and Wildlife Service Regional or Field Office for their review. This information shall be provided within 10 days of receipt of the request from the Service. [52 FR 47359, Dec. 11, 1987]

30 CFR 784.22 Geologic information. (a) General. Each application shall include geologic information in sufficient detail to assist in--

(1) Determining the probable hydrologic consequences of the operation upon the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface- and ground-water monitoring is necessary;

(2) Determining all potentially acid- or toxic-forming strata down to and including the stratum immediately below the coal seam to be mined;

(3) Determining whether reclamation as required by this chapter can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area; and

(4) Preparing the subsidence control plan under § 784.20.

(b) Geologic information shall include, at a minimum, the following:

(1) A description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. This description shall include the areal and structural geology of the permit and adjacent areas, and other parameters which influence the required reclamation and it shall also show how the areal and structural geology may affect the occurrence, availability, movement, quantity and quality of potentially impacted surface and ground water. It shall be based on--

(i) The cross sections, maps, and plans required by § 783.25 of this chapter;

(ii) The information obtained under paragraphs (b)(2), (b)(3), and (c) of this section; and

(iii) Geologic literature and practices.

(2) For any portion of a permit area in which the strata down to the coal seam to be mined will be removed or are already exposed, samples shall be collected and analyzed from test borings; drill cores; or fresh, unweathered, uncontaminated samples from rock outcrops down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. The analyses shall result in the following:

(i) Logs showing the lithologic characteristics including physical properties and thickness of each stratum and location of ground water where occurring;

(ii) Chemical analyses identifying those strata that may contain acid- or toxic-forming, or alkalinity-producing materials and to determine their content except that the regulatory authority may find that the analysis for alkalinity-producing material is unnecessary; and

(iii) Chemical analysis of the coal seam for acid- or toxic-forming materials, including
the total sulfur and pyritic sulfur, except that the regulatory authority may find that the analysis
of pyritic sulfur content is unnecessary.

(3) For lands within the permit and adjacent areas where the strata above the coal seam to
be mined will not be removed, samples shall be collected and analyzed from test borings or drill
cores to provide the following data:
   (i) Logs of drill holes showing the lithologic characteristics, including physical properties
and thickness of each stratum that may be impacted, and location of ground water where
occurring;
   (ii) Chemical analyses for acid- or toxic-forming or alkalinity- producing materials and
their content in the strata immediately above and below the coal seam to be mined;
   (iii) Chemical analyses of the coal seam for acid- or toxic-forming materials, including
the total sulfur and pyritic sulfur, except that the regulatory authority may find that the analysis
of pyrite sulfur content is unnecessary; and
   (iv) For standard room and pillar mining operations, the thickness and engineering
properties of clays or soft rock such as clay shale, if any, in the stratum immediately above and
below each coal seam to be mined.

(c) If determined to be necessary to protect the hydrologic balance, to minimize or
prevent subsidence, or to meet the performance standards of this chapter, the regulatory authority
may require the collection, analysis and description of geologic information in addition to that
required by paragraph (b) of this section.

(d) An applicant may request the regulatory authority to waive in whole or in part the
requirements of paragraphs (b) (2) and (3) of this section. The waiver may be granted only if the
regulatory authority finds in writing that the collection and analysis of such data is unnecessary
because other information having equal value or effect is available to the regulatory authority in
a satisfactory form. [48 FR 43989, Sept. 26, 1983]

30 CFR 784.23 Operation plan: Maps and plans. Each application shall contain maps and
plans as follows:
   (a) The maps, plans and cross-sections shall show the underground mining activities to be
conducted, the lands to be affected throughout the operation, and any change in a facility or
feature to be caused by the proposed operations, if the facility or feature was shown under 30
CFR 783.24 and 783.25.
   (b) The following shall be shown for the proposed permit area:
      (1) Buildings, utility corridors, and facilities to be used;
      (2) The area of land to be affected within the proposed permit area, according to the
sequence of mining and reclamation;
      (3) Each area of land for which a performance bond or other equivalent guarantee will be
posted under subchapter J of this chapter;
      (4) Each coal storage, cleaning and loading area;
      (5) Each topsoil, spoil, coal preparation waste, underground development waste, and non-
coal waste storage area;
      (6) Each water diversion, collection, conveyance, treatment, storage and discharge
facility to be used;
      (7) Each source of waste and each waste disposal facility relating to coal processing or
pollution control;
      (8) Each facility to be used to protect and enhance fish and wildlife related environmental
values;
(9) Each explosive storage and handling facility;
(10) Location of each sedimentation pond, permanent water impoundment, coal
processing waste bank, and coal processing waste dam and embankment, in accordance with 30
CFR 784.16 and disposal areas for underground development waste and excess spoil, in
accordance with 30 CFR 784.19;
(11) Each profile, at cross-sections specified by the regulatory authority, of the
anticipated final surface configuration to be achieved for the affected areas;
(12) Location of each water and subsidence monitoring point;
(13) Location of each facility that will remain on the proposed permit area as a permanent
feature, after the completion of underground mining activities.
(c) Except as provided in §§ 784.16(a)(2), 784.16(a)(3), 784.19, 817.71(b), 817.73(c),
817.74(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. [44 FR 15366, Mar. 13, 1979; 44
FR 49686, Aug. 24, 1979, as amended at 45 FR 51550, Aug. 4, 1980; 48 FR 14822, Apr. 5,

30 CFR 784.24 Road systems. (a) Plans and drawings. Each applicant for an underground coal
mining and reclamation permit shall submit plans and drawings for each road, as defined in §
701.5 of this chapter, to be constructed, used, or maintained within the proposed permit area. The
plans and drawings shall–
(1) Include a map, appropriate cross sections, design drawings, and specifications for
road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage
ditches, low-water crossings, and drainage structures;
(2) Contain the drawings and specifications of each proposed road that is located in the
channel of an intermittent or perennial stream, as necessary for approval of the road by the
regulatory authority in accordance with § 817.150(d)(1) of this chapter;
(3) Contain the drawings and specifications for each proposed ford of perennial or
intermittent streams that is used as a temporary route, as necessary for approval of the ford by
the regulatory authority in accordance with § 817.151(c)(2) of this chapter;
(4) Contain a description of measures to be taken to obtain approval of the regulatory
authority for alteration or relocation of a natural stream channel under § 817.151(d)(5) of this
chapter;
(5) Contain the drawings and specifications for each low-water crossing of perennial or
intermittent stream channels so that the regulatory authority can maximize the protection of the
stream in accordance with § 817.151(d)(6) of this chapter; and
(6) Describe the plans to remove and reclaim each road that would not be retained under
an approved postmining land use, and the schedule for this removal and reclamation.
(b) Primary road certification. The plans and drawings for each primary road shall 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 certify the design of primary roads a
qualified registered professional land surveyor, experienced in the design and construction of
roads, as meeting the requirements of this chapter; current, prudent engineering practices; and any design criteria established by the regulatory authority.

(c) Standard design plans. The regulatory authority may establish engineering design standards for primary roads through the State program approval process, in lieu of engineering tests, to establish compliance with the minimum static safety factor of 1.3 for all embankments specified in § 817.151(b) of this chapter. [53 FR 45211, Nov. 8, 1988]

30 CFR 784.25 Return of coal processing waste to abandoned underground workings. (a) Each plan shall describe the design, operation and maintenance of any proposed coal processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval of the regulatory authority and the Mine Safety and Health Administration under 30 CFR 817.81(f).

(b) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(c) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retention of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(d) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(e) The requirements of paragraphs (a), (b), (c), and (d) of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the regulatory authority from requirements specifying hydrologic monitoring. [44 FR 15366, Mar. 13, 1979, as amended at 48 FR 44780, Sept. 30, 1983]

30 CFR 784.26 Air pollution control plan. For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan which includes the following:

(a) An air quality monitoring program, if required by the regulatory authority, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices, under paragraph (b) of this section to comply with applicable Federal and State air quality standards; and

(b) A plan for fugitive dust control practices, as required under 30 CFR 817.95.

30 CFR 784.29 Diversions. Each application shall contain descriptions, including maps and cross sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with § 817.43 of this chapter. [44 FR 15366, Mar. 13, 1979. Redesignated and amended at 48 FR 43989, Sept. 26, 1983]

30 CFR 784.30 Support facilities. Each applicant for an underground coal mining and reclamation permit shall submit a description, plans, and drawings for each support facility to be
constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with §817.181 of this chapter for each facility. [53 FR 45211, Nov. 8, 1988]

**30 CFR 784.200 Interpretive rules related to General Performance Standards.** The following interpretation of rules promulgated in part 784 of this chapter have been adopted by the Office of Surface Mining Reclamation and Enforcement.

(a) *Interpretation of §784.15: Reclamation plan: Postmining land uses.* (1) The requirements of §784.15(a)(2), for approval of an alternative postmining land use, may be met by requesting approval through the permit revision procedures of §774.13 rather than requesting such approval in the original permit application. The original permit application, however, must demonstrate that the land will be returned to its premining land use capability as required by §817.133(a). An application for a permit revision of this type, (i) must be submitted in accordance with the filing deadlines of §774.13, (ii) shall constitute a significant alteration from the mining operations contemplated by the original permit, and (iii) shall be subject to the requirements of 30 CFR parts 773 and 775.

(b) [Reserved] [45 FR 64908, Oct. 1, 1980, as amended at 48 FR 44780, Sept. 30, 1983]
K.A.R. 47-11-8. Small operator assistance program; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2001, are adopted by reference, except as otherwise indicated in this regulation:

1. Definitions, 30 CFR 795.3;
2. eligibility for assistance, 30 CFR 795.6;
3. filing for assistance, 30 CFR 795.7;
4. application approval and notice, 30 CFR 795.8;
5. program services and data requirements, 30 CFR 795.9;
6. qualified laboratories, 30 CFR 795.10;
7. assistance funding, 30 CFR 795.11; and

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

1. “Act” shall be replaced by “state act.”
2. “This chapter” and “this section” shall be replaced by “these regulations.”
3. “This part” shall be replaced by “K.A.R. 47-11-8.”
4. “§ 795.9” and “§ 795.9(b)” shall be replaced by “K.A.R. 47-11-8 (a)(5).”
5. “§ 795.10” shall be replaced by “K.A.R. 47-11-8 (a)(6).”
6. “§ 795.6” shall be replaced by “K.A.R. 47-11-8 (a)(2).”
7. “§§ 780.21(f), 784.14(e)” shall be replaced by “K.A.R. 47-3-42 (a)(28) and K.A.R. 47-10-1 (a)(2)(E).”
8. “§§ 780.22(b) and 784.22(b)” shall be replaced by “K.A.R. 47-3-42 (a)(29) and K.A.R. 47-10-1 (a)(2)(M).”
9. “§§ 779.25 and 783.25” shall be replaced by “K.A.R. 47-3-42 (a)(19) and K.A.R. 47-10-1 (a)(1)(H).”
10. “§§ 779.12(b) and 783.12(b) and §§ 780.31 and 784.17” shall be replaced by “K.A.R. 47-3-42 (a)(14) and K.A.R. 47-10-1 (a)(1)(C) and K.A.R. 47-3-42 (a)(34) and K.A.R. 47-10-1 (a)(2)(H).”
11. “§§ 780.16 and 784.21” shall be replaced by “K.A.R. 47-3-42 (a)(26) and K.A.R. 47-10-1 (a)(2)(L).”
12. “§ 780.13” shall be replaced by “K.A.R. 47-3-42 (a)(23).”
13. “§ 773.6(d) of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(46).”
14. “§§ 780.21, 780.22, 784.14, and 784.22” shall be replaced by “K.A.R. 47-3-42 (a)(28) and (29), and K.A.R. 47-10-1 (a)(2)(E) and (M).” (Authorized by K.S.A. 49-405; implementing K.S.A. 49-406; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended December 1, 2006.)

30 CFR 795.3 Definitions. As used in this part—

Program administrator means the State of Federal official within the regulatory authority who has the authority and responsibility for overall management of the Small Operator Assistance Program; and
**Qualified laboratory** means a designated public agency, private firm, institution, or analytical laboratory that can provide the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified at § 795.9 under the Small Operator Assistance Program and that meets the standards of § 795.10. [48 FR 2272, Jan. 18, 1983, as amended at 59 FR 28167, May 31, 1994]

**30 CFR 795.6 Eligibility for assistance.** (a) An applicant is eligible for assistance if he or she–
   (1) Intends to apply for a permit pursuant to the Act;
   (2) Establishes that his or her probable total attributed annual production from all locations on which the operator is issued the surface coal mining and reclamation permit will not exceed 300,000 tons. Production from the following operations shall be attributed to the applicant:
      (i) The pro rata share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a 10 percent interest;
      (ii) The pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than 10 percent of the applicant's operation;
      (iii) All coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management;
      (iv) All coal produced by operations owned by members of the applicant's family and the applicant's relatives, unless it is established that there is no direct or indirect business relationship between or among them.
   (3) Is not restricted in any manner from receiving a permit under the permanent regulatory program; and
   (4) Does not organize or reorganize his or her company solely for the purpose of obtaining assistance under the SOAP.

(b) A State may provide alternate criteria or procedures for determining the eligibility of an operator for assistance under the program, provided that such criteria may not be used as a basis for grant requests in excess of that which would be authorized under the criteria of paragraph (a) of this section. [48 FR 2272, Jan. 18, 1983, as amended at 59 FR 28168, May 31, 1994]

**30 CFR 795.7 Filing for assistance.** Each application for assistance shall include the following information:
   (a) A statement of the operator's intent to file a permit application.
   (b) The names and addresses of–
      (1) The permit applicant; and
      (2) The operator if different from the applicant.
   (c) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under § 795.6 The schedule shall include for each location–
      (1) The operator or company name under which coal is or will be mined;
      (2) The permit number and Mine Safety and Health Administration (MSHA) number;
      (3) The actual coal production during the year preceding the year for which the applicant applies for assistance and production that may be attributed to the applicant under § 795.6; and
(4) The estimated coal production and any production which may be attributed to the applicant for each year of the proposed permit.

(d) A description of—
(1) The proposed method of coal mining;
(2) The anticipated starting and termination dates of mining operations;
(3) The number of acres of land to be affected by the proposed mining operation; and
(4) A general statement on the probable depth and thickness of the coal resource including a statement of reserves in the permit area and the method by which they were calculated.

(e) A U.S. Geological Survey topographic map at a scale of 1:24,000 or larger or other topographic map of equivalent detail which clearly shows—
(1) The area of land to be affected;
(2) The location of any existing or proposed test borings; and
(3) The location and extent of known workings of any underground mines.

(f) Copies of documents which show that—
(1) The applicant has a legal right to enter and commence mining within the permit area; and
(2) A legal right of entry has been obtained for the program administrator and laboratory personnel to inspect the lands to be mined and adjacent areas to collect environmental data or to install necessary instruments.

30 CFR 795.8 Application approval and notice. (a) If the program administrator finds the applicant eligible, he or she shall inform the applicant in writing that the application is approved.
(b) If the program administrator finds the applicant ineligible, he or she shall inform the applicant in writing that the application is denied and shall state the reasons for denial.

30 CFR 795.9 Program services and data requirements. (a) To the extent possible with available funds, the program administrator shall select and pay a qualified laboratory to make the determination and statement and provide other services referenced in paragraph (b) of this section for eligible operators who request assistance.
(b) The program administrator shall determine the data needed for each applicant or group of applicants. Data collected and the results provided to the program administrator shall be sufficient to satisfy the requirements for:
(1) The determination of the probable hydrologic consequences of the surface mining and reclamation operation in the proposed permit area and adjacent areas, including the engineering analyses and designs necessary for the determination in accordance with §§ 780.21(f), 784.14(e), and any other applicable provisions of this chapter;
(2) The drilling and statement of the results of test borings or core samplings for the proposed permit area in accordance with §§ 780.22(b) and 784.22(b) and any other applicable provisions of this chapter;
(3) The development of cross-section maps and plans required by §§ 779.25 and 783.25;
(4) The collection of archaeological and historic information and related plans required by §§ 779.12(b) and 783.12(b) and §§ 780.31 and 784.17 and any other archaeological and historic information required by the regulatory authority;
(5) Pre-blast surveys required by § 780.13; and
(6) The collection of site-specific resources information, the production of protection and
enhancement plans for fish and wildlife habitats required by §§ 780.16 and 784.21, and information and plans for any other environmental values required by the regulatory authority under the act.

(c) Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator.

(d) Data collected under this program shall be made publicly available in accordance with § 773.6(d) of this chapter. The program administrator shall develop procedures for interstate coordination and exchange of data. [48 FR 2272, Jan. 18, 1983, as amended at 48 FR 44780, Sept. 30, 1983; 59 FR 28168, May 31, 1994, as amended at 65 FR 79670, Dec. 19, 2000]

30 CFR 795.10 Qualified laboratories. (a) Basic qualifications. To be designated a qualified laboratory, a firm shall demonstrate that it:

(1) Is staffed with experienced, professional or technical personnel in the fields applicable to the work to be performed;

(2) Has adequate space for material preparation and cleaning and sterilizing equipment and has stationary equipment, storage, and space to accommodate workloads during peak periods;

(3) Meets applicable Federal or State safety and health requirements;

(4) Has analytical, monitoring and measuring equipment capable of meeting applicable standards; and

(5) Has the capability of collecting necessary field samples and making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic, geologic, or analytical methods in accordance with the requirements of §§ 780.21, 780.22, 784.14 and 784.22 and any other applicable provisions of this chapter. Other appropriate methods or guidelines for data acquisition may be approved by the program administrator.

(6) Has the capability of performing services for either the determination or statement referenced in § 795.9(b).

(b) Subcontractors. Subcontractors, may be used to provide some of the required services provided their use is identified at the time a determination is made that a firm is qualified and they meet requirements specified by the program administrator.

30 CFR 795.11 Assistance funding. (a) Use of funds. Funds specifically authorized for this program shall be used to provide the services specified in § 795.9 and shall not be used to cover administrative expenses.

(b) Allocation of funds. The program administrator shall establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services pursuant to this part.

30 CFR 795.12 Applicant liability. (a) A coal operator who has received assistance pursuant to § 795.9 shall reimburse the regulatory authority for the cost of the services rendered if:

(1) The applicant submits false information, fails to submit a permit application within 1 year from the date of receipt of the approved laboratory report, or fails to mine after obtaining a permit;

(2) The program administrator finds that the operator’s actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately
following the date on which the operator is issued the surface coal mining and reclamation permit; or

(3) The permit is sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the 300,000 ton production limit during the 12 months immediately following the date on which the permit was originally issued. Under this paragraph the applicant and its successor are jointly and severally obligated to reimburse the regulatory authority.

(b) The program administrator may waive the reimbursement obligation if he or she finds that the applicant at all times acted in good faith. [48 FR 2272, Jan. 18, 1983, as amended at 59 FR 28168, May 31, 1994]
47-12-4. **Lands unsuitable for surface mining: adoption by reference.** (a) The following federal regulations, as in effect on July 1, 2001, are adopted by reference, except as otherwise indicated in this regulation:

1. Definitions, 30 CFR 761.5, except that the statement “we, us, and our refer to the office of surface mining reclamation and enforcement” shall be replaced by “we, us, and our refer to the Kansas department of health and environment” and the phrase “or its State program counterpart” shall be deleted;
2. Areas where mining is prohibited or limited, 30 CFR 761.11, deleting subsection (b);
3. Procedures, 30 CFR 761.12, deleting subsection (b);
4. Procedures for relocating or closing a public road or waiving the prohibition on surface coal mining operations within the buffer zone for public roads, 30 CFR 761.14;
5. Procedures for waiving the prohibition on surface coal mining operations within the buffer zone of an occupied dwelling, 30 CFR 761.15;
6. Submission and processing of requests for valid existing rights determinations, 30 CFR 761.16;
7. Regulatory authority obligations at time of permit application review, 30 CFR 761.17;
8. Interpretive rule related to subsidence due to underground coal mining in areas designated by act of congress, 30 CFR 761.200;
9. Definitions, 30 CFR 762.5;
10. Criteria for designating lands as unsuitable, 30 CFR 762.11;
11. Additional criteria, 30 CFR 762.12. “Secretary” shall mean the “secretary of the United States department of interior”;
12. Land exempt from designation as unsuitable for surface coal mining operations, 30 CFR 762.13;
13. Applicability to lands designated as unsuitable by congress, 30 CFR 762.14;
14. Exploration on land designated as unsuitable for surface coal mining operations, 30 CFR 762.15;
15. Petitions, 30 CFR 764.13;
16. Initial processing, recordkeeping, and notification requirements, 30 CFR 764.15;
17. Hearing requirements, 30 CFR 764.17;
18. Decision, 30 CFR 764.19;
19. Database and inventory system requirements, 30 CFR 764.21;
20. Public information, 30 CFR 764.23; and

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

1. §§ 775.11 and 775.13 of this chapter shall be replaced by “K.S.A. 49-407 (d), K.S.A. 49-416a, K.S.A. 49-422a, and amendments thereto, and article 4 of these regulations.”
2. “Sections 522(a) (2) and (3) of the Act” shall be replaced by “K.S.A. 49-405b (a)(1) and (2), and amendments thereto.”
(3) “This chapter” shall be replaced by “these regulations.”
(4) “Section 526(e) of the Act and § 775.13 of this chapter” shall be replaced by “K.S.A. 49-422a and K.S.A. 49-426, and amendments thereto.”
(5) “Section 522 of the Act” and “section 522 (e) of the Act” shall be replaced by “K.S.A. 49-405b, and amendments thereto.”
(6) “Section 701(28) of the act” shall be replaced by “K.S.A. 49-403 (r), and amendments thereto.”
(7) “Part 761, 762, or 764 of this chapter” shall be replaced by “K.A.R. 47-12-4.”
(8) “Part 772 of this chapter” shall be replaced by “K.A.R. 47-7-2.”
(9) “Act” shall be replaced by “state act.”
(10) “This part” and “this subchapter” shall be replaced by “K.A.R. 47-12-4.”
(11) “Subchapter G of this chapter” shall be replaced by “K.A.R. 47-3-42, K.A.R. 47-6-2, K.A.R. 47-6-3, K.A.R. 47-6-4, and K.A.R. 47-7-2.”
(12) “30 U.S.C. 1272(e) and § 761.11 of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(2).”
(13) “§ 761.11 and 30 U.S.C. 1272(e)” shall be replaced by “K.A.R. 47-12-4 (a)(2) and K.S.A. 49-405b and 49-406 (f), and amendments thereto.”
(14) “§ 761.11 or 30 U.S.C. 1272(e)” shall be replaced by “K.A.R. 47-12-4 (a)(2) or K.S.A. 49-405b and 49-406 (f), and amendments thereto.”
(15) “30 U.S.C. 1272(e) or § 761.11” shall be replaced by “K.A.R. 47-12-4 (a)(2) or K.S.A. 49-405b and 49-406 (f), and amendments thereto or K.A.R. 47-12-4 (a)(2).”
(16) “Section 701(28) of the Act and § 700.5 of this chapter” shall be replaced by “K.S.A. 49-403(r), and amendments thereto and K.A.R. 47-2-75(a).”
(17) “§ 779.24(c) or § 783.24(c)” shall be replaced by “K.A.R. 47-3-42 (a)(18) or K.A.R. 47-10-1(a)(1)(G).”
(18) “§ 700.5 of this chapter” shall be replaced by “K.A.R. 47-2-75(a).”
(19) “Federal Register” shall be replaced by “Kansas Register.”
(20) “§ 773.13(d) of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(53).”
(21) “§ 840.14 or § 842.16 of this chapter” shall be replaced by “K.A.R. 47-15-1a (a)(2).”
(22) “§ 761.11,” “§ 761.11 of this chapter,” “§ 761.11(d)(1),” “§ 761.11(e)(2),” “§ 761.11(a) or (b),” “§ 761.11(c),” “§ 761.11(a),” and “§ 761.11(f) or (g)” shall be replaced by “K.A.R. 47-12-4 (a)(2).”
(23) “§ 761.12” shall be replaced by “K.A.R. 47-12-4 (a)(3).”
(24) “§ 761.16” shall be replaced by “K.A.R. 47-12-4 (a)(6).”
(25) “§ 761.17(d)” shall be replaced by “K.A.R. 47-12-4 (a)(7).”
(26) “§ 761.14” shall be replaced by “K.A.R. 47-12-4 (a)(4).”
(27) “§ 761.15” shall be replaced by “K.A.R. 47-12-4 (a)(5).”
(28) “Subchapter B of this chapter” shall be replaced by “K.A.R. 47-9-4.”
(29) “§ 761.5” shall be replaced by “K.A.R. 47-12-4 (a)(1).”
(30) “§§ 761.13 through 761.15” shall be replaced by “K.A.R. 47-12-4 (a)(4) and (5).”
(31) “Parts 764 and 769 of this chapter shall be replaced by “K.A.R. 47-12-4 (a)(15) through (21).”
(32) “§ 762.11(b) of this chapter,” “§ 762.11(a) of this chapter,” and “§ 762.11 of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(10).”
(33) “§ 764.13 (b) or (c)” and “§ 764.13(a)” shall be replaced by “K.A.R. 47-12-4 (a)(15).”

(34) “§ 764.17” and “§ 764.17(e)” shall be replaced by “K.A.R. 47-12-4 (a)(17).”


30 CFR 761.5 Definitions. For the purposes of this part–

Cemetery means any area of land where human bodies are interred.

Community or institutional building means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

Occupied dwelling means any building that is currently being used on a regular or temporary basis for human habitation.

Public building means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

Public park means an area or portion of an area dedicated or designated by any Federal, State, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

Public road means a road (a) which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction; (c) for which there is substantial (more than incidental) public use; and (d) which meets road construction standards for other public roads of the same classification in the local jurisdiction.

Publicly-owned park means a public park that is owned by a Federal, State or local governmental entity.

Significant forest cover means an existing plant community consisting predominantly of trees and other woody vegetation. The Secretary of Agriculture shall decide on a case-by-case basis whether the forest cover is significant within those national forests west of the 100th meridian.

Significant recreational, timber, economic, or other values incompatible with surface coal mining operations means those values to be evaluated for their significance which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas. Those values to be evaluated for their importance include:

(a) Recreation, including hiking, boating, camping, skiing or other related outdoor activities;

(b) Timber manager and silviculture;

(c) Agriculture, aquaculture or production of other natural, processed or manufactured
products which enter commerce;

(d) Scenic, historic, archeologic, esthetic, fish, wildlife, plants or cultural interests.

Surface operations and impacts incident to an underground coal mine means all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water resources of the area, including all activities listed in section 701(28) of the Act and the definition of surface coal mining operations appearing in § 700.5 of this chapter.

Valid existing rights means a set of circumstances under which a person may, subject to regulatory authority approval, conduct surface coal mining operations on lands where 30 U.S.C. 1272(e) and § 761.11 would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of § 761.11 and 30 U.S.C. 1272(e). A person seeking to exercise valid existing rights must comply with all other pertinent requirements of the Act and the applicable regulatory program.

(a) Property rights demonstration. Except as provided in paragraph (c) of this definition, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of § 761.11 or 30 U.S.C. 1272(e). Applicable State statutory or case law will govern interpretation of documents relied upon to establish property rights, unless Federal law provides otherwise. If no applicable State law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.

(b) Except as provided in paragraph (c) of this definition, a person claiming valid existing rights also must demonstrate compliance with one of the following standards:

(1) Good faith/all permits standard. All permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of § 761.11 or 30 U.S.C. 1272(e). At a minimum, an application must have been submitted for any permit required under subchapter G of this chapter or its State program counterpart.

(2) Needed for and adjacent standard. The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of § 761.11 or 30 U.S.C. 1272(e). To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of § 761.11 or 30 U.S.C. 1272(e).

Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of § 761.11 or 30 U.S.C. 1272(e) when the regulatory authority approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the agency making the determination may consider factors such as:

(i) The extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of § 761.11 or 30 U.S.C. 1272(e)
depend upon use of that land for surface coal mining operations.

(ii) The extent to which plans used to obtain financing for the operation before the land came under the protection of § 761.11 or 30 U.S.C. 1272(e) rely upon use of that land for surface coal mining operations.

(iii) The extent to which investments in the operation before the land came under the protection of § 761.11 or 30 U.S.C. 1272(e) rely upon use of that land for surface coal mining operations.

(iv) Whether the land lies within the area identified on the life-of-mine map submitted under § 779.24(c) or § 783.24(c) of this chapter before the land came under the protection of § 761.11.

(c) Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by § 761.11 or 30 U.S.C. 1272(e) must demonstrate that one or more of the following circumstances exist if the road is included within the definition of "surface coal mining operations" in § 700.5 of this chapter:

(1) The road existed when the land upon which it is located came under the protection of § 761.11 or 30 U.S.C. 1272(e), and the person has a legal right to use the road for surface coal mining operations.

(2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of § 761.11 or 30 U.S.C. 1272(e), and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations.

(3) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of § 761.11 or 30 U.S.C. 1272(e).

(4) Valid existing rights exist under paragraphs (a) and (b) of this definition. We, us, and our refer to the Office of Surface Mining Reclamation and Enforcement. You and your refer to a person who claims or seeks to obtain an exception or waiver authorized by § 761.11 or 30 U.S.C. 1272(e). [48 FR 41348, Sept. 14, 1983, as amended at 52 FR 4261, Feb. 10, 1987; 56 FR 65634, Dec. 17, 1991; 64 FR 70831, Dec. 17, 1999] Effective Date Note: At 51 FR 41960, Nov. 20, 1986 in § 761.5, the definition of significant recreational, timber, economic, or other values incompatible with surface coal mining operations was suspended insofar as the listed values are evaluated for compatibility solely in terms of reclaimability.

30 CFR 761.11 Areas where surface coal mining operations are prohibited or limited. You may not conduct surface coal mining operations on the following lands unless you either have valid existing rights, as determined under § 761.16, or qualify for the exception for existing operations under § 761.12:

(a) Any lands within the boundaries of:

(1) The National Park System;

(2) The National Wildlife Refuge System;

(3) The National System of Trails;

(4) The National Wilderness Preservation System;

(5) The Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, 16 U.S.C. 1276(a), or study rivers or study river corridors established in any guidelines issued under that Act; or
(6) National Recreation Areas designated by Act of Congress.

(b) Any Federal lands within a national forest. This prohibition does not apply if the Secretary finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations, and:

(1) Any surface operations and impacts will be incident to an underground coal mine; or

(2) With respect to lands that do not have significant forest cover within national forests west of the 100th meridian, the Secretary of Agriculture has determined that surface mining is in compliance with the Act, the Multiple-Use Sustained Yield Act of 1960, 16 U.S.C. 528-531; the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C. 181 et seq.; and the National Forest Management Act of 1976, 16 U.S.C. 1600 et seq. This provision does not apply to the Custer National Forest.

(c) Any lands where the operation would adversely affect any publicly owned park or any place in the National Register of Historic Places. This prohibition does not apply if, as provided in § 761.17(d), the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or place jointly approve the operation.

(d) Within 100 feet, measured horizontally, of the outside right-of-way line of any public road. This prohibition does not apply:

(1) Where a mine access or haul road joins a public road, or

(2) When, as provided in § 761.14, the regulatory authority (or the appropriate public road authority designated by the regulatory authority) allows the public road to be relocated or closed, or the area within the protected zone to be affected by the surface coal mining operation, after:

(i) Providing public notice and opportunity for a public hearing; and

(ii) Finding in writing that the interests of the affected public and landowners will be protected.

(e) Within 300 feet, measured horizontally, of any occupied dwelling. This prohibition does not apply when:

(1) The owner of the dwelling has provided a written waiver consenting to surface coal mining operations within the protected zone, as provided in § 761.15; or

(2) The part of the operation to be located closer than 300 feet to the dwelling is an access or haul road that connects with an existing public road on the side of the public road opposite the dwelling.

(f) Within 300 feet, measured horizontally, of any public building, school, church, community or institutional building, or public park.

(g) Within 100 feet, measured horizontally, of a cemetery. This prohibition does not apply if the cemetery is relocated in accordance with all applicable laws and regulations. [64 FR 70832, Dec. 17, 1999]

**30 CFR 761.12 Exception for existing operations.** The prohibitions and limitations of § 761.11 do not apply to:

(a) Surface coal mining operations for which a valid permit, issued under Subchapter G of this chapter or an approved State regulatory program, exists when the land comes under the protection of § 761.11. This exception applies only to lands within the permit area as it exists when the land comes under the protection of § 761.11.

(b) With respect to operations subject to Subchapter B of this chapter, lands upon which validly authorized surface coal mining operations exist when the land comes under the protection
of 30 U.S.C. 1272(e) or § 761.11. [64 FR 70833, Dec. 17, 1999]

**30 CFR 761.14 Procedures for relocating or closing a public road or waiving the prohibition on surface coal mining operations within the buffer zone of a public road.** (a) This section does not apply to:

1. Lands for which a person has valid existing rights, as determined under § 761.16.
2. Lands within the scope of the exception for existing operations in § 761.12.
3. Access or haul roads that join a public road, as described in § 761.11(d)(1).

(b) You must obtain any necessary approvals from the authority with jurisdiction over the road if you propose to:

1. Relocate a public road;
2. Close a public road; or
3. Conduct surface coal mining operations within 100 feet, measured horizontally, of the outside right-of-way line of a public road.

(c) Before approving an action proposed under paragraph (b) of this section, the regulatory authority, or a public road authority that it designates, must determine that the interests of the public and affected landowners will be protected. Before making this determination, the authority must:

1. Provide a public comment period and opportunity to request a public hearing in the locality of the proposed operation;
2. If a public hearing is requested, publish appropriate advance notice at least two weeks before the hearing in a newspaper of general circulation in the affected locality; and
3. Based upon information received from the public, make a written finding as to whether the interests of the public and affected landowners will be protected. If a hearing was held, the authority must make this finding within 30 days after the hearing. If no hearing was held, the authority must make this finding within 30 days after the end of the public comment period. [64 FR 70833, Dec. 17, 1999]

**30 CFR 761.15 Procedures for waiving the prohibition on surface coal mining operations within the buffer zone of an occupied dwelling.** (a) This section does not apply to:

1. Lands for which a person has valid existing rights, as determined under § 761.16.
2. Lands within the scope of the exception for existing operations in § 761.12.
3. Access or haul roads that connect with an existing public road on the side of the public road opposite the dwelling, as provided in § 761.11(e)(2).

(b) If you propose to conduct surface coal mining operations within 300 feet, measured horizontally, of any occupied dwelling, the permit application must include a written waiver by lease, deed, or other conveyance from the owner of the dwelling. The waiver must clarify that the owner and signator had the legal right to deny mining and knowingly waived that right. The waiver will act as consent to surface coal mining operations within a closer distance of the dwelling as specified.

(c) If you obtained a valid waiver before August 3, 1977, from the owner of an occupied dwelling to conduct operations within 300 feet of the dwelling, you need not submit a new waiver.

(d) If you obtain a valid waiver from the owner of an occupied dwelling, that waiver will remain effective against subsequent purchasers who had actual or constructive knowledge of the
existing waiver at the time of purchase. A subsequent purchaser will be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to State laws or if surface coal mining operations have entered the 300-foot zone before the date of purchase. [64 FR 70833, Dec. 17, 1999]

30 CFR 761.16 Submission and processing of requests for valid existing rights determinations. (a) Basic framework for valid existing rights determinations. The following table identifies the agency responsible for making a valid existing rights determination and the definition that it must use, based upon which paragraph of § 761.11 applies and whether the request includes Federal lands.

<table>
<thead>
<tr>
<th>Paragraph of 761.11 that provides protection</th>
<th>Protected feature</th>
<th>Type of land to which request pertains</th>
<th>Agency responsible for determination</th>
<th>Applicable definition of valid existing rights</th>
</tr>
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<tbody>
<tr>
<td>(a)</td>
<td>National Parks, wildlife refuge, etc.</td>
<td>Federal</td>
<td>OSM</td>
<td>Federal¹</td>
</tr>
<tr>
<td>..</td>
<td>National Parks, wildlife refuge, etc.</td>
<td>Non-Federal</td>
<td>Regulatory Authority</td>
<td>Federal¹</td>
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<tr>
<td>(a)</td>
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<td>Federal</td>
<td>OSM</td>
<td>Regulatory program²</td>
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<tr>
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<td>Public parks and historic places .....</td>
<td>Does not matter</td>
<td>Regulatory Authority</td>
<td>Regulatory program²</td>
</tr>
<tr>
<td>(b)</td>
<td>Public Roads</td>
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<td>Regulatory Authority</td>
<td>Regulatory program²</td>
</tr>
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<td>..</td>
<td>Occupied dwellings</td>
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<td>Regulatory Authority</td>
<td>Regulatory program²</td>
</tr>
<tr>
<td>(c)</td>
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<td>..</td>
<td>Regulatory Authority</td>
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</tbody>
</table>

¹Definition in 30 CFR 761.5.
²Definition in applicable State or Federal regulatory program under 30 CFR Chapter VII, Subchapter T.
³Neither 30 U.S.C. 1272(e) nor 30 CFR 761.11 provides special protection for non-Federal lands within national forests. Therefore, this table does not include a category for those lands.

(b) What you must submit as part of a request for a valid existing rights determination. You must submit a request for a valid existing rights determination to the appropriate agency
under paragraph (a) of this section if you intend to conduct surface coal mining operations on the basis of valid existing rights under § 761.11 or wish to confirm the right to do so. You may submit this request before preparing and submitting an application for a permit or boundary revision for the land, unless the applicable regulatory program provides otherwise.

(1) Requirements for property rights demonstration. You must provide a property rights demonstration under paragraph (a) of the definition of valid existing rights in § 761.5 if your request relies upon the good faith/all permits standard or the needed for and adjacent standard in paragraph (b) of the definition of valid existing rights in § 761.5. This demonstration must include the following items:

(i) A legal description of the land to which your request pertains.

(ii) Complete documentation of the character and extent of your current interests in the surface and mineral estates of the land to which your request pertains.

(iii) A complete chain of title for the surface and mineral estates of the land to which your request pertains.

(iv) A description of the nature and effect of each title instrument that forms the basis for your request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities.

(v) A description of the type and extent of surface coal mining operations that you claim the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with State property law.

(vi) Complete documentation of the nature and ownership, as of the date that the land came under the protection of § 761.11 or 30 U.S.C. 1272(e), of all property rights for the surface and mineral estates of the land to which your request pertains.

(vii) Names and addresses of the current owners of the surface and mineral estates of the land to which your request pertains.

(viii) If the coal interests have been severed from other property interests, documentation that you have notified and provided reasonable opportunity for the owners of other property interests in the land to which your request pertains to comment on the validity of your property rights claims.

(ix) Any comments that you receive in response to the notification provided under paragraph (b)(1)(viii) of this section.

(2) Requirements for good faith/all permits standard. If your request relies upon the good faith/all permits standard in paragraph (b)(1) of the definition of valid existing rights in § 761.5, you must submit the information required under paragraph (b)(1) of this section. You also must submit the following information about permits, licenses, and authorizations for surface coal mining operations on the land to which your request pertains:

(i) Approval and issuance dates and identification numbers for any permits, licenses, and authorizations that you or a predecessor in interest obtained before the land came under the protection of § 761.11 or 30 U.S.C. 1272(e).

(ii) Application dates and identification numbers for any permits, licenses, and authorizations for which you or a predecessor in interest submitted an application before the land came under the protection of § 761.11 or 30 U.S.C. 1272(e).

(iii) An explanation of any other good faith effort that you or a predecessor in interest made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of § 761.11 or 30 U.S.C. 1272(e).
(3) **Requirements for needed for and adjacent standard.** If your request relies upon the needed for and adjacent standard in paragraph (b)(2) of the definition of valid existing rights in § 761.5, you must submit the information required under paragraph (b)(1) of this section. In addition, you must explain how and why the land is needed for and immediately adjacent to the operation upon which your request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of § 761.11 or 30 U.S.C. 1272(e).

(4) **Requirements for standards for mine roads.** If your request relies upon one of the standards for roads in paragraphs (c)(1) through (c)(3) of the definition of valid existing rights in § 761.5, you must submit satisfactory documentation that:

(i) The road existed when the land upon which it is located came under the protection of § 761.11 or 30 U.S.C. 1272(e), and you have a legal right to use the road for surface coal mining operations;

(ii) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of § 761.11 or 30 U.S.C. 1272(e), and, under the document creating the right of way or easement, and under any subsequent conveyances, you have a legal right to use or construct a road across that right of way or easement to conduct surface coal mining operations; or

(iii) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of § 761.11 or 30 U.S.C. 1272(e).

(c) **Initial review of request.** (1) The agency must conduct an initial review to determine whether your request includes all applicable components of the submission requirements of paragraph (b) of this section. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.

(2) If your request does not include all applicable components of the submission requirements of paragraph (b) of this section, the agency must notify you and establish a reasonable time for submission of the missing information.

(3) When your request includes all applicable components of the submission requirements of paragraph (b) of this section, the agency must implement the notice and comment requirements of paragraph (d) of this section.

(4) If you do not provide information that the agency requests under paragraph (c)(2) of this section within the time specified or as subsequently extended, the agency must issue a determination that you have not demonstrated valid existing rights, as provided in paragraph (e)(4) of this section.

(d) **Notice and comment requirements and procedures.** (1) When your request satisfies the completeness requirements of paragraph (c) of this section, the agency must publish a notice in a newspaper of general circulation in the county in which the land is located. This notice must invite comment on the merits of the request. Alternatively, the agency may require that you publish this notice and provide the agency with a copy of the published notice. We will publish a similar notice in the Federal Register if your request involves Federal lands within an area listed in § 761.11(a) or (b). Each notice must include:

(i) The location of the land to which the request pertains.

(ii) A description of the type of surface coal mining operations planned.

(iii) A reference to and brief description of the applicable standard(s) under the definition of valid existing rights in § 761.5.
(A) If your request relies upon the good faith/all permits standard or the needed for and adjacent standard in paragraph (b) of the definition of valid existing rights in § 761.5, the notice also must include a description of the property rights that you claim and the basis for your claim.

(B) If your request relies upon the standard in paragraph (c)(1) of the definition of valid existing rights in § 761.5, the notice also must include a description of the basis for your claim that the road existed when the land came under the protection of § 761.11 or 30 U.S.C. 1272(e). In addition, the notice must include a description of the basis for your claim that you have a legal right to use that road for surface coal mining operations.

(C) If your request relies upon the standard in paragraph (c)(2) of the definition of valid existing rights in § 761.5, the notice also must include a description of the basis for your claim that a properly recorded right of way or easement for a road in that location existed when the land came under the protection of § 761.11 or 30 U.S.C. 1272(e). In addition, the notice must include a description of the basis for your claim that, under the document creating the right of way or easement, and under any subsequent conveyances, you have a legal right to use or construct a road across the right of way or easement to conduct surface coal mining operations.

(iv) If your request relies upon one or more of the standards in paragraphs (b), (c)(1), and (c)(2) of the definition of valid existing rights in § 761.5, a statement that the agency will not make a decision on the merits of your request if, by the close of the comment period under this notice or the notice required by paragraph (d)(3) of this section, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of your claim.

(v) A description of the procedures that the agency will follow in processing your request.

(vi) The closing date of the comment period, which must be a minimum of 30 days after the publication date of the notice.

(vii) A statement that interested persons may obtain a 30-day extension of the comment period upon request.

(viii) The name and address of the agency office where a copy of the request is available for public inspection and to which comments and requests for extension of the comment period should be sent.

(2) The agency must promptly provide a copy of the notice required under paragraph (d)(1) of this section to:

(i) All reasonably locatable owners of surface and mineral estates in the land included in your request.

(ii) The owner of the feature causing the land to come under the protection of § 761.11, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of § 761.11. For example, both the landowner and the State Historic Preservation Officer must be notified if surface coal mining operations would adversely impact any site listed on the National Register of Historic Places. As another example, both the surface owner and the National Park Service must be notified if the request includes non-Federal lands within the authorized boundaries of a unit of the National Park System.

(3) The letter transmitting the notice required under paragraph (d)(2) of this section must provide a 30-day comment period, starting from the date of service of the letter, and specify that another 30 days is available upon request. At its discretion, the agency responsible for the
determination of valid existing rights may grant additional time for good cause upon request. The agency need not necessarily consider comments received after the closing date of the comment period.

(e) How a decision will be made.  (1) The agency responsible for making the determination of valid existing rights must review the materials submitted under paragraph (b) of this section, comments received under paragraph (d) of this section, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the agency must notify you in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the agency deems necessary to remedy the inadequacy.

(2) Once the record is complete and adequate, the responsible agency must determine whether you have demonstrated valid existing rights. The decision document must explain how you have or have not satisfied all applicable elements of the definition of valid existing rights in § 761.5. It must contain findings of fact and conclusions, and it must specify the reasons for the conclusions.

(3) Impact of property rights disagreements. This paragraph applies only when your request relies upon one or more of the standards in paragraphs (b), (c)(1), and (c)(2) of the definition of valid existing rights in § 761.5.

(i) The agency must issue a determination that you have not demonstrated valid existing rights if your property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The agency will make this determination without prejudice, meaning that you may refile the request once the property rights dispute is finally adjudicated. This paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under paragraph (d)(1) or (d)(3) of this section.

(ii) If the record indicates disagreement as to the accuracy of your property rights claims, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the agency must evaluate the merits of the information in the record and determine whether you have demonstrated that the requisite property rights exist under paragraph (a), (c)(1), or (c)(2) of the definition of valid existing rights in § 761.5, as appropriate. The agency must then proceed with the decision process under paragraph (e)(2) of this section.

(4) The agency must issue a determination that you have not demonstrated valid existing rights if you do not submit information that the agency requests under paragraph (c)(2) or (e)(1) of this section within the time specified or as subsequently extended. The agency will make this determination without prejudice, meaning that you may refile a revised request at any time.

(5) After making a determination, the agency must:

(i) Provide a copy of the determination, together with an explanation of appeal rights and procedures, to you, to the owner or owners of the land to which the determination applies, to the owner of the feature causing the land to come under the protection of § 761.11, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of § 761.11.

(ii) Publish notice of the determination in a newspaper of general circulation in the county in which the land is located. Alternatively, the agency may require that you publish this notice and provide a copy of the published notice to the agency. We will publish the
determination, together with an explanation of appeal rights and procedures, in the Federal Register if your request includes Federal lands within an area listed in § 761.11(a) or (b).

(f) Administrative and judicial review. A determination that you have or do not have valid existing rights is subject to administrative and judicial review under §§ 775.11 and 775.13 of this chapter.

(g) Availability of records. The agency responsible for processing a request subject to notice and comment under paragraph (d) of this section must make a copy of that request available to the public in the same manner as the agency, when acting as the regulatory authority, must make permit applications available to the public under § 773.13(d) of this chapter. In addition, the agency must make records associated with that request, and any subsequent determination under paragraph (e) of this section, available to the public in accordance with the requirements and procedures of § 840.14 or § 842.16 of this chapter. [64 FR 70833, Dec. 17, 1999]

30 CFR 761.17 Regulatory authority obligations at time of permit application review. (a) Upon receipt of an administratively complete application for a permit for a surface coal mining operation, or an administratively complete application for revision of the boundaries of a surface coal mining operation permit, the regulatory authority must review the application to determine whether the proposed surface coal mining operation would be located on any lands protected under § 761.11.

(b) The regulatory authority must reject any portion of the application that would locate surface coal mining operations on land protected under § 761.11 unless:

(1) The site qualifies for the exception for existing operations under § 761.12;

(2) A person has valid existing rights for the land, as determined under § 761.16;

(3) The applicant obtains a waiver or exception from the prohibitions of § 761.11 in accordance with §§ 761.13 through 761.15; or

(4) For lands protected by § 761.11(c), both the regulatory authority and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with paragraph (d) of this section.

(c) Location verification. If the regulatory authority has difficulty determining whether an application includes land within an area specified in § 761.11(a) or within the specified distance from a structure or feature listed in § 761.11(f) or (g), the regulatory authority must request that the Federal, State, or local governmental agency with jurisdiction over the protected land, structure, or feature verify the location.

(1) The request for location verification must:

(i) Include relevant portions of the permit application.

(ii) Provide the agency with 30 days after receipt to respond, with a notice that another 30 days is available upon request.

(iii) Specify that the regulatory authority will not necessarily consider a response received after the comment period provided under paragraph (c)(1)(ii) of this section.

(2) If the agency does not respond in a timely manner, the regulatory authority may make the necessary determination based on available information.

(d) Procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks or historic places. (1) If the regulatory authority determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any
place included in the National Register of Historic Places, the regulatory authority must request that the Federal, State, or local agency with jurisdiction over the park or place either approve or object to the proposed operation. The request must:

(i) Include a copy of applicable parts of the permit application.
(ii) Provide the agency with 30 days after receipt to respond, with a notice that another 30 days is available upon request.
(iii) State that failure to interpose an objection within the time specified under paragraph (d)(1)(ii) of this section will constitute approval of the proposed operation.

(2) The regulatory authority may not issue a permit for a proposed operation subject to paragraph (d)(1) of this section unless all affected agencies jointly approve.

(3) Paragraphs (d)(1) and (d)(2) of this section do not apply to:
   (i) Lands for which a person has valid existing rights, as determined under 761.16.
   (ii) Lands within the scope of the exception for existing operations in 761.12. [64 FR 70836, Dec. 17, 1999]

30 CFR 761.200 Interpretative rule related to subsistence due to underground coal mining in areas designated by Act of Congress. OSM has adopted the following interpretation of rules promulgated in part 761.

(a) Interpretation of § 761.11--Areas where mining is prohibited or limited. Subsidence due to underground coal mining is not included in the definition of surface coal mining operations under section 701(28) of the Act and § 700.5 of this chapter and therefore is not prohibited in areas protected under section 522(e) of the Act.

(b) [Reserved] [64 FR 70866, Dec. 17, 1999]

30 CFR 762.5 Definitions. For purposes of this part:

Fragile lands means areas containing natural, ecologic, scientific, or esthetic resources that could be significantly damaged by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmarks, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and esthetic features, and areas of recreational value due to high environmental quality.

Historic lands means areas containing historic, cultural, or scientific resources. Examples of historic lands include archeological sites, properties listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, properties having religious or cultural significance to Native Americans or religious groups, and properties for which historic designation is pending.

Natural hazard lands means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches and areas of unstable geology.

Renewable resource lands means geographic areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.
Substantial legal and financial commitments in a surface coal mining operation means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. Costs of acquiring the coal in place, or the right to mine it alone without other significant investments, as described above, are not sufficient to constitute substantial legal and financial commitments. [48 FR 41350, Sept. 14, 1983, as amended at 52 FR 18795, May 19, 1987; 53 FR 26584, July 13, 1988]

30 CFR 762.11 Criteria for designating lands as unsuitable. (a) Upon petition an area shall be designated as unsuitable for all or certain types of surface coal mining operations, if the regulatory authority determines that reclamation is not technologically and economically feasible under the Act, this chapter or an approved State program.

(b) Upon petition an area may be (but is not required to be) designated as unsuitable for certain types of surface coal mining operations, if the operations will–

1. Be incompatible with existing State or local land use plans or programs;
2. Affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems;
3. Affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or
4. Affect natural hazard lands in which the operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

30 CFR 762.12 Additional criteria. (a) A State regulatory authority may establish additional or more stringent criteria for determining whether lands within the State should be designated as unsuitable for coal mining operations. Such criteria shall be approved pursuant to subchapter C of this chapter.

(b) The Secretary may establish additional criteria for determining whether Federal lands should be designated as unsuitable for surface mining operations.

(c) Additional criteria will be determined to be more stringent on the basis of whether they provide for greater protection of the public health, safety and welfare or the environment, such that areas beyond those specified in the criteria of this part would be designated as unsuitable for surface coal mining operations.

30 CFR 762.13 Land exempt from designation as unsuitable for surface coal mining operations. The requirements of this part do not apply to–

(a) Lands on which surface coal mining operations were being conducted on the date of enactment of the Act;
(b) Lands covered by a permit issued under the Act; or
(c) Lands where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977.

30 CFR 762.14 Applicability to lands designated as unsuitable by Congress. Pursuant to appropriate petitions, lands listed in § 761.11 of this chapter are subject to designation as unsuitable for all or certain types of surface coal mining operations under this part and parts 764
30 CFR 762.15 Exploration on land designated as unsuitable for surface coal mining operations. Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to section 522 of the Act and regulations of this subchapter does not prohibit coal exploration operations in the area, if conducted in accordance with the Act, this chapter, any approved State or Federal program, and other applicable requirements. Exploration operations on any lands designated unsuitable for surface coal mining operations must be approved by the regulatory authority under part 772 of this chapter, to ensure that exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining.

30 CFR 764.13 Petitions. (a) Right to petition. Any person having an interest which is or may be adversely affected has the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated. For the purpose of this Action, a person having an interest which is or may be adversely affected must demonstrate how he or she meets an “injury in fact” test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

(b) Designation. The regulatory authority shall determine what information must be provided by the petitioner to have an area designated as unsuitable for surface coal mining operations.

(1) At a minimum, a complete petition for designation shall include—

(i) The petitioner's name, address, telephone number, and notarized signature;

(ii) Identification of the petitioned areas, including its location and size, and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area;

(iii) An identification of the petitioner's interest which is or may be adversely affected by surface coal mining operations, including a statement demonstrating how the petitioner satisfies the requirements of paragraph (a) of this section;

(iv) A description of how mining of the area has affected or may adversely affect people, land, air, water, or other resources, including the petitioner's interests; and

(v) Allegations of fact and supporting evidence, covering all lands in the petition area, which tend to establish that the area is unsuitable for all or certain types of surface coal mining operations, pursuant to specific criteria of sections 522(a) (2) and (3) of the Act, assuming that contemporary mining practices required under applicable regulatory programs would be followed if the area were to be mined. Each of the allegations of fact should be specific as to the mining operation, if known, and the portion(s) of the petitioned area and petitioner's interests to which the allegation applies and be supported by evidence that tends to establish the validity of the allegations for the mining operation or portion of the petitioned areas.

(2) The regulatory authority may request that the petitioner provide other supplementary information which is readily available.

(c) Termination. The regulatory authority shall determine what information must be provided by the petitioner to terminate designations of lands as unsuitable for surface coal mining operations.

(1) At a minimum, a complete petition for termination shall include—

(i) The petitioner's name, address, telephone number, and notarized signature;

(ii) Identification of the petitioned area, including its location and size and a U.S.
Geological Survey topographic map outlining the perimeter of the petitioned area to which the termination petition applies;

(iii) An identification of the petitioner's interest which is or may be adversely affected by the designation that the area is unsuitable for surface coal mining operations including a statement demonstrating how the petitioner satisfies the requirements of paragraph (a) of this section;

(iv) Allegations of facts covering all lands for which the termination is proposed. Each of the allegations of fact shall be specific as to the mining operation, if any, and to portions of the petitioned area and petitioner's interests to which the allegation applies. The allegations shall be supported by evidence, not contained in the record of the designation proceeding, that tends to establish the validity of the allegations for the mining operation or portion of the petitioned area, assuming that contemporary mining practices required under applicable regulatory programs would be followed were the area to be mined. For areas previously and unsuccessfully proposed for termination, significant new allegations of facts and supporting evidence must be presented in the petition. Allegations and supporting evidence should also be specific to the basis for which the designation was made and tend to establish that the designation should be terminated on the following bases:

(A) Nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in § 762.11(b) of this chapter;
(B) Reclamation now being technologically and economically feasible if the designation was based on the criteria found in § 762.11(a) of this chapter; or
(C) Resources or conditions not being affected by surface coal mining operations, or in the case of land use plans, not being incompatible with surface coal mining operations during and after mining, if the designation was based on the criteria found in § 762.11(b) of this chapter;

(2) The State regulatory authority may request that the petitioner provide other supplementary information which is readily available.

30 CFR 764.15 Initial processing, recordkeeping, and notification requirements. (a)(1)
Within 30 days of receipt of a petition, the regulatory authority shall notify the petitioner by certified mail whether the petition is complete under § 764.13 (b) or (c). Complete, for a designation or termination petition, means that the information required under § 764.13 (b) or (c) has been provided.

(2) The regulatory authority shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the regulatory authority finds there are not any identified coal resources in that area, it shall return the petition to the petitioner with a statement of the findings.

(3) If the regulatory authority determines that the petition is incomplete, frivolous, or that the petitioner does not meet the requirements of § 764.13(a), it shall return the petition to the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete. A frivolous petition is one in which the allegations of harm lack serious merit.

(4) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the regulatory authority shall determine if the new petition presents significant new allegations of facts with evidence which tends to establish the allegations. If the
petition does not contain such material, the regulatory authority may choose not to consider the
petition and may return the petition to the petitioner, with a statement of its findings and a
reference to the record of the previous designation proceedings where the facts were considered.
(5) The regulatory authority shall notify the person who submits a petition of any
application for a permit received which includes any area covered by the petition.
(6) The regulatory authority may determine not to process any petition received insofar
as it pertains to lands for which an administratively complete permit application has been filed
and the first newspaper notice has been published. Based on such a determination, the regulatory
authority may issue a decision on a complete and accurate permit application and shall inform
the petitioner why the regulatory authority cannot consider the part of the petition pertaining to
the proposed permit area.
(b)(1) Promptly after a petition is received, the regulatory authority shall notify the
general public of the receipt of the petition by a newspaper advertisement placed in the locale of
the area covered by the petition, in the newspaper providing broadest circulation in the region of
the petitioned area and in any official State register of public notices. The regulatory authority
shall make copies of the petition available to the public and shall provide copies of the petition to
other interested governmental agencies, intervenors, persons with an ownership interest of record
in the property, and other persons known to the regulatory authority to have an interest in the
property. Proper notice to persons with an ownership interest of record in the property shall
comply with the requirements of applicable State law.
(2) Promptly after the determination that a petition is complete, the regulatory authority
shall request submissions from the general public of relevant information by a newspaper
advertisement placed once a week for two consecutive weeks in the locale of the area covered by
the petition, in the newspaper providing broadest circulation in the region of the petitioned area,
and in any official State register of public notices.
(c) Until three days before the regulatory authority holds a hearing under § 764.17, any
person may intervene in the proceeding by filing allegations of facts describing how the
designation determination directly affects the intervenor, supporting evidence, a short statement
identifying the petition to which the allegations pertain, and the intervenor's name, address and
telephone number.

(d) Beginning from the date a petition is filed, the regulatory authority shall compile and
maintain a record consisting of all documents relating to the petition filed with or prepared by
the regulatory authority. The regulatory authority shall make the record available to the public
for inspection free of charge and for copying at reasonable cost during all normal hours at the
main office of the regulatory authority. The regulatory authority shall also maintain information
at or near the area in which the petitioned land is located and make this information available to
the public for inspection free of charge and for copying at reasonable cost during all normal
business hours. At a minimum, this information shall include a copy of the petition. [48 FR

30 CFR 764.17 Hearing requirements. (a) Within 10 months after receipt of a complete
petition, the regulatory authority shall hold a public hearing in the locality of the area covered by
the petition. If all petitioners and intervenors agree, the hearing need not be held. The regulatory
authority may subpoena witnesses as necessary. The hearing may be conducted with cross-

examination of expert witnesses only. A record of the hearing shall be made and preserved
according to State law. No person shall bear the burden of proof or persuasion. All relevant parts
of the data base and inventory system and all public comments received during the public

comment period shall be included in the record and considered by the regulatory authority in its
decision on the petition.

(b)(1) The regulatory authority shall give notice of the date, time, and location of the

hearing to:

(i) Local, State, and Federal agencies which may have an interest in the decision on the

petition;

(ii) The petitioner and the intervenors; and

(iii) Any person known by the regulatory authority to have a property interest in the

petitioned area. Proper notice to persons with an ownership interest of record shall comply with

the requirements of applicable State law.

(2) Notice of the hearing shall be sent by certified mail to petitioners and intervenors, and

by regular mail to government agencies and property owners involved in the proceeding, and

postmarked not less than 30 days before the scheduled date of the hearing.

(c) The regulatory authority shall notify the general public of the date, time, and location

of the hearing by placing a newspaper advertisement once a week for 2 consecutive weeks in the

locale of the area covered by the petition and once during the week prior to the public hearing.
The consecutive weekly advertisement must begin between 4 and 5 weeks before the scheduled
date of the public hearing.

(d) The regulatory authority may consolidate in a single hearing the hearings required for

each of several petitions which relate to areas in the same locale.

(e) Prior to designating any land areas as unsuitable for surface coal mining operations,

the regulatory authority shall prepare a detailed statement, using existing and available

information on the potential coal resources of the area, the demand for coal resources, and the

impact of such designation on the environment, the economy, and the supply of coal.

(f) In the event that all petitioners and intervenors stipulate agreement prior to the

hearing, the petition may be withdrawn from consideration.

§ 764.19 Decision. (a) In reaching its decision, the regulatory authority shall use–

(1) The information contained in the data base and inventory system;

(2) Information provided by other governmental agencies;

(3) The detailed statement when it is prepared under § 764.17(e); and

(4) Any other relevant information submitted during the comment period.

(b) A final written decision shall be issued by the regulatory authority, including a

statement of reasons, within 60 days of completion of the public hearing, or, if no public hearing

is held, then within 12 months after receipt of the complete petition. The regulatory authority

shall simultaneously send the decision by certified mail to the petitioner and intervenors and by

regular mail to all other persons involved in the proceeding.

(c) The decision of the State regulatory authority with respect to a petition, or the failure

of the regulatory authority to act within the time limits set forth in this section, shall be subject to

judicial review by a court of competent jurisdiction in accordance with State law under section

526(e) of the Act and § 775.13 of this chapter. All relevant portions of the data base, inventory
system, and public comments received during the public comment period set by the regulatory authority shall be considered and included in the record of the administrative proceeding.

30 CFR 764.21 Data base and inventory system requirements. (a) The regulatory authority shall develop a data base and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.

(b) The regulatory authority shall include in the system information relevant to the criteria in § 762.11 of this chapter, including, but not limited to, information received from the United States Fish and Wildlife Service, the State Historic Preservation Officer, and the agency administering section 127 of the Clean Air Act, as amended (42 U.S.C. 7470 et seq.).

(c) The regulatory authority shall add to the data base and inventory system information–

(1) On potential coal resources of the State, demand for those resources, the environment, the economy and the supply of coal, sufficient to enable the regulatory authority to prepare the statements required by § 764.17(e); and

(2) That becomes available from petitions, publications, experiments, permit application, mining and reclamation operations, and other sources.

30 CFR 764.23 Public information. The regulatory authority shall: (a) Make the information in the data base and inventory system developed under § 764.21 available to the public for inspection free of charge and for copying at reasonable cost, except that specific information relating to location of properties proposed to be nominated to, or listed in, the National Register of Historic Places need not be disclosed if the regulatory authority determines that the disclosure of such information would create a risk of destruction or harm to such properties;

(b) Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

30 CFR 764.25 Regulatory authority responsibility for implementation. (a) The regulatory authority shall not issue permits which are inconsistent with designations made pursuant to part 761, 762, or 764 of this chapter.

(b) The regulatory authority shall maintain a map or other unified and cumulative record of areas designated unsuitable for all or certain types of surface coal mining operations.

(c) The regulatory authority shall make available to any person any information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment but excepting proprietary information on the chemical and physical properties of the coal.
K.A.R. 47-13-4. Training and certification of blasters; adoption by reference. (a) The following portions of the permanent program performance standards – standards for certification of blasters, CFR part 850, as in effect on July 1, 2001, are hereby adopted by reference and altered as specified in this regulation:
   (1) Definitions, 30 CFR 850.5;
   (2) training, 30 CFR 850.13;
   (3) examination, 30 CFR 850.14, except that for the purposes of this section only, the term "regulatory authority" shall be replaced by "secretary-approved blaster training program director"; and
   (4) certification, 30 CFR 850.15, except that for the purposes of 30 CFR 850.15(a) only, "regulatory authority" shall be replaced by "state fire marshal."

(b) The following phrase and citation shall be replaced with the phrase and citation specified in this subsection wherever the phrase and citation appear in the text of the federal regulations adopted by reference in this regulation:
   (1) § 850.13(b) shall be replaced by "K.A.R. 47-13-4 (a)(2)."
   (2) "This part" shall be replaced by "these regulations."

(c) The term "secretary-approved blaster training program director" shall mean the person who is in charge of a given blaster training program that has been specifically approved by the secretary as being in accordance with the state act, the regulations, and the state program.

(Approved by and implementing K.S.A. 49-405 and 49-405a; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997; amended December 1, 2006.)

30 CFR 850.1 Scope. This part establishes the requirements and the procedures applicable to the development of regulatory programs for training, examination, and certification of persons engaging in or directly responsible for the use of explosives in surface coal mining operations.

30 CFR 850.5 Definition. As used in this part–
Blaster means a person directly responsible for the use of explosives in surface coal mining operations who is certified under this part.

30 CFR 850.13 Training. (a) The regulatory authority shall establish procedures which require that–
   (1) Persons seeking to become certified as blasters receive training including, but not limited to, the technical aspects of blasting operations and State and Federal laws governing the storage, transportation, and use of explosives; and
   (2) Persons who are not certified and who are assigned to a blasting crew or assist in the use of explosives receive direction and on-the-job training from a blaster.

   (b) The regulatory authority shall ensure that courses are available to train persons responsible for the use of explosives in surface coal mining operations. The courses shall provide training and discuss practical applications of–
   (1) Explosives, including–
(i) Selection of the type of explosive to be used;
(ii) Determination of the properties of explosives which will produce desired results at an acceptable level of risk; and
(iii) Handling, transportation, and storage;
(2) Blast designs, including–
(i) Geologic and topographic considerations;
(ii) Design of a blast hole, with critical dimensions;
(iii) Pattern design, field layout, and timing of blast holes; and
(iv) Field applications;
(3) Loading blastholes, including priming and booster ing;
(4) Initiation systems and blasting machines;
(5) Blasting vibrations, airblast, and flyrock, including–
(i) Monitoring techniques, and
(ii) Methods to control adverse affects;
(6) Secondary blasting applications;
(7) Current Federal and State rules applicable to the use of explosives;
(8) Blast records;
(9) Schedules;
(10) Preblasting surveys, including–
(i) Availability,
(ii) Coverage, and
(iii) Use of in-blast design;
(11) Blast-plan requirements;
(12) Certification and training;
(13) Signs, warning signals, and site control;
(14) Unpredictable hazards, including–
(i) Lightning,
(ii) Stray currents,
(iii) Radio waves, and
(iv) Misfires.

30 CFR 850.14 Examination. (a) The regulatory authority shall ensure that candidates for blaster certification are examined by reviewing and verifying the–

(1) Competence of persons directly responsible for the use of explosives in surface coal mining operations through a written examination in technical aspects of blasting and State and Federal laws governing the storage, use, and transportation of explosives; and
(2) Practical field experience of the candidates as necessary to qualify a person to accept the responsibility for blasting operations in surface coal mining operations. Such experience shall demonstrate that the candidate possesses practical knowledge of blasting techniques, understands the hazards involved in the use of explosives, and otherwise has exhibited a pattern of conduct consistent with the acceptance of responsibility for blasting operations.

(b) Applicants for blaster certification shall be examined, at a minimum, in the topics set forth in § 850.13(b).

30 CFR 850.15 Certification. (a) Issuance of certification. The regulatory authority shall certify
for a fixed period those candidates examined and found to be competent and to have the necessary experience to accept responsibility for blasting operations in surface coal mining operations.

(b) Suspension and revocation. (1) The regulatory authority, when practicable, following written notice and opportunity for a hearing, may, and upon a finding of willful conduct, shall suspend or revoke the certification of a blaster during the term of the certification or take other necessary action for any of the following reasons:
   (i) Noncompliance with any order of the regulatory authority.
   (ii) Unlawful use in the work place of, or current addiction to, alcohol, narcotics, or other dangerous drugs.
   (iii) Violation of any provision of the State or Federal explosives laws or regulations.
   (iv) Providing false information or a misrepresentation to obtain certification.
   (2) If advance notice and opportunity for hearing cannot be provided, an opportunity for a hearing shall be provided as soon as practical following the suspension, revocation, or other adverse action.
   (3) Upon notice of a revocation, the blaster shall immediately surrender to the regulatory authority the revoked certificate.

(c) Recertification. The regulatory authority may require the periodic reexamination, training, or other demonstration of continued blaster competency.

(d) Protection of certification. Certified blasters shall take every reasonable precaution to protect their certificates from loss, theft, or unauthorized duplication. Any such occurrence shall be reported immediately to the certifying authority.

(e) Conditions. The regulatory authority shall specify conditions for maintaining certification which shall include the following:
   (1) A blaster shall immediately exhibit his or her certificate to any authorized representative of the regulatory authority or the Office upon request.
   (2) Blasters' certifications shall not be assigned or transferred.
   (3) Blasters shall not delegate their responsibility to any individual who is not a certified blaster.

K.A.R. 47-13-5. Responsibilities of operators and blasters-in-charge. (a) Each operator shall perform the following:
   (1) Designate a blaster-in-charge for each blast to be detonated in surface coal mining and reclamation operations;
   (2) ensure that the designated blaster-in-charge is properly certified;
   (3) ensure that each employee who performs blasting tasks under the supervision of a blaster-in-charge has adequate training;
   (4) limit the size of a blasting crew to 12 persons, supervised by a blaster-in-charge who is continuously and readily accessible to crew members in preparing and executing a blast. A larger blasting crew may be approved by the secretary if these conditions exist:
      (A) Unusual circumstances or mining methods are involved; and
      (B) the operator ensures that the blaster-in-charge can perform the following:
         (i) Provide adequate, direct supervision to crew members;
         (ii) remain in control of blast design, preparation, and execution; and
         (iii) assure that blasting complies with the applicable regulations; and
      (5) ensure that each blaster-in-charge shall supervise no more than one crew at any given
time.

(b) Each blaster-in-charge shall fulfill these requirements:
   (1) Be certified by the state fire marshal for each blasting operation conducted in the state of Kansas;
   (2) ensure that blast design and execution meet the applicable standards;
   (3) directly supervise blast preparation and execution at the blast site to ensure that such standards are met;
   (4) be present at the site when the blast is detonated;
   (5) ensure that each member of each blasting crew has adequate training to perform assigned tasks in compliance with the applicable standards; and
   (6) limit to 12 the number of persons being supervised at any given time in preparing and executing a blast at one operational pit at the site.

(c) After instructions from the blaster-in-charge and under the direct supervision of the blaster-in-charge, members of the blasting crew may engage in these activities:
   (1) Perform general blasting operations;
   (2) load and unload explosives for use in blasting;
   (3) transport explosives at or near the job site;
   (4) load explosives into drill holes; and
   (5) stem or otherwise prepare explosives for detonation.

(d) The blaster-in-charge shall retain full responsibility for all blasting and for the use of explosives. These responsibilities shall include the following:
   (1) Keeping blasting logs and records;
   (2) supervising the blasting-related activities of the workers over which the supervisor is in charge; and
   (3) ensuring that each person under the supervisor's charge has the training necessary to perform the person's assigned tasks safely and in accordance with the applicable regulations.


(b) Proof of completion of an approved blaster training program shall be filed with an applicant's application for certification by the state fire marshal. (Authorized by and implementing K.S.A. 49-405 and 49-405a; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997.)
K.A.R. 47-14-7. Employee financial interest: adoption by reference. (a) The following federal regulations, as in effect on July 1, 2001, are adopted by reference, except as otherwise indicated in this regulation:

1. Responsibility, 30 CFR 705.4 (a) and (c), deleting subsection (b);
2. penalties, 30 CFR 705.6 (b), deleting subsection (a);
3. who shall file, 30 CFR 705.11 (a), (b), (c), and (d), deleting subsection (e);
4. when to file, 30 CFR 705.13;
5. where to file, 30 CFR 705.15;
6. what to report, 30 CFR 705.17;
7. gifts and gratuities, 30 CFR 705.18;
8. resolving prohibited interests, 30 CFR 705.19 (a), deleting subsection (b); and
9. appeals procedures, 30 CFR 705.21.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

1. “Act” shall be replaced by the term “state act,” except in 30 CFR 705.6(d), where the term “Act” shall mean “the surface mining control and reclamation act of 1977, Pub. L. 95-87.”
2. “Head of each State Regulatory Authority” and “Head of the State Regulatory Authority” shall be replaced by the term “secretary of the Kansas department of health and environment.”
3. “This section” and “this part” shall be replaced by “these regulations.”
4. “§ 705.11” and “§ 705.11 (b), (c), and (d)” shall be replaced by “K.A.R. 47-14-7 (a)(3).”
5. “§ 705.13(a)” shall be replaced by “K.A.R. 47-14-7 (a)(4).”
6. “§ 705.6(a)” shall be replaced by “K.S.A. 49-404.”
7. “§ 705.19” shall be replaced by “K.A.R. 47-14-7 (a)(8).”
8. “Section 517(g) of the Act” and “section 517(g)” shall be replaced by “K.S.A. 49-404, and amendments thereto.”

30 CFR 705.4 Responsibility. (a) The Head of each State Regulatory Authority shall;

1. Provide advice, assistance, and guidance to all State employees required to file statements pursuant to § 705.11;
2. Promptly review the statement of employment and financial interests and supplements, if any, filed by each employee, to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in an underground or surface coal mining operation;
3. Resolve prohibited financial interest situations by ordering or initiating remedial action or by reporting the violations to the Director who is responsible for initiating action to impose the penalties of the Act;
(4) Certify on each statement that review has been made, that prohibited financial interests, if any, have been resolved, and that no other prohibited interests have been identified from the statement;
(5) Submit to the Director such Statistics and information as he or she may request to enable preparation of the required annual report to Congress;
(6) Submit to the Director the initial listing and the subsequent annual listings of positions as required by § 705.11 (b), (c), and (d);
(7) Furnish a blank statement 45 days in advance of the filing date established by § 705.13(a) to each State employee required to file a statement; and
(8) Inform annually each State employee required to file a statement with the Head of the State Regulatory Authority, or such other official designated by State law or regulation, of the name, address, and telephone number of the person whom they may contact for advice and counseling.

(c) State Regulatory Authority employees performing any duties or functions under the Act shall:
(1) Have no direct or indirect financial interest in coal mining operations;
(2) File a fully completed statement of employment and financial interest 120 days after these regulations become effective or upon entrance to duty, and annually thereafter on the specified filing date; and
(3) Comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.
(d) Members of advisory boards and commissions established in accordance with State laws or regulations to represent multiple interests, who perform a function or duty under the Act, shall recuse themselves from proceedings which may affect their direct or indirect financial interests. [42 FR 56060, Oct. 20, 1977, as amended at 51 FR 37122, Oct. 17, 1986; 56 FR 46987, Sept. 17, 1991]

30 CFR 705.6 Penalties. (a) Criminal penalties are imposed by section 517(g) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87. Section 517(g) prohibits each employee of the State Regulatory Authority who performs any function or duty under the Act from having a direct or indirect financial interest in any underground or surface coal mining operation. The Act provides that whoever knowingly violates the provisions of section 517(g) shall, upon conviction, be punished by a fine of not more than $2,500, or by imprisonment of not more than one year, or by both.
(b) Regulatory penalties are imposed by this part. The provisions in section 517(g) of the Act make compliance with the financial interest requirements a condition of employment for employees of the State Regulatory Authority who perform any functions or duties under the Act. Accordingly, an employee who fails to file the required statement will be considered in violation of the intended employment provisions of section 517(g) and will be subject to removal from his or her position.

30 CFR 705.11 Who shall file. (a) Any employee who performs any function or duty under the Act is required to file a statement of employment and financial interests. Members of advisory boards and commissions established in accordance with State laws or regulations to represent multiple interests, who perform a function or duty under the Act, must file a statement of employment and financial interests. An employee who occupies a position which has been determined by the Head of the State Regulatory Authority not to involve performance of any
function or duty under the Act or who is no longer employed by the State Regulatory Authority at the time a filing is due, is not required to file a statement.

(b) The Head of each State Regulatory Authority shall prepare a list of those positions within the State Regulatory Authority that do not involve performance of any functions or duties under the Act. State Regulatory Authorities may be organized to include more activities than are covered by the Act. For example, if a State has identified its Department of Natural Resources as the State Regulatory Authority there may be only one or two offices within that Department which have employees who perform any functions, or duties under the Act. In those cases, the Head of the State Regulatory Authority shall list the title of boards, offices, bureaus or divisions within the State Regulatory Authority which do not perform any functions or duties under the Act and list the positions not performing functions or duties under the Act for only those boards, offices, bureaus or divisions that do have some employees performing functions or duties under the Act. Only those employees who are employed in a listed organizational unit or who occupy a listed position will be exempted from the filing requirements of section 517(g) of the Act.

(c) The Head of each State Regulatory Authority shall prepare and submit to the director, an initial listing of positions that do not involve performance of any functions or duties under the Act within 60 days of the effective date of these regulations.

(d) The Head of each State Regulatory Authority shall annually review and update this listing. For monitoring and reporting reasons, the listing must be submitted to the Director and must contain a written justification for inclusion of the positions listed. Proposed revisions or a certification that revision is not required shall be submitted to the Director by no later than September 30 of each year. The Head of each State Regulatory Authority may revise the listing by the addition or deletion of positions at any time he or she determines such revisions are required to carry out the purpose of the law or the regulations of this part. Additions to and deletions from the listing of positions are effective upon notification to the incumbents of the positions added or deleted.

(e) The Secretary or the Director may modify the listing at any time one or both of them determines that the listing submitted by the Head of a State Regulatory Authority indicates that coverage is not sufficient to carry out the purpose of the law or the regulations of this part. [42 FR 56060, Oct. 20, 1977, as amended at 51 FR 37122, Oct. 17, 1986]

CFR 705.13 When to file. (a) Employees and members of advisory boards and commissions representing multiple interests performing functions or duties under the Act shall file:

(1) Within 120 days of the effective date of these regulations; and

(2) Annually on February 1 of each year, or at such other date as may be agreed to by the Director, provided that such alternative date will allow sufficient time to obtain information needed by the Director for his or her annual report to the Congress.

(b) New employees and new members of advisory boards and commissions representing multiple interest hired, appointed, or transferred to perform functions or duties under the Act will be required to file at the time of entrance to duty.

(c) New employees and new members of advisory boards and commissions representing multiple interests are not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after their initial statement was filed. For example, an employee entering duty on December 2, 1986 would file a statement on that date. Because December 2 is within two months of February 1 the employee would not be required to file his or her next annual statement until February 1, 1988. [51 FR 37122, Oct. 17, 1986]
30 CFR 705.15 Where to file. The head of the State Regulatory Authority shall file his or her statement with the Director. All other employees and members of advisory boards and commissions representing multiple interests, as provided in § 705.11, shall file their statements with the Director of the State Regulatory Authority or such other official as may be designated by State law or regulation. [51 FR 37122, Oct. 17, 1986]

30 CFR 705.17 What to report. (a) Each employee shall report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are full time residents of the employee's home. The report shall be on OSM Form 23 as provided by the Office. The statement consists of three major parts, (1) a listing of all financial interests, including employment, security, real property, creditor and other financial interests held during the course of the preceding year, (2) a certification that none of the listed financial interests represent a direct or indirect financial interest in an underground or surface coal mining operation except as specifically identified and described by the employee as part of the certificate and (3) a certification by the reviewer that the form was reviewed, that prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement.

(b) Listing of all financial interests. The statement will set forth the following information regarding any financial interest:

(1) Employment. Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary or other income arrangement as a result of prior or current employment. The employee, his or her spouse or other resident relative is not required to report a retirement plan from which he or she will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the State Regulatory Authority.

(2) Securities. Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities or other arrangements including trusts. An employee is not required to report mutual funds, investment clubs or regulated investment companies not specializing in underground and surface coal mining operations.

(3) Real Property. Ownership, lease, royalty or other interests or rights in lands or minerals. Employees are not required to report lands developed and occupied for a personal residence.

(4) Creditors. Debts owed to business entities and nonprofit organizations. Employees are not required to report debts owed to financial institutions (banks, savings and loan associations, credit unions, and the like) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short term debts for current and ordinary household and living expenses.

(c) Employee certification, and, if applicable, a listing of exceptions.

(1) The statement will provide for a signed certification by the employee that to the best of his or her knowledge, (i) none of the listed financial interests represent an interest in an underground or surface coal mining operation except as specifically identified and described as exceptions by the employee as part of the certificate, and (ii) the information shown on the statement is true, correct, and complete.

(2) An employee is expected to (i) have complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship and partnership, his or her outside employment and the outside employment of the spouse and other covered relatives, and
(ii) be aware of the information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public.

(3) The exceptions shown in the employee certification of the form must provide enough information for the Head of the State Regulatory Authority to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:
   (i) List the financial interests;
   (ii) Show the number of shares, estimated value or annual income of the financial interests; and
   (iii) Include any other information which the employee believes should be considered in determining whether or not the interest represents a prohibited interest.

(4) Employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement of certification. Signing the certification without listing known prohibited financial interests may be cause for imposing the penalties prescribed in § 705.6(a). [42 FR 56060, Oct. 20, 1977, as amended at 56 FR 46988, Sept. 17, 1991]

30 CFR 705.18 Gifts and gratuities. (a) Except as provided in paragraph (b) of this section, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or any other thing of monetary value, from a coal company which:
   (1) Conducts or is seeking to conduct, operations or activities that are regulated by the State Regulatory Authority; or
   (2) Has interests that may be substantially affected by the performance or non-performance of the employee's official duty.

(b) The prohibitions in paragraph (a) of this section do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. An employee may accept:
   (1) Food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance; and
   (2) Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal value.

(c) Employees found guilty of violating the provisions of this section will be subject to administrative remedies in accordance with existing or adopted State regulations or policies.

30 CFR 705.19 Resolving prohibited interests. (a) Actions to be taken by the Head of the State Regulatory Authority:
   (1) Remedial action to effect resolution. If an employee has a prohibited financial interest, the Head of the State Regulatory Authority shall promptly advise the employee that remedial action which will resolve the prohibited interest is required within 90 days.
   (2) Remedial action may include:
      (i) Reassignment of the employee to a position which performs no function or duty under the Act, or
      (ii) Divestiture of the prohibited financial interest, or
      (iii) Other appropriate action which either eliminates the prohibited interest or eliminates the situation which creates the conflict.
(3) Reports of noncompliance. If 90 days after an employee is notified to take remedial action that employee is not in compliance with the requirements of the Act and these regulations, the Head of the State Regulatory Authority shall report the facts of the situation to the Director who shall determine whether action to impose the penalties prescribed by the Act should be initiated. The report to the Director shall include the original or a certified true copy of the employee's statement and any other information pertinent to the Director's determination, including a statement of actions being taken at the time the report is made.

(b) Actions to be taken by the Director:
(1) Remedial action to effect resolution. Violations of the regulations in this part of the Head of a State Regulatory Authority, will be cause for remedial action by the Governor of the State or other appropriate State official based on recommendations from the Director on behalf of the Secretary. The Governor or other appropriate State official shall promptly advise the Head of the State Regulatory Authority that remedial action which will resolve the prohibited interest is required within 90 days.

(2) Remedial action should be consistent with the procedures prescribed for other State employees by § 705.19(a)(2).

(3) Reports on noncompliance.
(i) If 90 days after the Head of State Regulatory Authority is notified to take remedial action the Governor or other appropriate State official notifies the Director that the Head of the State Regulatory Authority is not in compliance with the Act and these regulations, the Director shall report the facts of the situation to the Secretary who shall determine whether the action to impose the penalties prescribed by the Act, or to impose the eligibility restrictions prescribed by § 705.1 should be initiated.

(ii) Within 30 days of receipt of a noncompliance report from the Head of a Regulatory Authority under § 705.19(a)(3), the Director shall notify the Head of the State Regulatory Authority and the employee involved of additional action to be taken. Actions which the Director may take include but are not limited to the granting of additional time for resolution or the initiation of action to impose the penalties prescribed by the Act.

**30 CFR 705.21 Appeals procedures.** Employees have the right to appeal an order for remedial action under § 705.19, and shall have 30 days to exercise this right before disciplinary action is initiated.

(a) Employees other than the Head of the State Regulatory Authority, may file their appeal, in writing, through established procedures within their particular State.

(b) The Head of the State Regulatory Authority may file his or her appeal, in writing, with the Director who will refer it to the Conflict of Interest Appeals Board within the U.S. Department of the Interior.
K.A.R. 47-15-1a. Inspection and enforcement; adoption by reference. (a) The following regulations as in effect on July 1, 2001 are adopted by reference, except as otherwise indicated in this regulation:

   (1) Inspections by state regulatory authority, 30 CFR 840.11;
   (2) availability of records, 30 CFR 840.14;
   (3) definitions, 30 CFR 843.5;
   (4) right of entry, 30 CFR 840.12;
   (5) compliance conference, 30 CFR 840.16;
   (6) review of adequacy and completeness of inspections, 30 CFR 842.14, except that the phrase “director or his or her designee” shall be replaced by “secretary or secretary’s designee”;
   (7) review of decision not to inspect or enforce, 30 CFR 842.15;
   (8) cessation orders, 30 CFR 843.11;
   (9) notices of violations, 30 CFR 843.12, except for the following:
      (A) In subsection (a) of 30 CFR 843.12, the following phrase shall be deleted: “carried out during the enforcement of a federal program or federal lands program or during federal enforcement of a state program under sections 504 (b) or 521 (b) of the act and part 733 of this chapter”; and
      (B) paragraph (a)(2) of 30 CFR 843.12 shall be deleted;
   (10) suspension or revocation of permits: pattern of violations, 30 CFR 843.13, except that the phrase “or a federal lands program” in paragraph (a)(4)(i)(A) of 30 CFR 843.13 shall be deleted, and paragraphs (a)(4)(i)(B) and (C) of 30 CFR 843.13 shall be deleted;
   (11) service of notices of violation, cessation orders, and show cause orders, 30 CFR 843.14, except that the phrase “Office of Surface Mining office” shall be replaced by “Kansas Department of Health and Environment office”;
   (12) informal public hearings, 30 CFR 843.15. However, the following sentence in paragraph (e) shall be deleted: “Section 554 of title 5 of the United States code, regarding requirements for formal adjudicatory hearings, shall not govern public hearings”;
   (13) formal review of citations, 30 CFR 843.16; and
   (14) inability to comply, 30 CFR 843.18.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations:

   (1) “Act” shall be replaced by “state act.”
   (2) “This chapter,” “this part,” and “this section” shall be replaced by “these regulations.”
   (3) “Federal” shall be replaced by “state.”
   (4) “Office” shall be replaced by “secretary or secretary's designee.”
   (5) “Director” shall be replaced by “secretary.”
   (6) “43 CFR part 4” shall be replaced by “K.A.R. 47-4-14a.”
   (7) “Office of hearings and appeals” shall be replaced by “department.”
   (8) “30 CFR Part 845” and “part 845 of this chapter” shall be replaced by “article 5 of these regulations.”
   (9) “43 CFR 4.1281” shall be replaced by “K.A.R. 47-4-14a (a)(1)-(8)."
(10) “Section 521(a)(5) of the Act and § 843.15” shall be replaced by “K.S.A. 49-405 (m)(4), and amendments thereto and K.A.R. 47-15-1a (a)(12).”
(11) “Section 521(a)(2) of the Act” shall be replaced by “K.S.A. 49-405 (m)(1), and amendments thereto.”
(12) “Section 517 of the Act and § 842.11” shall be replaced by “K.S.A. 49-404, K.S.A. 49-405, and K.S.A. 49-405d, and amendments thereto.”
(13) “Section 518(b), 521(a)(4), or 525 of the Act” shall be replaced by “K.S.A. 49-405c (b), K.S.A. 49-405 (m)(3), or K.S.A. 49-416a, and amendments thereto.”
(15) “Section 520 of the Act” shall be replaced by “K.S.A. 49-426, and amendments thereto.”
(16) “Section 525 of the Act” shall be replaced by “K.S.A. 49-416a, and amendments thereto.”
(17) “Director” shall be replaced by “secretary.”
(18) “30 CFR 843.15(e)” shall be replaced by the following: “An informal public hearing shall be conducted in accordance with K.A.R. 47-4-14a.”
(19) “§ 816.131(b) or § 817.131(b) of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(43) or (d)(41).”
(20) “§ 800.40 of this chapter” shall be replaced by “K.A.R. 47-8-9 (a)(13).”
(21) “Section 518(e), 518(f), 521(a)(4), or 521(c) of the Act or their regulatory program counterparts” shall be replaced by “K.S.A. 49-405c (e) and (f) and K.S.A. 49-405 (m), and amendments thereto.”
(22) “§ 772.15 and 773.6(d) of this chapter” shall be replaced by “K.A.R. 47-7-2 (a)(5) and K.A.R. 47-3-42 (a)(46).”
(23) “§ 843.12(a)” and “§ 843.12(c) and (f)” shall be replaced by “K.A.R. 47-15-1a (a)(9).”
(24) “§ 701.5 of this chapter” shall be replaced by “K.A.R. 47-2-75 (b).”
(25) “§ 843.11” and “§ 843.11(b)” shall be replaced by “K.A.R. 47-15-1a (a)(8).”
(26) “§ 845.15(b)(2) of this chapter” shall be replaced by “K.A.R. 47-5-5a (a)(5).”
(27) “Rule 4 of the Federal Rules of Civil Procedure” shall be replaced by “K.A.R. 47-4-14a.”
(28) “§ 843.13(c)” shall be replaced by “K.A.R. 47-15-1a (a)(10).”
(30) “Freedom of Information Act or other Federal law” shall be replaced by “Kansas Open Records Act or other State law.”
(31) “§ 842.12” shall be replaced by “K.A.R. 47-15-8.”
(32) “§ 843.11 or § 843.12” shall be replaced by “K.A.R. 47-15-1a (a)(8) and (9).”

30 CFR 840.11 Inspections by State regulatory authority. (a) The State regulatory authority shall conduct an average of at least one partial inspection per month of each active surface coal
mining and reclamation operation under its jurisdiction, and shall conduct such partial inspections of each inactive surface coal mining and reclamation operation under its jurisdiction as are necessary to ensure effective enforcement of the approved State program. A partial inspection is an on-site or aerial review of a person's compliance with some of the permit conditions and requirements imposed under an approved State program.

(b) The State regulatory authority shall conduct an average of at least one complete inspection per calendar quarter of each active or inactive surface coal mining and reclamation operation under its jurisdiction. A complete inspection is an on-site review of a person's compliance with all permit conditions and requirements imposed under the State program, within the entire area disturbed or affected by the surface coal mining and reclamation operations.

(c) The State regulatory authority shall conduct such inspections of coal explorations as are necessary to ensure compliance with the approved State program.

(d)(1) Aerial inspections shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.

(2) Any potential violation observed during an aerial inspection shall be investigated on site within three days: provided, that any indication of a condition, practice or violation constituting cause for the issuance of a cessation order under section 521(a)(2) of the Act shall be investigated on site immediately, And provided further, That an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of paragraphs (a) and (b) of this section.

(e) The inspections required under paragraphs (a), (b), (c) and (d) of this section shall:

(1) Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

(2) Occur without prior notice to the permittee or any agent or employee of such permittee, except for necessary on-site meetings; and

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of the approved State program.

(f) For the purposes of this section, an inactive surface coal mining and reclamation operation is one for which:

(1) The State regulatory authority has secured from the permittee the written notice provided for under § 816.131(b) or § 817.131(b) of this chapter; or

(2) Reclamation Phase II as defined at § 800.40 of this chapter has been completed and the liability of the permittee has been reduced by the State regulatory authority in accordance with the State program.

(g) Abandoned site means a surface coal mining and reclamation operation for which the regulatory authority has found in writing that:

(1) All surface and underground coal mining and reclamation activities at the site have ceased;

(2) The regulatory authority or the Office has issued at least one notice of violation or the initial program equivalent, and either:

(i) Is unable to serve the notice despite diligent efforts to do so; or

(ii) The notice was served and has progressed to a failure-to-abate cessation order or the initial program equivalent;
The regulatory authority:

(i) Is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and
(ii) Is taking action pursuant to section 518(e), 518(f), 521(a)(4) or 521(c) of the Act or their regulatory program counterparts to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(4) Where the site is, or was, permitted and bonded:
(i) The permit has either expired or been revoked; and
(ii) The regulatory authority has initiated and is diligently pursuing forfeiture of, or has forfeited, any available performance bond.

(h) In lieu of the inspection frequency established in paragraphs (a) and (b) of this section, the regulatory authority shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year.

(1) In selecting an alternate inspection frequency authorized under the paragraph above, the regulatory authority shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (h)(2) of this section. Following the inspection and public notice, the regulatory authority shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

(i) How the site meets each of the criteria under the definition of an abandoned site under paragraph (g) of this section and thereby qualifies for a reduction in inspection frequency;

(ii) Whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

(iii) The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

(iv) The degree to which erosion and sediment control is present and functioning;

(v) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

(vi) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and

(vii) Based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(2) The public notice and opportunity to comment required under paragraph (h)(1) of this section shall be provided as follows:
(i) The regulatory authority shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments.

(ii) The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the regulatory authority where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period. (Pub. L. 95-87, 30 U.S.C. 1201 et seq.) [47 FR 35633, Aug. 16, 1983, as amended at 48 FR 44781, Sept. 30, 1983; 53 FR 24882, June 30, 1988; 59 FR 60883, Nov. 28, 1994]

30 CFR 840.12 Right of entry. (a) Within its jurisdiction, the State regulatory authority shall have authority that grants its representatives a right of entry to, upon, and through any coal exploration or surface coal mining and reclamation operation without advance notice upon presentation of appropriate credentials. No search warrant shall be required, except that a State may provide for its use with respect to entry into a building.

(b) The State regulatory authority shall have authority that authorizes its representatives to inspect any monitoring equipment or method of exploration or operation and to have access to and copy any records required under the approved State program. This authority shall provide that the representatives may exercise such rights at reasonable times, without advance notice, upon presentation of appropriate credentials. No search warrant shall be required, except that a State may provide for its use with respect to entry into a building.

30 CFR 840.14 Availability of records. (a) Each State regulatory authority shall make available to the Director, upon request, copies of all documents relating to applications for and approvals of existing, new, or revised coal exploration approvals or surface coal mining and reclamation operations permits and all documents relating to inspection and enforcement actions.

(b) Copies of all records, reports, inspection materials, or information obtained by the regulatory authority shall be made immediately available to the public in the area of mining until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area, except–

(1) As otherwise provided by Federal law; and

(2) For information not required to be made available under §§ 772.15 and 773.6(d) of this chapter or paragraph (d) of this section.

(c) The State regulatory authority shall ensure compliance with paragraph (b) by either:

(1) Making copies of all records, reports, inspection materials, and other subject information available for public inspection at a Federal, State or local government office in the county where the mining is occurring or proposed to occur; or,

(2) At the regulatory authority’s option and expense, providing copies of subject information promptly by mail at the request of any resident of the area where the mining is occurring or is proposed to occur, Provided, That the regulatory authority shall maintain for public inspection, at a Federal, State or local government office in the county where the mining is occurring or proposed to occur, a description of the information available for mailing and the procedure for obtaining such information.
(d) In order to provide preparation for hearings and enforcement proceedings, the Director and the State regulatory authority may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such materials. (Pub. L. 95-87, 30 U.S.C. 1201 et seq.) [47 FR 35633, Aug. 16, 1982, as amended at 48 FR 44781, Sept. 30, 1983; 65 FR 79670, Dec. 19, 2000]

30 CFR 840.16 Compliance conference. (a) The State program may provide for compliance conferences between a permittee and an authorized representative of the regulatory authority as described in paragraphs (b) through (e) of this section.

(b) A permittee may request an on-site compliance conference with an authorized representative of the regulatory authority to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of section 517 of the Act and § 840.11.

(c) The State regulatory authority may accept or refuse any request to conduct a compliance conference under paragraph (b).

(d) The authorized representative at any compliance conference shall review such proposed conditions and practices in order to advise whether any such condition or practice may become a violation of any requirement of the Act, the approved State program, or any applicable permit or exploration approval.

(e) Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the regulatory authority or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such compliance conference; or

(2) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

30 CFR 842.14 Review of adequacy and completeness of inspections. Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration operation may notify the Director or his or her designee in writing of any alleged failure on the part of the Office to make adequate and complete or periodic Federal inspections. The notification shall include sufficient information to create a reasonable belief that the regulations of this part are not being complied with and to demonstrate that the person is or may be adversely affected. The Director or his or her designee shall within 15 days of receipt of the notification determine whether adequate and complete or periodic inspections have been made. The Director or his or her designee shall furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

30 CFR 842.15 Review of decision not to inspect or enforce. (a) Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may ask the Director or his or her designee to review informally an authorized representative’s decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for Federal inspection under § 842.12. The request for review
shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

(b) The Director or his or her designee shall conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the person who is or may be adversely affected shall not be disclosed unless confidentiality has been waived or disclosure is required under the Freedom of Information Act or other Federal law.

(c) Informal review under this section shall not affect any right to formal review under section 525 of the Act or to a citizen's suit under section 520 of the Act.

(d) Any determination made under paragraph (b) of this section shall constitute a decision of OSM within the meaning of 43 CFR 4.1281 and shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR part 4.

30 CFR 843.5 Definitions. As used in this part, the following terms have the specified meanings: Unwarranted failure to comply means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit of the Act due to indifference, lack of diligence, or lack of reasonable care. [47 FR 35637, Aug. 16, 1982, as amended at 65 FR 79670, Dec. 19, 2000]

30 CFR 843.11 Cessation orders. (a)(1) An authorized representative of the Secretary shall immediately order a cessation of surface coal mining and reclamation operations or of the relevant portion thereof, if he or she finds, on the basis of any Federal inspection, any condition or practice, or any violation of the Act, this chapter, any applicable program, or any condition of an exploration approval or permit imposed under any such program, the Act, or this chapter which:

(i) Creates an imminent danger to the health or safety of the public; or
(ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(2) Surface coal mining operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources unless such operations:

(i) Are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations; or
(ii) Were conducted lawfully without a permit under the interim regulatory program because no permit has been required for such operations by the State in which the operations were conducted.

(3) If the cessation ordered under paragraph (a)(1) of this section will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the Secretary shall impose affirmative obligations on the permittee to abate the imminent danger or significant environmental harm. The order shall specify the time by which abatement shall be accomplished.
(b)(1) When a notice of violation has been issued under §843.12(a) and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative, the authorized representative of the Secretary shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the portion relevant to the violation.

(2) A cessation order issued under this paragraph (b) shall require the permittee to take all steps the authorized representative of the Secretary deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) A cessation order issued under paragraphs (a) or (b) of this section shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

(1) The nature of the condition, practice or violation;

(2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate; (3) the time established for abatement, if appropriate; and

(4) a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice or violation resulting in the issuance of the cessation order has been abated or until vacated, modified or terminated in writing by an authorized representative of the Secretary, or until the order expires pursuant to section 521(a)(5) of the Act and §843.15.

(d) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(e) An authorized representative of the Secretary may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee.

(f) An authorized representative of the Secretary shall terminate a cessation order by written notice to the permittee when he or she determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of the Office to assess civil penalties for those violations under part 845 of this chapter.

(g) Within 60 days after issuing a cessation order, OSM will notify in writing the permittee, the operator, and any person who has been listed or identified by the applicant, permittee, or OSM as an owner or controller of the operation, as defined in §701.5 of this chapter. [47 FR 35637, Aug. 16, 1982, as amended at 54 FR 8992, Mar. 2, 1989; 54 FR 13823, Apr. 5, 1989; 62 FR 19461, Apr. 21, 1997; 65 FR 79670, Dec. 19, 2000]
required by the Act which does not create an imminent danger or harm for which a cessation order must be issued under § 843.11, the authorized representative shall give a written report of the violation to the State and to the permittee so that appropriate action can be taken by the State. Where the State fails within ten days after notification to take appropriate action to cause the violation to be corrected, or to show good cause for such failure, subject to the procedures of § 842.11(b)(1)(iii) of this chapter, the authorized representative shall reinspect and, if the violation continues to exist, shall issue a notice of violation or cessation order, as appropriate. No additional notification to the State by the Office is required before the issuance of a notice of violation if previous notification was given under § 842.11(b)(1)(ii)(B) of this chapter.

(b) A notice of violation issued under this section shall be in writing signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

(1) The nature of the violation;
(2) The remedial action required, which may include interim steps;
(3) A reasonable time for abatement, which may include time for accomplishment of interim steps; and
(4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

(c) An authorized representative of the Secretary may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in paragraph (f) of this section. An extended abatement date pursuant to this section shall not be granted when the permittee's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

(d)(1) If the permittee fails to meet the time set for abatement the authorized representative shall issue a cessation order under § 843.11(b).
(2) If the permittee fails to meet the time set for accomplishment of any interim step the authorized representative may issue a cessation order under § 843.11(b).
(e) An authorized representative of the Secretary shall terminate a notice of violation by written notice to the permittee when he determines that all violations listed in the notice of violation have been abated. Termination shall not affect the right of the Office to assess civil penalties for those violations under 30 CFR part 845.

(f) Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;
(2) Where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;
(3) Where the permittee cannot abate within 90 days due to a labor strike;
(4) Where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or

(5) Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

(g) Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(h) If any of the conditions in paragraph (f) of this section exists, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the Director or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of § 843.12(c) and (f). In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The authorized representative's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.

(i) Any determination made under paragraph (h) of this section shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR 4.1281 and the regulations at 43 CFR part 4.

(j) No extension granted under paragraph (h) of this section may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of paragraph (h) of this section. [47 FR 35637, Aug. 16, 1982, as amended at 53 FR 26744, July 14, 1988]

30 CFR 843.13 Suspension or revocation of permits: Pattern of violations. (a)(1) The Director shall issue an order to a permittee requiring him or her to show cause why his or her permit and right to mine under the Act should not be suspended or revoked, if the Director determines that a pattern of violations of any requirements of the Act, this chapter, the applicable program, or any permit condition required by the Act exists or has existed, and that the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage. The Director shall promptly file a copy of any order to show cause with the Office of Hearings and Appeals and the State regulatory authority, if any.

(2) The Director may determine that a pattern of violations exists or has existed, based upon two or more Federal inspections of the permit area within any 12-month period, after considering the circumstances, including:

(i) The number of violations, cited on more than one occasion, of the same or related requirements of the Act, this chapter, the applicable program, or the permit;
(ii) The number of violations, cited on more than one occasion, of different requirements of the Act, this chapter, the applicable program, or the permit; and
(iii) The extent to which the violations were isolated departures from lawful conduct.

(3) The Director shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of the Act, this chapter, the applicable program, or the permit during three or more Federal inspections of the permit area within any 12-month period. If, after such review, the Director determines that a pattern of violations exists or has existed, he or she shall issue an order to show cause as provided in paragraph (a)(1) of this section.

(4)(i) In determining the number of violations within any 12-month period, the Director shall consider only violations issued as a result of a Federal inspection carried out—
(A) During enforcement of a Federal program or a Federal lands program;
(B) During the interim program and before the applicable State program was approved pursuant to section 502 or 504 of the Act; or
(C) During Federal enforcement of a State program in accordance with section 504(b) or 521(b) of the Act.

(ii) The Director may not consider violations issued as a result of inspections other than those mentioned in paragraph (a)(4)(i) of this section in determining whether to exercise his or her discretion under paragraph (a)(2) of this section, except as evidence of the willful or unwarranted nature of the permittee's failure to comply.

(b) If the permittee files an answer to the show cause order and requests a hearing under 43 CFR part 4, a public hearing shall be provided as set forth in that part. The Office of Hearings and Appeals shall give thirty days written notice of the date, time and place of the hearing to the Director, the permittee, the State regulatory authority, if any, and any intervenor. Upon receipt of the notice, the Director shall publish it, if practicable, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations, and shall post it at the State or field office closest to those operations.

(c) Within sixty days after the hearing, and within the time limits set forth in 43 CFR part 4, the Office of Hearings and Appeals shall issue a written determination as to whether a pattern of violations exists and, if appropriate, an order. If the Office of Hearings and Appeals revokes or suspends the permit and the permittee's right to mine under the Act, the permittee shall immediately cease surface coal mining operations on the permit area and shall:

(1) If the permit and the right to mine under the Act are revoked, complete reclamation within the time specified in the order; or
(2) If the permit and the right to mine under the Act are suspended, complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

(d) Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the Director shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this section, and shall issue an order to show cause as appropriate pursuant to § 845.15(b)(2) of this chapter.

30 CFR 843.14 Service of notices of violation, cessation orders, and show cause orders. (a) A notice of violation, cessation order, or show cause order shall be served on the person to whom it is directed or his or her designated agent promptly after issuance, as follows:
(1) By tendering a copy at the coal exploration or surface coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the permittee or his or her designated agent, or by any means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice or order or of the certified mail and shall not be deemed incomplete because of refusal to accept.

(b) Designation by any person of an agent for service of notices and orders shall be made in writing to the appropriate State or field office of the Office.

(c) The Office shall furnish copies of notices and orders to the State regulatory authority, if any, promptly after their issuance. The Office may furnish copies to any person having an interest in the coal exploration, surface coal mining and reclamation operation, or the permit area.

30 CFR 843.15 Informal public hearing. (a) Except as provided in paragraphs (b) and (c) of this section, a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the Office and the person to whom the notice or order was issued. The Office of Surface Mining office nearest to the mine site shall be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the Office. Expiration of a notice or order shall not affect the Office's right to assess civil penalties with respect to the period during which the notice or order was in effect. No hearing will be required where the condition, practice, or violation in question has been abated or the hearing has been waived. For purposes of this section only, “mining" includes (1) extracting coal from the earth or from coal waste piles and transporting it within or from the permit area, and (2) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than at a mine site.

(b) A notice of violation or cessation order shall not expire as provided in paragraph (a) of this section if the informal public hearing has been waived, or if, with the consent of the person to whom the notice or order was issued, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of this subsection:

(1) The informal public hearing will be deemed waived if the person to whom the notice or order was issued:

(i) Is informed, by written notice served in the manner provided in paragraph (b)(2) of this section, that he or she will be deemed to have waived an informal public hearing unless he or she requests one within 30 days after service of the notice; and

(ii) Fails to request an informal public hearing within that time.
(2) The written notice referred to in paragraph (b)(1)(i) of this section shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than 5 days after the notice or order is served on such person.

(3) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if his or her request is received on or after the 21st day after service of the notice or order. The extension of time shall be equal to the number of days elapsed after the 21st day.

(c) The Office shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:
   (1) The person to whom the notice or order was issued;
   (2) Any person who filed a report which led to that notice or order; and
   (3) The State regulatory authority, if any.

(d) The Office shall also post notice of the hearing at the State or field office closest to the mine site and, where practicable, publish it in a newspaper of general circulation in the area of the mine.

(e) Section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings, shall not govern informal public hearings. An informal public hearing shall be conducted by a representative of the Office, who may accept oral or written arguments and any other relevant information from any person attending.

(f) Within five days after the close of the informal public hearing, the Office shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to:
   (1) The person to whom the notice or order was issued;
   (2) Any person who filed a report which led to the notice or order; and
   (3) The State regulatory authority, if any.

(g) The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under section 518(b), 521(a)(4), or 525 of the Act.

(h) The person conducting the hearing for the Office shall determine whether or not the mine site should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the mine site will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or of the required remedial action.

30 CFR 843.16 Formal review of citations. (a) A person issued a notice of violation or cessation order under § 843.11 or § 843.12, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of that action by filing an application for review and request for hearing under 43 CFR part 4, within 30 days after receiving notice of the action.

(b) The filing of an application for review and request for a hearing under this Section shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

30 CFR 843.18 Inability to comply. (a) No cessation order or notice of violation issued under this part may be vacated because of inability to comply.

(b) Inability to comply may not be considered in determining whether a pattern of violations exists.
(c) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under part 845 of this chapter and of the duration of the suspension of a permit under § 843.13(c).

**30 CFR 843.20 Compliance conference.** (a) A permittee may request an on-site compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of section 517 of the Act and § 842.11.

(b) The Office may accept or refuse any request to conduct a compliance conference under paragraph (a). Where the Office accepts such a request, reasonable notice of the scheduled date and time of the compliance conference shall be given to the permittee.

(c) The authorized representative at any compliance conference shall review such proposed conditions and practices as the permittee may request in order to determine whether any such condition or practice may become a violation of any requirement of the Act of any applicable permit or exploration approval.

(d) Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference shall affect:

1. Any rights or obligations of the Office or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such conference; or
2. The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

**K.A.R. 47-15-3. Lack of information; inability to comply.** (a) A notice of violation, cessation order, show cause order, or order revoking or suspending a permit shall not be vacated because it is subsequently determined that the secretary did not have information sufficient to justify an inspection.

(b) A notice of violation or cessation order shall not be vacated because of inability to comply.

(c) Inability to comply shall not be considered in determining whether or not a pattern of violation exists.

(d) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of the civil penalty and the duration of the suspension of a permit.


**K.A.R. 47-15-4. Injunctive relief.** The attorney general may be requested by the secretary to institute any civil action for relief, including a permanent or temporary injunction, and a restraining order or any other order, whenever, in violation of the state act, these regulations, or any condition of an exploration approval or permit, anyone does the following:

(a) violates, fails to comply with, or refuses to comply with any order or decision of the secretary or secretary's designee;

(b) interferes with, hinders, or delays the secretary or secretary's designee in carrying out provisions of the state act or these regulations; or
(c) refuses to perform the following:
   (1) admit the secretary or secretary's designee to a mine;
   (2) permit inspection of a mine by the secretary or secretary's designee;
   (3) furnish any required information or report;
   (4) permit access to or copying of any required records; or

K.A.R. 47-15-7. State inspections. (a) Inspection of surface coal mining and reclamation operations shall be conducted by the secretary or secretary's designee as necessary to determine whether or not the permittee has complied with any notice of violation or cessation order issued during an inspection authorized under this regulation.
   (b) A state inspection shall be conducted immediately by the secretary or secretary's designee to enforce any requirement of the state act, these regulations, the regulatory program, or any condition of a permit or an exploration approval.
   (c) Appropriate action to have the violation abated shall be taken by the secretary or secretary's designee when, on the basis of information available to the department other than information resulting from a previous state inspection, the secretary or secretary's designee has reason to believe that either of the following has occurred:
      (1) the permittee has violated the state act, these regulations, the regulatory program, or any condition of a permit or an exploration approval; or
      (2) any condition, practice, or violation creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause a significant, imminent environmental harm to land, air, or water resources.  (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-405d; effective May 1, 1984; amended Feb. 11, 1991; amended May 2, 1997.)

K.A.R. 47-15-8. Citizen's requests for state inspections. (a) Any person may request a state inspection under K.A.R. 47-15-7 (b) by furnishing the secretary or secretary's designee with a signed, written statement or an oral report followed by a signed, written statement. The statement shall include the following:
   (1) the reasons that the person believes a violation, condition, or practice referred to in K.A.R. 47-15-7 (b) exists; and
   (2) a phone number and address at which the person can be contacted.
   (b) Upon request by the person, the identity of any person supplying information to the secretary or secretary's designee relating to a possible violation or imminent danger or harm shall remain confidential, unless that person accompanies the inspector on the inspection.
   (c) If a state inspection is conducted as a result of information provided to the secretary or secretary's designee as described in subsection (a) of this regulation, the person requesting the inspection shall be notified as far in advance as practicable as to when the inspection will occur. The person may accompany the secretary or secretary's designee. During the inspection, the person shall have a right of entry to, upon, and through the coal exploration or surface coal mining and reclamation operation about which that person supplied information. However, the person shall be in the presence of and under the control, direction, and supervision of the
secretary or secretary's designee while on the mine property. This right of entry shall not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(d) Within 10 days after the state inspection or, if there is no inspection, within 15 days after receipt of the person's written statement, the secretary or secretary's designee shall send the person the following:

(1) (A) if an inspection was conducted, a description of the enforcement action taken. This description may consist of copies of the state inspection report and of all notices of violation and cessation orders issued as a result of the inspection or an explanation as to why no enforcement action was taken; or

(B) if no state inspection was conducted, an explanation of the reason why an inspection was not considered to be necessary;

and

(2) an explanation of the person's right, if any, to informal review of the action or inaction of the secretary or secretary's designee under K.A.R. 47-15-1a(a)(6).

(e) Copies of all materials in paragraphs (d)(1) and (d)(2) of this regulation shall be given by the secretary or secretary's designee to the person alleged to be in violation within the time limits specified in those paragraphs. However, the name of the person requesting the inspection shall be removed unless disclosure of the person's identity is permitted under subsection (b) of this regulation. (Authorized by K.S.A. 49-405; implementing K.S.A.49-405, 49-405d; effective May 1, 1984, amended May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997.)

K.A.R. 47-15-15. Service of notices of violations and cessation orders. (a) Promptly after issuance, each notice of violation or cessation order shall be served on the person to whom it is directed or to that person's designated agent, as follows:

(1)(A) A copy of each notice of violation or cessation order may be tendered, at the coal exploration or surface coal mining and reclamation operation, to the designated agent or to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the coal exploration or surface coal mining and reclamation operation referred to in the notice or order.

(B) If no one in charge can be found, the copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued.

(C) Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2)(A) In the alternative, service may be made by sending a copy of the notice or order by certified mail or by delivering the copy by hand to the person to whom it is issued or to the person's designated agent.

(B) Service shall be complete upon tender of the notice or order or upon certified mailing of the notice or order, and service shall not be deemed incomplete because of refusal to accept.

(b) A show cause order may be served on the person to whom it is issued in either manner provided in subsection (a) of this regulation.
(c) A person shall make any designation of an agent for service of notices and orders in writing and to the secretary or secretary's designee.

(d) The secretary or secretary's designee may furnish copies to any person having an interest in the coal exploration, surface coal mining and reclamation operation, or the permit area, including the owner of the fee, a corporate officer of the permittee or entity conducting coal exploration, or the bonding company. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-405d; effective May 1, 1984; amended Feb. 11, 1991; amended May 2, 1997.)

**K.A.R. 47-15-17. Maintenance of permit areas.** The permittee shall be required by the secretary or the secretary's designee to cut vegetative growth, if necessary to facilitate inspection of each permit area in order to insure compliance with the state act and regulations. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-405d; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997.)
K.A.R. 47-16-1. Eligible lands and water. (a) Coal mined lands and associated waters shall be eligible for reclamation activities if these conditions are met:
   (1) they were mined or affected by mining processes;
   (2) they were mined before August 3, 1977, and were left or abandoned in an unclaimed or inadequately reclaimed condition; and
   (3) there is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the state or federal government or a result of bond forfeiture. Bond forfeiture shall render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation.

(b) Lands and water that were mined or affected by mining for minerals and materials other than coal shall be eligible for reclamation activities if all reclamation with respect to abandoned coal mine land and water has been accomplished within the state.

(c) "Left or abandoned in an unclaimed or inadequately reclaimed condition" means land and water that meet the following conditions:
   (1) were mined or affected by such mining, wastebanks, processing, or other mining processes before August 3, 1977, and on which all mining has ceased;
   (2) continue, in their present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public; and
   (3) are not subject to any continuing reclamation responsibility under state or federal laws. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

K.A.R. 47-16-2. Reclamation project evaluation. Proposed reclamation projects and completed reclamation work shall be evaluated using the factors stated in this section to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the objectives of K.S.A. 49-428. Completed reclamation shall be evaluated using the following factors to identify conditions that should be avoided, corrected, or improved in plans for future reclamation work:

(a) the need for reclamation work to accomplish one or more specific objectives stated in K.S.A. 49-428;

(b) the availability of technology to accomplish the reclamation work with reasonable assurance of success. In the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts;

(c) the specific benefits of the reclamation work for the area including the following:
   (1) protection of human life, health, or safety;
   (2) protection of the environment, including air and water quality, fish and wildlife, plant habitat, visual beauty, historic, cultural or recreation resources, and abatement of erosion sedimentation;
   (3) protection of public or private property;
(4) improvement of environmental conditions that may be considered to generally enhance the quality of human life;
(5) improvement of natural resource use, including:
   (A) increasing productivity capability of the land;
   (B) enhancing the use of surrounding lands consistent with existing land use plans;
   (C) providing for construction or enhancement of public facilities; and
   (D) providing for residential, commercial, or industrial developments consistent with the needs and plans of the community in which the site is located; and
(6) technologies that can be used to reclaim areas disturbed by mining;
(d) any additional adverse impacts to people or the environment during or after reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation;
(e) the costs of reclamation. Consideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation;
(f) any additional coal or other mineral or material resources within the project area when either of the following conditions exists:
   (1) a reasonable probability that the desired reclamation could be accomplished in conjunction with future mining; or
   (2) a need to assure that the resource is not lost as a result of reclamation and the benefits of reclamation are not negated by subsequent, essential resource recovery operations;
(g) compatibility of post-reclamation land uses with the following:
   (1) land uses in the surrounding area;
   (2) applicable state, regional, and local land use plans and laws; and
   (3) the needs and desires of the community where the project is located; and
(h) the probability that post-reclamation management, maintenance and control of the area will be consistent with the reclamation completed. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428, effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

K.A.R. 47-16-3. Consent to entry. (a) All reasonable actions that are necessary to obtain prior written consent from the owner of record of the land or property to be entered shall be taken by the secretary or secretary's designee.
(b) The consent shall consist of a signed statement by the owner or the owner's authorized agent that shall include the following:
   (1) a legal description of the land to be entered;
   (2) the nature of work to be performed on the lands; and
   (3) any special conditions for entry.
(c) This statement shall not include any commitment by the secretary to perform reclamation work or compensate the owner for entry. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-432; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)
K.A.R. 47-16-4. Entry for study or exploration. (a) Any property may be entered by the secretary or secretary's designee for the purpose of conducting studies or exploratory work to determine the following:

(1) the existence of adverse effects of past coal mining practices; and
(2) the feasibility of restoration, reclamation, abatement, control, or prevention of adverse effects.

(b) If the owner will not give consent to entry, notice shall be given to the owner in writing of the secretary's intent to enter for purposes of study and exploration to determine the existence of adverse effects of past coal mining practices that may be harmful to the public health, safety, or general welfare. The notice shall be provided by mail, return receipt requested, to the owner, if known, and shall include a statement of the reasons why entry is believed necessary. If the owner is not known, or the current mailing address of the owner is not known, or if the owner is not readily available, the notice shall be posted in one or more places on the property to be entered where it is readily visible to the public. In addition, the notice shall be published once in a newspaper of general circulation in the locality in which the land is located. Notice shall be given at least 30 days before entry. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-432; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

K.A.R. 47-16-5. Entry and consent to reclaim. (a) Notice shall be given of the secretary's intent to enter for purposes of conducting reclamation at least 30 days before entry upon the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by K.S.A. 49-432. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it is readily visible to the public. In addition, the notice shall be published once in a newspaper of general circulation in the locality in which the land is located. The notice shall include a statement of where the findings required by K.S.A. 49-432 may be inspected or obtained.

(b) Any land where an emergency exists and on any other land necessary to gain access to the land where an emergency exists may be entered by the secretary to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices and to do all things necessary to protect the public health, safety, or general welfare.

(1) Before entry a written finding shall be made by the secretary with reasons supporting the following conclusions:

(A) an emergency exists constituting a danger to the public health, safety, or general welfare; and
(B) no other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices.

(2) Notice to the owner shall not be required before entry for emergency reclamation. Reasonable efforts to notify the owner and obtain prior consent shall be made by the secretary. These efforts shall be consistent with the existing emergency conditions. Proper written notice shall be given to the owner as soon after entry as practical. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-432; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

K.A.R. 47-16-6. Liens. (a) A lien shall be placed by the secretary on land reclaimed if the reclamation results in a significant increase in the fair market value based on the pre- and post-
reclamation appraisals, except that the lien may be waived by the secretary or the secretary's designee if any of these conditions are met:

(1) the lien amount would be less than the cost of filing the lien;
(2) the reclamation work primarily increases the health, safety, or environment of the community or area affected; or
(3) the reclamation is necessitated by an unforeseen occurrence, and the work performed to restore the land will not significantly increase the market value of the land as it existed immediately before the occurrence.

(b) A lien shall not be placed against land reclaimed if the current owner of the property acquired title before May 2, 1977 and did not consent to, participate in, or exercise control over the mining operation that caused or contributed to the unreclaimed conditions.

(c) If a lien is to be filed, within six months after completion of the reclamation work, a statement shall be filed by the secretary in the office having responsibility under applicable law for recording judgments and placing liens against land. The statement shall include the following:

(1) An account of monies expended for the reclamation work; and
(2) a notarized summary of the appraisal report.

(d) The increase in the appraised value of the property shall constitute the amount of the lien recorded and shall have priority second only to a real estate tax lien. The landowner shall be afforded the following:

(1) Notified before the time of filing the lien of the amount of the proposed lien; and
(2) allowed a reasonable time to pay that amount in lieu of filing the lien. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998.)

K.A.R. 47-16-7. Appraisals. In order for a lien to be filed under K.A.R. 47-16-6, the following procedures shall be followed. (a) A notarized appraisal of the fair market value of the land shall be obtained from an independent, professional appraiser before any reclamation activities are started.

(b) A second, notarized appraisal of the fair market value of the land shall be obtained after all reclamation activities have been completed.

(c) The landowner shall receive a statement of any increase in market value, an itemized statement of reclamation expenses, and a notice that a lien will be filed against the property. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

K.A.R. 47-16-8. Satisfaction of liens. (a) A lien shall be satisfied to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property and shall be satisfied in accordance with this subsection.

(b) Liens shall be maintained or renewed by the secretary from time to time as may be required.

(c) Monies derived from the satisfaction of liens established under this subsection shall be deposited in the state abandoned mined-land fund. (Authorized by K.S.A. 49-405;

K.A.R. 47-16-9. Contractor responsibility. (a) Each successful bidder for an abandoned mined-land reclamation project contract shall be eligible under 30 CFR 773.12 (a), as adopted by reference in K.A.R. 47-3-42 (a) (52), at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations.

(b) Before any contract may be awarded to a bidder, that bidder’s eligibility shall be confirmed by the office of surface mining’s automated applicant violator system. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 2, 1997; amended July 31, 1998; amended December 1, 2006.)

K.A.R. 47-16-10. Exclusion of certain noncoal reclamation sites. (a) Money from the abandoned mined-land fund shall not be used for either of the following:

1. The reclamation of sites and areas designated for remedial action pursuant to the uranium mill tailings radiation control act of 1978, 42 U.S.C. 7901 et seq., and amendments thereto; or

(b)(1) Each successful bidder for an abandoned mined-land contract for noncoal reclamation shall be eligible under 30 CFR 773.12 (a), as adopted by reference in K.A.R. 47-3-42 (a) (52), at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations.

(b)(2) Bidder eligibility shall be confirmed by the office of surface mining’s automated applicant violator system for each contract to be awarded. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 2, 1997; amended July 31, 1998; amended December 1, 2006.)

K.A.R. 47-16-11. Reports. For each grant, cooperative agreement, or both, the department shall either semiannually or annually whichever the case may be, submit to the office of surface mining reclamation and enforcement any reports required by the office of surface mining reclamation and enforcement. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 2, 1997; amended July 31, 1998.)

K.A.R. 47-16-12. Surface mining section’s procedures for reclamation projects receiving less than 50 percent government funding. 30 CFR 874.17, as in effect on July 1, 2001, is adopted by reference, except that the following terms shall be replaced with the terms specified:

(a) “[P]art 707 of this chapter” and “the part 707 exemption or counterpart State/Indian Tribe laws and regulations” shall be replaced by “K.A.R. 47-6-9.”

(b) “30 CFR subchapter R” shall be replaced by “Article 12 of these regulations.”

(c) “Title V” and “Title V of SMCRA” shall be replaced by “K.S.A. 49-401 et seq.”

(Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective December 1, 2006.)

30 CFR 874.17 AML agency procedures for reclamation projects receiving less than 50 percent government funding. This section tells you, the AML agency, what to do when
considering an abandoned mine land reclamation project as government-financed construction under part 707 of this chapter. This section only applies if the level of funding for the construction will be less than 50 percent of the total cost because of planned coal extraction.

(a) **Consultation with the Title V regulatory authority.** In consultation with the Title V regulatory authority, you must make the following determinations:

1. You must determine the likelihood of the coal being mined under a Title V permit. This determination must take into account available information such as:
   - (i) Coal reserves from existing mine maps or other sources;
   - (ii) Existing environmental conditions;
   - (iii) All prior mining activity on or adjacent to the site;
   - (iv) Current and historic coal production in the area; and
   - (v) Any known or anticipated interest in mining the site.

2. You must determine the likelihood that nearby or adjacent mining activities might create new environmental problems or adversely affect existing environmental problems at the site.

3. You must determine the likelihood that reclamation activities at the site might adversely affect nearby or adjacent mining activities.

(b) **Concurrence with the Title V regulatory authority.** If, after consulting with the Title V regulatory authority, you decide to proceed with the reclamation project, then you and the Title V regulatory authority must concur in the following determinations:

1. You must concur in a determination of the limits on any coal refuse, coal waste, or other coal deposits which can be extracted under the part 707 exemption or counterpart State/Indian Tribe laws and regulations.

2. You must concur in the delineation of the boundaries of the AML project.

(c) **Documentation.** You must include in the AML case file:

1. The determinations made under paragraphs (a) and (b) of this section;
2. The information taken into account in making the determinations; and
3. The names of the parties making the determinations.

(d) **Special requirements.** For each project, you must:

1. Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrologic balance;

2. Ensure that the reclamation project is conducted in accordance with the provisions of 30 CFR subchapter R;

3. Develop specific-site reclamation requirements, including performance bonds when appropriate in accordance with State procedures; and

4. Require the contractor conducting the reclamation to provide prior to the time reclamation begins applicable documents that clearly authorize the extraction of coal and payment of royalties.

(e) **Limitation.** If the reclamation contractor extracts coal beyond the limits of the incidental coal specified in paragraph (b)(1) of this section, the contractor must obtain a permit under Title V of SMCRA for such coal. [64 FR 7483, Feb. 12, 1999]