

## SUBCHAPTER B—INITIAL PROGRAM REGULATIONS

### PART 710—INITIAL REGULATORY PROGRAM

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

SOURCE: 42 FR 62677, Dec. 13, 1977, unless otherwise noted.

#### § 710.1 Scope.

(a) This part provides general introductory and applicability material for the initial regulatory program required by section 502 and other sections of the Act which require early implementation. The initial regulatory program is effective until permanent programs are approved in accordance with sections 503, 504, or 523 of the Act.

(b) The initial regulatory program which this part introduces includes—

(1) Environmental performance standards of parts 715 through 718 of this chapter.

(2) Inspection and enforcement procedures of parts 720 through 723 of this chapter; and

(3) Reimbursements to States of part 725 of this chapter.

#### § 710.2 Objectives.

The objectives of the initial regulatory program are to—

(a) Protect the health and safety of the public and minimize the damage to the environment resulting from surface coal mining operations during the interval between enactment of the Act and adoption of a permanent State or Federal regulatory program; and

(b) Coordinate the State and Federal regulatory programs to accomplish the purposes of the Act.

#### § 710.3 Authority.

(a) The Secretary is directed to implement an initial regulatory program

within six months after the date of enactment of the Act in each State which regulates any aspect of surface coal mining under one or more State laws until a State program has been approved or until a Federal program has been implemented.

(b) The Secretary is also authorized to regulate surface coal mining and reclamation operations on Federal Lands by the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181-287) and the Minerals, Leasing Act for Acquired Lands (30 U.S.C. 351-359) and on Indian lands by various Indian lands acts. Additional regulations under these Acts are in 30 CFR part 211,<sup>1</sup> 43 CFR part 3041 and 25 CFR part 177.

#### § 710.4 Responsibility.

(a) Under the general direction of the Assistant Secretary, Energy and Minerals, the Director is responsible for administering the initial regulatory program established by the Secretary.

(b) The States are responsible for issuing permits and inspection and enforcement on lands on which operations are regulated by a State to insure compliance with the initial performance standards in parts 715 through 718 of this chapter. States are required to file copies of inspection reports with the Office. States are also responsible for assuring that permits are not issued which would be in conflict with the restriction on mining found in section 510 of the Act, particularly in regard to alluvial valley floors and prime farm lands, and section 522(e) of the Act in regard to prohibitions of mining on certain lands.

#### § 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

<sup>1</sup>EDITORIAL NOTE: 30 CFR part 211 was redesignated as 43 CFR part 3480 at 48 FR 41589, Sept. 16, 1983.

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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 wind-blown 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.

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*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 than 20° or the profile of the hollow from the toe of the fill to the top of the fill is greater than 10°. 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 sur-

face 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

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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 facili-

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ties 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]

### §710.10 Information collection.

The collections of information contained in §§710.4, 710.11, and 710.12 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-0095. The information will be used in administering the Initial Regulatory Program. Response is required to obtain a benefit in accordance with 30 U.S.C. 1201 *et seq.* Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, OSM, Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; and to the Office of Management and Budget, Paperwork Reduction Project (1029-0095), OMB, Washington, DC 20503.

[56 FR 6227, Feb. 14, 1991]

### §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, dis-

turbed, 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, 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 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;

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(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.

(e) *Satisfying Permanent Program Performance Standards in lieu of Initial Program Performance Standards.* Where there is a counterpart Permanent Program performance standard in subchapter K of this chapter that corresponds to an Initial Program performance standard in subchapter B of this chapter, meeting either performance standard will satisfy the requirements of subchapter B of this chapter.

[42 FR 62677, Dec. 13, 1977; 43 FR 2721, Jan. 19, 1978, as amended at 43 FR 5001, Feb. 7, 1978; 43 FR 8091, Feb. 27, 1978; 49 FR 38477, Sept. 28, 1984; 56 FR 6227, Feb. 14, 1991; 59 FR 43419, Aug. 23, 1994]

### § 710.12 Special exemption for small operators.

(a) As used in this section—

(1) *Permittee* means a person holding a permit under State law and to whom the permit was originally issued.

(2) *Renewed permit* means any extension of the original area of duration of a permit.

(b) If a person is an eligible permittee under paragraph (c) of this section and intends to conduct surface coal mining operations on or after May 3, 1978, that permittee may receive from the Director a limited exemption from the performance standards of this chapter. The exemption shall not—

(1) Include the Special Performance Standard of § 716.2(a)(1) of this chapter regarding the handling of spoil;

(2) Apply to surface coal mining operations to be conducted under a permit or renewed permit issued on or after August 3, 1977;

(3) Include any general or special performance standard with which a permittee is required to comply by a State;

(4) Relieve the permittee of the general obligations imposed by § 710.11(a) of this part regarding conditions or practices creating imminent danger or causing significant, imminent environmental harm; or

(5) Relieve the permittee of any obligations under State law, regulation or permit.

(c) A permittee is eligible for an exemption under this section—

(1) If the actual and attributed production of that permittee is estimated by the Director not to exceed 100,000 tons of coal during the year ending on December 31, 1978; and

(2) If that permittee—

(i) Was in existence on July 31, 1976, and during the year ending on July 31, 1977, the actual and attributed production of that permittee was 100,000 tons of coal or less from all surface and underground coal mining operations; or

(ii) Came into existence after July 31, 1976, and prior to May 2, 1977, and the actual and attributed production from all surface and underground coal mining operations of that permittee in the average calendar month was an amount of coal which when multiplied by 12 yields a product of 100,000 tons or less.

(iii) And, in the case of a business organization, has not undergone a substantial change in ownership since May 2, 1977, other than a substantial change due to the death of an owner.

(d) Application for an exemption under this section shall be submitted to the Director of the Office by March 1, 1978 with a copy to the State regulatory authority.

(e) The request for exemption shall be in the form of an affidavit under oath and shall include—

(1) The name and address of the permittee and of persons who control the permittee by reason of stock ownership or otherwise.

(2) The name, location, Mining Enforcement and Safety Administration identification numbers, and permit numbers of the surface coal mining operations for which exemption is sought, including a statement of the dates each

permit was issued or renewed and will expire.

(3) The date and method by which the permittee was created if the permittee is not an individual.

(4) A listing of all surface and underground coal mining operations showing—

(i) Actual production for the year ending July 31, 1977, attributed to the permittee and the inclusive dates of operation.

(ii) Estimated production for the year ending December 31, 1978, attributed to the permittee and the anticipated dates of operation.

(5) A copy of coal severance tax returns for coal produced during the year ending on July 31, 1977.

(6) A copy of a notice the permittee has published in a local newspaper of general circulation in the area of each mine for which an exemption is sought once a week for two weeks stating—

(i) That an application for a small operator exemption will be filed, which if granted would exempt the operator from certain environmental protection performance standards in the Act;

(ii) The name and address of the permittee;

(iii) The location of the surface coal mining operations to which the exemption will apply; and

(iv) That public comments may be submitted to the Director, Office of Surface Mining Reclamation and Enforcement.

(f) Production from the following operations shall be attributed to the permittee—

(1) All coal produced by operations beneficially owned entirely by the permittee, or controlled by reasons of ownership, direction of the management, or in any other manner by the permittee.

(2) The pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the permittee owns more than a 5-percent interest.

(3) All coal produced by persons who own more than 5 percent of the permittee or who directly or indirectly control the permittee by reason of stock ownership, direction of the management or in any other manner.

(4) The pro rata share of coal produced by operations owned or controlled by the person who owns or controls the permittee.

(g) The Director shall grant the request for an exemption if, upon the basis of the request and any State regulatory authority or public comments, or any other information, he finds that—

(1) The permittee has satisfied his burden of proof by demonstrating eligibility for the exemption; and

(2) The exemption will not be inconsistent with State law, regulation or permit terms.

(h) Any person aggrieved by the decision of the Director under this section may appeal within 20 days from receipt of that decision to The Office of Hearing and Appeals under 43 CFR part 4. The Office of Hearings and Appeals and the Secretary shall have the authority to stay the exemption pending the outcome of the appeal.

(i) The exemption shall be effective on the date approved. It shall remain in effect until expiration or renewal of the State permit to which it applies, December 31, 1978, or until revoked, whichever is earlier.

(j) The Director shall revoke the exemption upon finding that the exemption was erroneously issued or that the exempted operation has or will produce more than 100,000 tons of coal per year.

[42 FR 62677, Dec. 13, 1977; 43 FR 2721, Jan. 19, 1978, as amended at 43 FR 5001, Feb. 7, 1978]

## PART 715—GENERAL PERFORMANCE STANDARDS

Sec.

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715.200 Interpretative rules related to general performance standards.

AUTHORITY: Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*).

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SOURCE: 42 FR 62680, Dec. 13, 1977, unless otherwise noted.

### § 715.10 Information collection.

The information collection requirements contained in 30 CFR 715.13(d); 715.17 (b)(1)(v) and (j)(3); 715.18(b) (2) and (6); and 715.19 (b), (c), (d) and (e)(4) have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0007. The information is being collected to meet the performance standards in section 515(b)(2) of P.L. 95-87 and are applicable during the initial regulatory program. This information will be used by OSM in measuring compliance with the performance standards until permanent programs are in effect in the States. The obligation to respond is mandatory.

[47 FR 33685, Aug. 4, 1982]

### § 715.11 General obligations.

(a) *Compliance.* All surface coal mining and reclamation operations conducted on lands where any element of the operations is regulated by a State shall comply with the initial performance standards of this part according to the time schedule specified in § 710.11. Part 717 of this chapter establishes performance standards for surface effects of underground coal mines. Initial regulations regarding the special Initial Performance Standards are established by part 716 of this chapter for—

- (1) Surface coal mining operations on steep slopes;
- (2) Surface coal mining operations involving mountaintop removal;
- (3) Special bituminous coal mines;
- (4) Anthracite surface coal mining operations;
- (5) Surface coal mining operations in Alaska; and
- (6) Surface coal mining operations on prime farmlands.

Where State environmental protection standards are adopted for a specific State because they are more stringent than the standards of parts 715, 716, and 717, they will be published in part 718 of this chapter.

(b) *Authorizations to operate.* A copy of all current permits, licenses, approved plans, or other authorizations to oper-

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ate the mine shall be available for inspection at or near the mine site.

(c)(1) *Mine maps.* Any person conducting surface coal mining and reclamation operations on and after May 3, 1978, shall submit two copies of an accurate map of the mine and permit area at a scale of 1:6000 or larger. The map shall show as of May 3, 1978, the lands from which coal has not yet been removed and the lands and structures which have been used or disturbed to facilitate mining. One copy of the mine map shall be submitted to the State regulatory authority and one copy shall be submitted to the Regional Director, OSM, before July 3, 1978.

(2) In addition to the requirements of paragraph (c)(1) of this section, any person who conducted surface coal mining and reclamation operations pursuant to a small operator's exemption shall submit before March 15, 1979, two copies of an accurate map of each mine showing the permit area at a scale of 1:6000 or larger. One copy shall be submitted to the state regulatory authority and one copy to the appropriate Regional Director, OSM. The map shall show as of December 31, 1979 or the expiration date of the exemption (whichever is earlier) the lands from which coal had not yet been removed, the lands and structures which had been used or disturbed to facilitate mining, and the lands which had not been disturbed. The map need not be submitted if these areas have already been shown on mine maps submitted to the state regulatory authority, if a copy is available to the appropriate Regional Director pursuant to paragraph (c)(1) of this section or 30 CFR 720.13(b).

(d) *Indian lands—(1) Mine maps.* Any person conducting surface coal mining and reclamation operations on Indian lands under this part shall submit no fewer than 7 copies of an accurate map of the mine and authorized mining areas at a scale of 1:6000 or larger. The map shall show, as of December 16, 1977, the lands where coal has not yet been removed and the lands and structures that have been used or disturbed to facilitate surface coal mining operations.

(2) *Consultation with tribal governments.* Any requirement in this part for consultation with or notification to

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State and local governments shall be interpreted as requiring, in like manner, consultation with or notification to tribal governments. OSM shall consult with the Bureau of Indian Affairs with respect to special requirements relating to the protection of noncoal resources and with the Bureau of Land Management with respect to the requirements relating to the development, production, and recovery of mineral resources on Indian lands.

[42 FR 62680, Dec. 13, 1977, as amended at 44 FR 6682, Feb. 1, 1979; 59 FR 43419, Aug. 23, 1994]

### § 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.

### § 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 houses, 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 juris-

dition 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]

#### § 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 re-affecting previously mined lands that have not been restored to the

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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). Out-slopes 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 out-slopes 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

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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

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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]

### §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.

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(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

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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:

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd <sup>3</sup>	Sandstone .....	10	4
	Do .....	16	8
More than 1,000,000 yd <sup>3</sup>	Sandstone .....	16	8
	Do .....	16	16

(iv) Underdrains shall consist of non-degradable, 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

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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:

Case	Design condition	Minimum factor of safety
I .....	End of construction .....	1.5
II .....	Earthquake .....	1.1

(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

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(ii) Eliminate the highwall to the extent practicable.

[44 FR 30628, May 25, 1979, as amended at 46 FR 37233, July 17, 1981; 47 FR 18555, Apr. 29, 1982]

### § 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 de-

velopment 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

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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.

**§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 back-fill areas. If pollution can be controlled only by treatment, the permittee shall

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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

Effluent characteristics	Maximum allowable <sup>1</sup>	Average of daily values for 30 consecutive discharge days <sup>1</sup>
Iron, total .....	7.0	3.5
Manganese, total .....	4.0	2.0
Total suspended solids <sup>2</sup> .....	70.0	35.0
pH <sup>3</sup> .....	(4)	(4)

<sup>1</sup> Based on representative sampling.

<sup>2</sup>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.

<sup>3</sup>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.

<sup>4</sup>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.

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(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 im-

pounded 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 dissipators, 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 al-

luvial 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 data 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.

(l) *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

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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 haul 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 runoff 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.

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(n) *Discharge of waters into underground mines.* Surface and ground waters shall not be discharged or diverted into underground mine workings.

(Secs. 101, 102, 201, 501, 503-510, 515-517, 523, and 701, Surface Mining Act of 1977, Pub. L. 95-87), 30 U.S.C. 1201, 1202, 1211, 1251-1260, 1265-1267, 1273, 1291))

[42 FR 62680, Dec. 13, 1977; 43 FR 2721, Jan. 19, 1978; 43 FR 3705, Jan. 27, 1978, as amended at 43 FR 8091, Feb. 27, 1978; 43 FR 21458, May 18, 1978; 44 FR 30631, May 25, 1979; 44 FR 36887, June 22, 1979; 44 FR 77451, Dec. 31, 1979; 45 FR 6913, Jan. 30, 1980]

EFFECTIVE DATE NOTE: A document published at 44 FR 77451, Dec. 31, 1979 temporarily suspended §715.17(a)(1) insofar as it applies to total suspended solids (TSS) discharges.

**§ 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 precipitation 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:

Case	Loading condition	Minimum safety factor
I .....	End of construction .....	1.3
II .....	Partial pool with steady seepage saturation.	1.5
III .....	Steady seepage from spillway or decant crest.	1.5
IV .....	Earthquake (cases II and III with seismic loading).	1.0

(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

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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.

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(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).

### §715.19 Use of explosives.

(a) *General.* (1) The permittee shall comply with all applicable local, State, and Federal laws and regulations and the requirements of this section in the storage, handling, preparation, and use of explosives.

(2) Blasting operations that use more than the equivalent of 5 pounds of TNT shall be conducted according to a time schedule approved by the regulatory authority.

(3) All blasting operations shall be conducted by experienced, trained, and competent persons who understand the hazards involved. Persons working with explosive materials shall—

(i) Have demonstrated a knowledge of, and a willingness to comply with, safety and security requirements;

(ii) Be capable of using mature judgment in all situations;

(iii) Be in good physical condition and not addicted to intoxicants, narcotics, or other similar types of drugs;

(iv) Possess current knowledge of the local, State and Federal laws and regulations applicable to his work; and

(v) Have obtained a certificate of completion of training and qualification as required by State law or the regulatory authority.

(b) *Preblasting survey.* (1) On the request to the regulatory authority of a resident or owner of a manmade dwelling or structure that is located within one-half mile of any part of the permit area, the permittee shall conduct a preblasting survey of the dwelling or structure and submit a report of the survey to the regulatory authority.

(2) Personnel approved by the regulatory authority shall conduct the survey to determine the condition of the dwelling or structure and to document any preblasting damage and other

physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems shall be limited to surface condition and other readily available data. Special attention shall be given to the preblasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(3) A written report of the survey shall be prepared and signed by the person or persons who conducted the survey and prepared the written report. The report shall include recommendations of any special conditions or proposed adjustments to the blasting procedures outlined in paragraph (e) of this section which should be incorporated into the blasting plan to prevent damage. Copies of the report shall be provided to the person requesting the survey and to the regulatory authority.

(c) *Public notice of blasting schedule.* At least 10 days, but not more than 20 days before beginning a blasting program in which explosives that use more than the equivalent of 5 pounds of TNT are detonated, the permittee shall publish a blasting schedule in a newspaper of general circulation in the locality of the proposed site. Copies of the schedule shall be distributed by mail to local governments and public utilities and to each residence within one-half mile of the blasting sites described in the schedule. The permittee shall republish and redistribute the schedule by mail at least every 3 months. Blasting schedules shall not be so general as to cover all working hours but shall identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur. The blasting schedule shall contain at a minimum—

(1) Identification of the specific areas in which blasting will take place. The specific blasting areas described shall not be larger than 300 acres with a generally contiguous border;

(2) Dates and times when explosives are to be detonated expressed in not more than 4-hour increments;

(3) Methods to be used to control access to the blasting area;

(4) Types of audible warnings and all-clear signals to be used before and after blasting; and

(5) A description of possible emergency situations (defined in paragraph (e)(1)(ii) of this section), which have been approved by the regulatory authority, when it may be necessary to blast at times other than those described in the schedule.

(d) *Public notice of changes to blasting schedules.* Before blasting in areas not covered by a previous schedule or whenever the proposed frequency of individual detonations are materially changed, the permittee shall prepare a revised blasting schedule in accordance with the procedures in paragraph (c) of this section. If the change involves only a temporary adjustment of the frequency of blasts, the permittee may use alternate methods to notify the governmental bodies and individuals to whom the original schedule was sent.

(e) *Blasting procedures—(1) General.* (i) All blasting shall be conducted only during the daytime hours, defined as sunrise until sunset. Based on public requests or other considerations, including the proximity to residential areas, the regulatory authority may specify more restrictive time periods.

(ii) Blasting may not be conducted at times different from those announced in the blasting schedule except in emergency situations where rain, lightning, other atmospheric conditions, or operator or public safety requires unscheduled detonation.

(iii) Warning and all-clear signals of different character that are audible within a range of one-half mile from the point of the blast shall be given. All persons within the permit area shall be notified of the meaning of the signals through appropriate instructions and signs posted as required by §715.12.

(iv) Access to the blasting area shall be regulated to protect the public and livestock from the effects of blasting. Access to the blasting area shall be controlled to prevent unauthorized entry at least 10 minutes before each blast and until the permittee's authorized representative has determined that no unusual circumstances such as imminent slides or undetonated charges exist and access to and travel

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in or through the area can safely resume.

(v) Areas in which charged holes are awaiting firing shall be guarded, barricaded and posted, or flagged against unauthorized entry.

(vi) Airblast shall be controlled such that it does not exceed 128 decibel linear-peak at any manmade dwelling or structure located within one-half mile of the permit area.

(vii) Except where lesser distances are approved by the regulatory authority (based upon a preblasting survey or other appropriate investigations) blasting shall not be conducted within—

(A) 1,000 feet of any building used as a dwelling, school, church, hospital, or nursing facility;

(B) 500 feet of facilities including, but not limited to, disposal wells, petroleum or gas-storage facilities, municipal water-storage facilities, fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines; and

(C) 500 feet of an underground mine not totally abandoned except with the concurrence of the Mining Enforcement and Safety Administration.

(2) *Blasting standards.* (i) 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 ground or surface waters outside the permit area.

(ii) *Ground vibration*—(A) *General.* In all blasting operations, except as otherwise authorized in paragraph (e)(2)(iii) of this section, the maximum ground vibration shall not exceed a value approved by the regulatory authority. It shall be established in accordance with the maximum peak-particle-velocity limit of paragraph (e)(2)(ii)(B), the scaled-distance equation of paragraph (e)(2)(ii)(C), or the blasting-level chart of paragraph (e)(2)(ii)(D), or such other standard established under paragraph (e)(2)(ii)(E), of this section. All structures in the vicinity of the blasting area, not listed in paragraph (e)(2)(ii)(B), of this section, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines, shall be protected from damage by es-

tablishment of a maximum allowable limit on the ground vibration, submitted by the operator and approved by the regulatory authority before the initiation of blasting.

(B) *Maximum peak-particle velocity.* (1) 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.

Distance (D) from blasting site, in feet	Maximum allowable peak particle velocity (V max) for ground vibration, in inches/second <sup>1</sup>	Scaled-distance factor to be applied without seismic monitoring <sup>2</sup>
0 to 300 .....	1.25	50
301 to 5,000 .....	1.00	55
5,001 and beyond .....	0.75	65

<sup>1</sup> Ground vibration shall be measured as 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 (e)(2)(ii)(C)(1) of this section.

(2) A seismographic record shall be provided for each blast.

(C) *Scaled-distance equation.* (1) The operator may use the scaled-distance equation,  $W=(D/Ds)^2$ , 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  $Ds$ =the scaled-distance factor, which may initially be approved by the regulatory authority using the values for scaled-distance factor listed in paragraph (e)(2)(ii)(B)(1), of this section.

(2) 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 scaled-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 (e)(2)(B)(1) of this section at a 95-percent confidence level.

(D) *Blasting-level chart.* (1) An operator may use the ground-vibration limits in Figure 1 to determine the maximum allowable ground vibration.

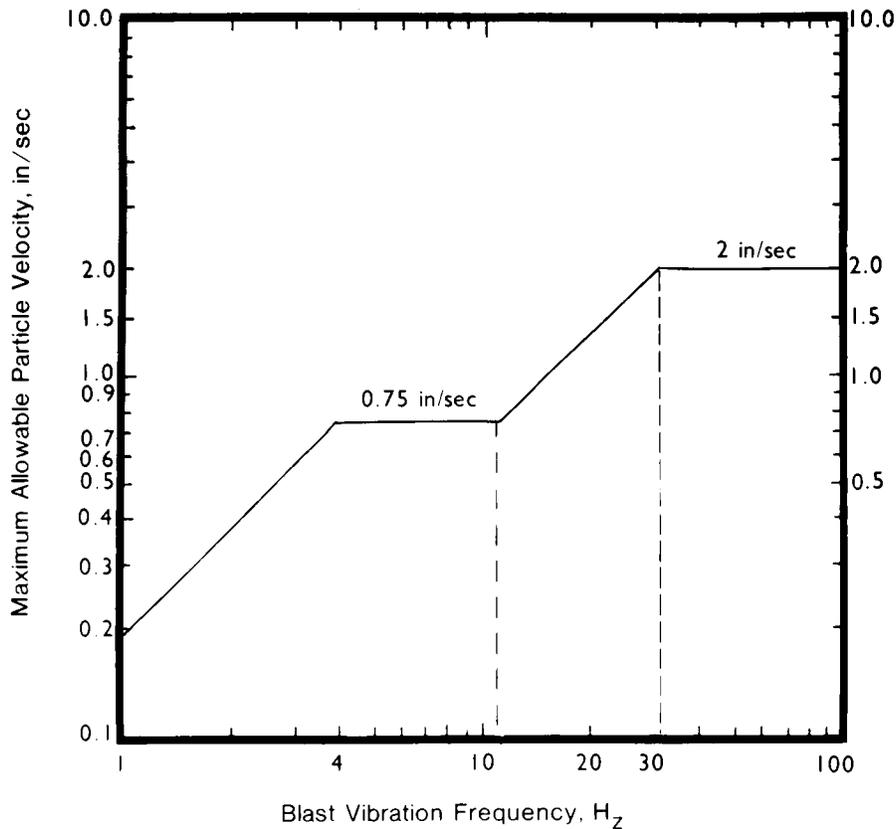


Figure 1. Alternative blasting level criteria.

(Source: Modified from figure B-1, Bureau of Mines RI8507)

(2) 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.

(E) The maximum allowable ground vibration shall be reduced by the regulatory authority beyond the limits otherwise provided by this section, if de-

termined necessary to provide damage protection.

(F) The regulatory authority may require an operator to conduct seismic monitoring of any or all blasts and may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(iii) If blasting is conducted in accordance with paragraph (e)(2)(i) of this section, the maximum ground-vibration and airblast standards shall not apply at the following locations:

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(A) At structures owned by the permittee and not leased to another person.

(B) 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.

(3) *Records of blasting operations.* A record of each blast, including seismograph reports, shall be retained for at least 3 years and shall be available for inspection by the regulatory authority and the public on request. The record shall contain the following data—

- (i) Name of permittee, operator, or other person conducting the blast;
- (ii) Location, date, and time of blast;
- (iii) Name, signature, and license number of blaster-in-charge;
- (iv) Direction and distance, in feet, to nearest dwelling, school, church, or commercial or institutional building neither owned or leased by the permittee;
- (v) Weather conditions;
- (vi) Type of material blasted;
- (vii) Number of holes, burden, and spacing;
- (viii) Diameter and depth of holes;
- (ix) Types of explosives used;
- (x) Total weight of explosives used;
- (xi) Maximum weight of explosives detonated within any 8 millisecond period;
- (xii) Maximum number of holes detonated within any 8 millisecond period;
- (xiii) Methods of firing and type of circuit;
- (xiv) Type and length of stemming;
- (xv) If mats or other protections were used;
- (xvi) Type of delay detonator used, and delay periods used;
- (xvii) Seismograph records, where required, including—
  - (A) Seismograph reading, including exact location of seismograph and its distance from the blast;
  - (B) Name of person taking the seismograph reading; and
  - (C) Name of person and firm analyzing the seismograph record.

[42 FR 62680, Dec. 13, 1977; 43 FR 2722, Jan. 19, 1978, as amended at 48 FR 9805, Mar. 8, 1983]

**§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 landmanaging 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, forbs, 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

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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 fa-

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vorable planting conditions or protected by other approved measures as specified in § 715.16.

### § 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 Reclamation 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).

(Sec. 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]

**PART 716—SPECIAL PERFORMANCE STANDARDS**

## Sec.

- 716.1 General obligations.
- 716.2 Steep-slope mining.
- 716.3 Mountaintop removal.
- 716.4 Special bituminous coal mines.
- 716.5 Anthracite coal mines.
- 716.6 Coal mines in Alaska.
- 716.7 Prime farmland.
- 716.10 Information collection.

AUTHORITY: Secs. 201, 501, 527 and 529, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SOURCE: 42 FR 62691, Dec. 13, 1977, unless otherwise noted.

**§ 716.1 General obligations.**

(a) This part establishes special initial performance standards that apply in the following special circumstances—

- (1) § 716.2 applies to surface coal mining operations on steep slopes.
- (2) § 716.3 applies to surface coal mining operations involving mountaintop removal.
- (3) § 716.4 applies to special bituminous coal mines.
- (4) § 716.5 applies to anthracite surface coal mining operations.
- (5) § 716.6 applies to surface coal mining operations in Alaska.
- (6) § 716.7 applies to surface coal mining operations on prime farmlands.

(b) All surface coal mining and reclamation operations subject to this part shall comply with the applicable special performance standards in this part. Such operations shall also comply with all general performance standards in part 715 of this chapter unless specifically exempted *in this part* from the requirements of part 715.

**§ 716.2 Steep-slope mining.**

The permittee conducting surface coal mining and reclamation operations on natural slopes that exceed 20 degrees, or on lesser slopes that require measures to protect the area from disturbance, as determined by the regulatory authority after consideration of soils, climate, the method of operation, geology, and other regional characteristics, shall meet the following performance standards. The standards of this section do not apply where mining is done on a flat or gently rolling ter-

rain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area; or where the mining is governed by § 716.3.

(a) Spoil, waste materials or debris, including that from clearing and grubbing, and abandoned or disabled equipment, shall not be placed or allowed to remain on the downslope.

(b) The highwall shall be completely covered with spoil and the disturbed are a graded to comply with the provisions of § 715.14 of this chapter. Land above the highwall shall not be disturbed unless the regulatory authority finds that the disturbance will facilitate compliance with the requirements of this section.

(c) Material in excess of that required to meet the provisions of § 715.14 of this chapter shall be disposed of in accordance with the requirements of § 715.15 of this chapter.

(d) Woody materials may be buried in the backfilled area only when burial does not cause, or add to, instability of the backfill. Woody materials may be chipped and distributed through the backfill when approved by the regulatory authority.

(e) Variances from approximate original contour restoration requirements. (1) This section applies to surface coal mining operations on steep slopes where the operation is not to be reclaimed to achieve the approximate original contour and is not a mountaintop removal operation.

(2) The objective of this subsection is to allow for a variance from the approximate original contour restoration requirements on steep slopes to—

(i) Improve watershed control of the area; and

(ii) Allow the land to be used for an industrial, commercial, residential, or public use, including recreational facilities.

(3) The regulatory authority may grant a variance from the requirement for restoration of the affected lands to their approximate original contour only if it first finds, in writing, on the basis of a showing made by the permittee, that all of the following requirements are met:

(i) The permittee has demonstrated that the purpose of the variance is to

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make the lands to be affected within the permit area suitable for an industrial, commercial, residential, or public use postmining land use and that the proposed industrial, commercial, residential, or public use is likely to occur.

(ii) The proposed use, after consultation with the appropriate land-use planning agencies, if any, constitutes an equal or better economic or public use.

(iii) The permittee has demonstrated that compliance with the requirements for acceptable alternative postmining industrial, commercial, residential or public land uses of 30 CFR 715.13 has been achieved except for the requirement at §715.13(d)(3) and (4) to provide letters of commitment. The permittee must demonstrate to the regulatory authority that necessary public facilities are likely to be provided and that the plan is financially feasible.

(iv) The permittee has demonstrated that the watershed of the area will be improved as compared to the condition of the watershed before mining. The watershed will be deemed improved only if—

(A) There will be a reduction in the amount of total suspended solids or other pollutants discharged to ground or surface waters from the area as compared to such discharges; or, there will be reduced flood hazards or more even flow within the watershed containing the area due to reduction of the peak flow discharges from precipitation events or thaws; or any other criterion authority in the granting of the variance. While improving one or more variables, the permittee must also at least maintain the variables not improved at their premining levels;

(B) The total volume of flows from the proposed affected lands, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water; and

(C) The appropriate State environmental agency approves the plan.

(v) The permittee has demonstrated that the owner of the surface of the lands within the permit area has knowingly requested, in writing, as a part of the application, that a variance be

granted. The request shall be made separately from any surface owner consent given for the operation and shall show an understanding that the variance could not be granted without the surface owner's request.

(vi) The proposal 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.

(vii) All other requirements of the Act and these regulations will be met by the proposed operations.

(4) Every permittee who obtains a variance under this subsection shall:

(i) Backfill completely the highwall with spoil material, in a manner which results in a static factor of safety of at least 1.3 using general geotechnical analysis.

(ii) Improve the watershed control of the area by reducing the peak flow from precipitation or thaw or reducing the total suspended solids or other pollutants in the surface water discharge during precipitation or thaw or by attaining the criteria approved by the regulatory authority in the granting of the variance. While improving one or more variables, the permittee must also at least maintain the variables not improved at their premining levels. The total volume of flow during every season of the year shall not vary in a way that adversely affects the ecology of any surface or ground water.

(iii) Disturb land above the highwall only to the extent that the regulatory authority deems appropriate and approves as necessary to facilitate compliance with the provisions of this section. The regulatory authority may authorize such a disturbance above the highwall if it finds the disturbance is necessary to—

(A) Blend the solid highwall and the backfilled material; or

(B) Control surface runoff; or

(C) Provide access to the area above the highwall.

(iv) Place off the mine bench no more than the amount of spoil 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 parts 710 through

725 of this chapter. All spoil not retained on the bench shall be placed in accordance with the Act and these regulations.

(5) The regulatory authority shall review every variance granted pursuant to this subsection not more than three years from the date of issuance of the permit to ensure that the proposed alternative postmining use is proceeding in accordance with the terms of the approved plan, unless the permittee affirmatively so demonstrates.

[42 FR 62691, Dec. 13, 1977, as amended at 45 FR 83168, Dec. 17, 1980]

#### §716.3 Mountaintop removal.

(a) Surface coal mining and reclamation operations that remove entire coal seams running through the upper fraction of a mountain, ridge, or hill by removing all of the overburden and creating a level plateau or gently rolling contour with no highwalls remaining are exempt from the requirements of §715.14 of this chapter for achieving approximate original contour, if the following requirements are met:

(1) An industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed for the affected land.

(2) The alternative land use criteria in §715.13(d) of this chapter are met and the proposal is approved by the regulatory authority.

(3) All other applicable requirements of part 715 of this chapter can be met.

(b) Surface coal mining and reclamation operations conducted under this section shall comply with the following standards:

(1) An outcrop barrier of sufficient width consisting of the toe of the lowest coal seam, and its associated overburden shall be retained to prevent slides and erosion.

(2) The 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 will be attained.

(3) The resulting level or gently rolling contour shall be graded to drain in-

ward from the outslope except at specific points where it drains over the outslope in protected stable channels.

(4) Damage to natural watercourses below the area to be mined shall be prevented.

(5) Spoil shall be placed on the mountaintop bench as is necessary to achieve the postmining land use approved under §715.13 of this chapter. All excess spoil material not retained on the mountaintop shall be placed in accordance with the standards of §715.15 of this chapter.

(c)(1) All permits giving approval for mountaintop removal shall be reviewed not more than 3 years from the date of issuance of the permit, unless the permittee affirmatively demonstrates and the regulatory authority finds that all operations are proceeding in accordance with the terms of the permit and applicable requirements of the Act and the regulations of this part. The terms of the permit shall be in accordance with the requirements of the Act and the regulations of this part.

(2) The terms of a permit for mountaintop removal may be modified by the regulatory authority if it determines that more stringent measures are necessary to prevent or control slides and erosion, prevent damage to natural water courses, avoid water pollution, or to assure successful revegetation.

#### §716.4 Special bituminous coal mines.

(a) *Definition.* Special bituminous coal surface mines as used in this section means those bituminous coal surface mines that are located in the State of Wyoming and that are being mined or will be mined according to the following criteria:

(1) Excavation of the mine pit takes place on a relatively limited site for an extended period of time. For the purposes of this section, mine pit means an open-pit mine in which the surface opening is at least the full size of the excavation and has a contiguous border. The pit generally is quite deep and is formed by the removal of relatively large amounts of overburden to obtain lesser amounts of coal. The term as used in this section applies only to mining operations that extract coal

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from seams dipping 15 degrees or more from the horizontal.

(2) Excavation of the mine pit follows a coal seam that inclines 15 degrees 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 operations.

(3)(i) Surface coal mining operations in the mine pit have taken place since January 1, 1972, and

(A) Operations in the mine pit are removing more than one coal seam, and

(B) Mining has begun on the deepest coal seam scheduled to be mined; or

(ii) Surface coal mining operations which may be developed after August 3, 1977, and are conducted on lands immediately adjacent to operations meeting the criteria of paragraph (a)(3)(i) of this section.

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

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

(6) There is no practicable way to entirely reclaim the land as required by part 715 of this chapter.

(b) *Requirements for special bituminous coal mines operating prior to July 1, 1973.* Those portions of a special bituminous coal mine approved for operation prior to July 1, 1973, including the orderly expansion of such a mine pit to the extent authorized by State law, shall at a minimum meet the general performance standards of part 715 of this chapter for all operations conducted on the permit area outside the mine pit and for those operations associated with spoil storage areas. The standards of part 715 also apply to the mine pit with the exception of §715.14, which relates to backfilling and grading. Special requirements for backfilling and grading the mine pit area are as follows:

(1) In the final mine area, highwalls will be allowed to remain and benches will be allowed. Details of the benches shall be included in the mine plans submitted to the regulatory authority for approval.

(2) The exposed pit floors will be sloped and graded to provide access to the area, and topsoil shall be applied

and the floor area seeded according to the requirements of §§715.16 and 715.20. Where water impoundments are included as part of the mine plan, riprap may be used if necessary to prevent erosion.

(3) Spoil piles will be graded and contoured with no more than overall slope of 17 degrees allowed, and terraces may be used to break the slope when it can be shown that terraces will accomplish the required reclamation. For the postmining land use, steeper slopes may be permitted upon approval of the regulatory authority, provided it can be demonstrated that such method will provide the required results.

(c) *Requirements for other special bituminous coal mines.* Those portions of a special bituminous coal mine which do not meet the criteria of paragraph (b) of this section shall, at minimum meet the general performance standards of part 715 of this chapter for all operations conducted on the permit area outside the mine pit and for these operations associated with spoil storage areas. The standards of part 715 also apply to the mine pit with the exception of §715.14, which relates to backfilling and grading. Special requirements for backfilling and grading the mine pit area are as follows:

(1) *Slope specifications.* Slope specifications for the postmining land use shall be based on an average of the natural slopes measured in the immediate area of the mine site, and the maximum inclination of the slopes in the reclaimed area shall not be greater than this average slope. However, slopes steeper than the average of the natural slopes may be approved by the regulatory authority if it can be demonstrated that returning the mined area to a slope equal to or less than the average natural slope would greatly increase the amount of disturbed land. Measurements of individual slopes, locations at which measurements are made, and the average natural slope as determined from the individual slope measurements shall be submitted for approval to the regulatory authority. The regulatory authority may make an independent slope survey to verify the average natural slope.

(2) *Postmining land uses that do not include permanent water impoundments.* (i)

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The final mine area shall be backfilled, graded, and contoured to the extent necessary to return the land to the use approved by the regulatory authority.

(ii) All backfilling, grading, and contouring shall be done in a manner to preserve the original drainage system or to provide substitute drainage systems approved by the regulatory authority.

(iii) Terraces or benches may be used only if it can be demonstrated that contouring methods will not provide the required results. Detailed plans of dimensions and design of the terraces or benches, check dams, erosion prevention techniques, and slopes of the terraces or benches and their intervals shall be submitted to the regulatory authority for approval before construction.

(iv) Depressions that will accumulate water shall not be allowed unless they are approved under paragraph (3).

(3) *Postmining land uses that include permanent water impoundments.* (i) The exposed mine pit area shall be sloped, graded, and contoured to blend with the topography of the surrounding terrain and to provide for access to the area. Where necessary to prevent erosion, riprap shall be used.

(ii) Under certain conditions where it can be demonstrated by the permittee that the pitwall can be stabilized by terracing or other techniques it may be permissible to leave one-half the proposed shoreline, as measured along the circumference, composed of the stabilized pitwall. The remaining part of the shoreline shall be graded and contoured to blend with the topography of the surrounding terrain and to provide access to the area. Detailed explanations of the techniques to be used to stabilize the pitwalls shall be submitted for approval to the regulatory authority. The regulatory authority may verify the effectiveness of the proposed stabilization techniques from a study made by an independent engineering company and based on this information and an onsite inspection, the regulatory authority will then determine the acceptability of the proposed stabilization techniques.

(d) In the event of an amendment or revision to the State of Wyoming's regulatory program, regulations, or deci-

sions made thereunder governing special bituminous coal mines, the Secretary shall issue such additional regulations as necessary to meet the purposes of the Act.

### §716.5 Anthracite coal mines.

(a) Permittees of anthracite surface coal mining and reclamation operations in those States where the mines are regulated by State environmental protection standards shall be subject to the environmental protection standards of the State regulatory program in existence on August 3, 1977, instead of part 715 and part 717 of this chapter.

(b) The environmental protection provisions of Title 25, Rules and Regulations, part 1, Department of Environmental Resources, Commonwealth of Pennsylvania, shall apply to reclamation of anthracite surface coal mining and reclamation operations in the Commonwealth of Pennsylvania instead of part 715 and part 717 of this chapter. In addition, the regulations of the Commonwealth of Pennsylvania pertaining to standards for air and water quality shall apply instead of the regulations of part 715 and part 717 of this chapter.

(c) If a State's regulatory program or regulations for anthracite surface coal mining and reclamation operations in force at the time of this Act are amended, the Secretary, upon receipt of a notice of amendment, shall issue additional regulations as necessary to meet the purposes of this Act.

[45 FR 61259, Sept. 15, 1980]

### §716.6 Coal mines in Alaska.

(a) Permittees of surface coal mining operations in Alaska from which coal has been mined on or after August 3, 1977, shall conduct operations in a manner that, at a minimum, meets the performance standards of this chapter.

(b) The Secretary, after consultation with the Governor of Alaska, may modify the applicability of any environmental protection standard to any surface coal mining operation if he determines that it is necessary to ensure the continued operation of the mine.

(c) Any person may petition the Secretary to modify the applicability of a performance standard to a coal mine in Alaska. No particular form of petition

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is required. However, the petition shall be in writing and shall identify clearly—

(1) The performance standard involved;

(2) The alternative methods to be used to protect the environment and public health and safety;

(3) The reasons why a modification is requested with full descriptions of the impacts continued requirements for compliance with the performance standard to be modified would have on mining and reclamation and of the impacts the proposed method would have on the environment and public health and safety; and

(4) The location of the mine.

(d) If the Secretary determines that the petition presents reasonable justification for modifying the performance standard, he may grant a temporary suspension of enforcement of the performance standard, and he shall publish a notice of intention to modify the applicability of the performance standard in the FEDERAL REGISTER and in a newspaper of general circulation in the area of Alaska where the affected coal mine is located. A public hearing shall be held in Alaska and any person may testify for or against the proposed modification. The Secretary, after considering the public comments, and consulting with the Governor of Alaska, shall publish his decision in the FEDERAL REGISTER and in the same newspaper in which the original notice was published.

### §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)  $\times$  percent slope of less than 2.0 and a product of  $I$  (soil erodibility)  $\times C$  (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—

(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—

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(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.

(6) Apply nutrients and soil amendments as needed to establish quick vegetative growth.

[42 FR 62691, Dec. 13, 1977; 43 FR 2722, Jan. 19, 1978, as amended at 46 FR 47529, Sept. 28, 1981; 46 FR 47721, Sept. 29, 1981]

#### § 716.10 Information collection.

The Office of Management and Budget has determined that the information collection requirements contained in 30 CFR part 716 do not require approval under the Paperwork Reduction Act.

[59 FR 43420, Aug. 23, 1994]

### PART 717—UNDERGROUND MINING GENERAL PERFORMANCE STANDARDS

Sec.

717.10 Information collection.

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717.13 [Reserved]

717.14 Backfilling and grading of road cuts, mine entry area cuts, and other surface work areas.

717.15 Disposal of excess rock and earth materials on surface areas.

717.16 [Reserved]

717.17 Protection of the hydrologic system.

717.18 Dams constructed of or impounding waste material.

717.19 [Reserved]

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717.20 Topsoil handling and revegetation.

AUTHORITY: Secs. 201 and 501, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SOURCE: 42 FR 62695, Dec. 13, 1977, unless otherwise noted.

### § 717.10 Information collection.

The Office of Management and Budget has determined that the information collection requirements contained in 30 CFR part 717 do not require approval under the Paperwork Reduction Act.

[59 FR 43420, Aug. 23, 1994]

### § 717.11 General obligations.

(a) *Compliance.* All underground coal mining and associated reclamation operations conducted on lands where any element of the operations is regulated by a State shall comply with the initial performance standards of this part according to the time schedule specified in § 710.11.

(1) For the purposes of this part, *underground coal mining and associated reclamation operations* mean a combination of *surface operations* and *underground operations*. *Surface operations* include construction, use, and reclamation of new and existing access and haul roads, aboveground repair areas, storage areas, processing areas, shipping areas, and areas upon which are sited support facilities including hoist and ventilating ducts, and on which materials incident to underground mining operations are placed. *Underground operations* include underground construction, operation, and reclamation of shafts, adits, underground support facilities, underground mining, hauling, storage, and blasting.

(2) For the purpose of this part the term *permittee* means the person permitted to conduct underground mining operations by a State or if no permit is issued in the State, the person operating a mine.

(3) For the purpose of this part, *Disturbed areas* means surface work areas and lands affected by surface operations including, but not limited to, roads, mine entry excavations, above ground (surface) work areas, such as tipples, coal processing facilities and other operating facilities, waste work and spoil disposal areas, and mine waste impoundments or embankments.

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(4) Where State environmental protection standards are adopted for a specific State because they are more stringent than the standards of this part, they will be published in part 718 of this chapter.

(b) *Authorizations to operate.* A copy of all current permits, licenses, approved plans or other authorizations to operate the mine shall be available for inspection at or near the mine site.

### § 717.12 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, and shall conform to local ordinances and codes. The signs and other markers shall be maintained during all operations to which they pertain.

(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 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.

### § 717.13 [Reserved]

### § 717.14 Backfilling and grading of road cuts, mine entry area cuts, and other surface work areas.

(a) Upon completion of underground mining, surface work areas which are involved in excavation, disposal of materials, or otherwise affected, shall be regraded to approximate original contour. The permittee shall transport, backfill and compact fill material to assure stability or to prevent leaching of toxic pollutants. Barren rock or similar materials excess to the mining operations and which are disposed on the land surface shall be subject to the provision of § 717.15 of this part. Roads and support facility areas existing prior to the effective date of this part and used in support of underground mining operations which are subject to this part shall be regraded to the extent deemed feasible by the regulatory authority based on the availability of

backfill material and resulting stability of the affected lands after reclamation. As a minimum, the permittee shall be required to:

(1) Retain all earth, rock and other mineral nonwaste materials on the solid portion of existing or new benches, except that the regulatory authority may permit placement of such material at the site of the faceup as a means of disposing of excavated spoil when additional working space is needed to facilitate operations. Such placement of material shall be limited to minimize disturbance of land and to the hydrologic balance. Such fills shall be stabilized with vegetation and shall achieve a minimum static safety factor of 1.5. In no case shall the outslope exceed the angle of repose.

(2) Backfill and grade to the most moderate slope possible to eliminate any highwall along roads, mine entry faces or other areas. Slopes shall not exceed the angle of repose or such lesser slopes as required by the regulatory authority to maintain stability.

(b) 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 appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(1) The width of the individual terrace bench shall not exceed 20 feet unless specifically approved by the regulatory authority as necessary for stability erosion control, or roads.

(2) The vertical distance between terraces shall be as specified by the regulatory authority to prevent excessive erosion and to provide long-term stability.

(3) 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 1.5 or more 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.

(4) Culverts and underground rock drains shall be used on the terrace only

when approved by the regulatory authority.

(c) All surface operations on steep slopes of 20 degrees or more or on such lesser slopes as the regulatory authority define as a *steep slope* shall be conducted so as not to place any material on the downslope below road cuts, mine working or other benches, other than in conformance with paragraph (a)(1) of this part.

(d) *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 § 717.20. The regulatory authority shall specify that erosional features of lesser size be stabilized if they result in additional erosion and sedimentation.

(e) *Covering coal and acid-forming, toxic-forming, combustible, and other waste materials; stabilizing backfilled materials; and using waste material for fill.* Any acid-forming, toxic-forming, combustible materials, or any other waste materials as identified by the regulatory authority that are exposed, used, or produced during underground mining and which are deposited on the land surface shall, after placement in accordance with § 717.15 of this part, 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 amount 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 § 717.17 of this part.

(f) *Grading along the contour.* All final grading, preparation of earth, rock and other nonwaste materials before replacement of topsoil, and placement of

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topsoil in accordance with §717.20, 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, 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.

### §717.15 Disposal of excess rock and earth materials on surface areas.

Excess rock and earth materials produced from an underground mine and not disposed in underground workings or used in backfilling and grading operations shall be placed in surface disposal areas in accordance with requirements of §715.15. Where the volume of such material is small and its chemical and physical characteristics do not pose a threat to either public safety or the environment, the regulatory authority may modify the requirements of §715.15 in accordance with §717.14(a)(1).

### §717.16 [Reserved]

### §717.17 Protection of the hydrologic system.

The permittee shall plan and conduct underground coal mining and reclamation operations to minimize disturbance of the prevailing hydrologic balance in order to prevent long-term adverse changes in the hydrologic balance that could result from underground coal mining 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 and applicable Federal and State statutes and regulations shall not be 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 underground coal mining and reclamation practices that will prevent or minimize water pollution and changes in flows in preference to the use of

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water treatment facilities prior to discharge to surface waters. Practices to control and minimize pollution include, but are not limited to, diverting water from underground workings or preventing water contact with acid- or toxic-forming materials, and minimizing water contact time with waste materials, maintaining mine barriers to enhance postmining inundation and sealing, establishing disturbed areas through grading, diverting runoff, achieving quick growing stands of temporary vegetation, and lining drainage channels. If treatment is required to eliminate pollution of surface or ground waters, the permittee shall operate and maintain the necessary water treatment facilities as set forth in this section.

(a) *Water quality standards and effluent limitations.* (1) All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded or planted and which remain subject to the requirements of this section, except for drainage from disturbed areas that have met the requirements of §717.20 shall be passed through a sedimentation pond or a series of sedimentation ponds prior to leaving the permit area. All waters which flow or are removed from underground operations or underground waters which are removed from other areas to facilitate mining and which discharge to surface waters must be passed through appropriate treatment facilities prior to discharge where necessary to meet effluent limitations.

(2) For purposes of this section only, disturbed areas shall include areas of surface operations but 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. Disturbed areas shall not include those surface areas overlying the underground working unless those areas are also disturbed by surface operations such as fill (disposal) areas, support facilities areas, or other major activities which create a risk of pollution.

(3) 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 not necessary to meet effluent limitations of this paragraph and to maintain water quality in downstream receiving waters. 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 underground operation and by surface operation and reclamation activities conducted thereon, must meet all applicable Federal and State regulations and, at a minimum, the following numerical effluent limitations:

EFFLUENT LIMITATIONS, IN MILLIGRAMS PER LITER, MG/L EXCEPT FOR PH

Effluent characteristics	Maximum allowable <sup>1</sup>	Average of daily values for 30 consecutive discharge days <sup>1</sup>
Iron, total .....	7.0	3.5
Manganese, total .....	4.0	2.0
Total suspended solids <sup>2</sup> .....	70.0	35.0
pH <sup>3</sup> .....	( <sup>4</sup> )	( <sup>4</sup> )

<sup>1</sup> Based on representative sampling.

<sup>2</sup> 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.

<sup>3</sup> Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitations 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.

<sup>4</sup> Within the range 6.0 to 9.0.

(i) 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 the 10-year 24-hour frequency event will not be subject to the effluent limitations of paragraph (a).

(ii) The permittee shall install, operate, and maintain adequate facilities to treat any water discharged from the disturbed area that violates applicable Federal or State 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 lime feeder or other neutralization process approved by the regulatory authority shall be installed, operated, and maintained. If the regulatory authority finds that small and infrequent treatment requirements to meet applicable standards do not necessitate use of an automatic neutralization process, and the mine normally produces less than 500 tons of coal per day, the regulatory authority can approve the use of a manual system if the permittee agrees to insure that consistent and timely treatment is carried out.

(iii) 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 and from the underground operations.

(ii) Provides adequate data to describe the likely daily and seasonal variation in discharges from the disturbed area in terms of flow, pH, total iron, total manganese, and total suspended solids and, as 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 concentration.

(iv) Provides an analytical quality control system including standard methods of analysis such as those specified in 40 CFR part 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 reports 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) Equipment, structures, or 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, as 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 for such diversions:

(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 agen-

cies. To protect fills and property, to prevent water from contacting toxic-producing deposits, 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 they are approved by the regulatory authority.

(3) Diversions shall be designed, constructed, and maintained in a manner so as 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, maintenance of appropriate gradients, channel lining, vegetation, and roughness structures and detention basins.

(d) *Stream channel diversions.* In the event that the regulatory authority permits diversion of streams, the regulations of §715.17(d) shall apply.

(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 and prior to any discharge of water to surface waters from underground mine workings;

(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 the 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), plus the average inflow from the underground mine.

(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 underground 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 events and lesser events through the sedimentation pond, regardless of the volume of water and sediment present from the underground mine during the runoff.

(8) Sediment shall be removed from sedimentation ponds.

(9) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff from a 25-year, 24-hour precipitation event, or larger event specified by the regulatory authority, plus any inflow from the underground mine. 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 of 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  $H$ , in feet, is the height 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 area 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 no 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 requirement 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 top 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 safely discharge the runoff resulting from a 100-year, 24-hour precipitation event, or a larger event specified by the regulatory authority, plus any in-flow from the underground mine.

(ii) The embankment shall be designed and constructed with an acceptable static safety factor of at least 1.5, or a higher safety factor as designated by the regulatory authority to ensure stability.

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(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 is being 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 § 717.20.

(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 notifications 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 §§ 717.14 and 717.20, unless the pond has been approved by the regulatory authority for retention as compatible with the approved post-mining land use paragraph (k) of this section. If the regulatory authority approves retention, the sedimentation pond shall meet all the requirements for permanent impoundments of paragraph (k).

(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 or 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 diversion structures shall be controlled, where necessary, using energy dissipators, 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 to ground and surface waters which emanates from acid-forming or toxic-forming mine waste materials and spoils placed on the land surface shall be avoided by—

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(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 in accordance with the provision of § 717.14(e);

(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 § 717.18 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 § 717.14(e) of this part;

(5) Casing, sealings, 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 boreholes have been approved for use in monitoring.

(h) *Ground water systems.* (1) Underground operations shall be conducted to minimize adverse effects on ground water flow and quality, and to minimize offsite effects. The permittee will be responsible for performing monitoring according to paragraph (h)(2) of this section to ensure operations conform to this requirement.

(2) Ground water levels, 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 underground coal mining operations 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 which 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 aquifer tests, must be undertaken by the permittee to demonstrate compliance with paragraph (h)(1) 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) *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 so as to the extent possible, using the best technology currently available, 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 haul and access roads shall be removed and the land affected shall be regraded and revegetated consistent with the requirements of §§ 717.14 and 717.20, unless retention of a road is approved and assured of necessary maintenance to adequately control erosion.

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(2) *Construction.* (i) All roads, insofar as possible, shall be located on ridges or on 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 basis 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 haul 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 roads.

(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.

(4) Access roads constructed for and used only to provide infrequent service to surface facilities, such as ventilators or monitoring devices shall be exempt from the requirements of paragraph (j)(2) of this section provided adequate stabilization to control erosion is achieved through use of alternative measures.

(k) *Hydrologic impacts of other transport facilities.* Railroad loops, spurs, conveyors, or other transport facilities 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 and to control other diminution or degradation of water quality and quantity. In no event shall contributions be in excess of requirements set by applicable State or Federal law.

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(l) *Discharge of waters into underground mines.* Surface and ground waters shall not be discharged or diverted into underground mine workings.

(Secs. 101, 102, 201, 501, 503-510, 515-517, 523, and 701, Surface Mining Reclamation Act of 1977, Pub. L. 95-87 (30 U.S.C. 1201, 1202, 1211, 1251-1260, 1265-1267, 1273, 1291))

[42 FR 62695, Dec. 13, 1977, as amended at 43 FR 8092, Feb. 27, 1978; 43 FR 21459, May 18, 1978; 44 FR 30632, May 25, 1979; 44 FR 36887, June 22, 1979; 44 FR 77452, Dec. 31, 1979]

EFFECTIVE DATE NOTE: A document published at 44 FR 77452, Dec. 31, 1979 suspended § 717.17(a)(3)(i) insofar as it applies to total suspended solids (TSS) discharges.

**§ 717.18 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 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 precipitation 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:

Case	Loading condition	Minimum safety factor
I .....	End of construction .....	1.3
II .....	Partial pool with steady seepage saturation.	1.5
III .....	Steady seepage from spillway or decant crest.	1.5
IV .....	Earthquake (cases II and III with seismic loading).	1.0

(iv) The dam, foundation, and abutment 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

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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 recertified 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 recertification 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,

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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).

### §717.19 [Reserved]

### §717.20 Topsoil handling and revegetation.

(a) Topsoil shall be removed as a separate operation from areas to be disturbed by surface operations, such as roads and areas upon which support facilities are to be sited. Selected overburden materials may be used instead of, or as a substitute for topsoil where the resulting soil medium is determined by the regulatory authority to be equal to or more suitable for revegetation. Topsoil shall be segregated, stockpiled, and protected from wind and water erosion, or contaminants. Disturbed areas no longer required for the conduct of mining operations shall be regraded, topsoil distributed, and revegetated.

(b) The permittee shall establish on all land that has been disturbed by mining operations a diverse, effective, and permanent vegetative cover capable of self-regeneration and plant succession, and adequate to control soil erosion. Introduced species may be substituted for native species if approved by the regulatory authority. Introduced species shall meet applicable State and Federal seed or introduced species statutes, and may not include poisonous or potentially toxic species.

## PART 721—FEDERAL INSPECTIONS

Sec.

721.11 Extent.

721.12 Right of entry.

721.13 Inspections based on citizen requests.

721.14 Failure to give notice and lack of reasonable belief.

AUTHORITY: Secs. 201, 501, and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SOURCE: 42 FR 62700, Dec. 13, 1977, unless otherwise noted.

### §721.11 Extent.

The authorized representative of the Secretary shall conduct inspections of surface coal mining and reclamation

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operations subject to regulation under the Act—

(a) On the basis of not less than two consecutive State inspection reports indicating a violation of the Act, regulations or permit conditions required by the Act;

(b) On the basis of information provided by a State or any person which gives rise to a reasonable belief that the provisions of the Act, regulations or permit conditions required by the Act are being violated, or that a condition or practice exists which creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources; and

(c) On a random basis of at least one complete inspection each 6 months. A complete inspection is an onsite review of the operator's compliance with all applicable standards in these regulations within the entire area disturbed or affected by mining.

### § 721.12 Right of entry.

(a) Authorized representatives of the Secretary, without advance notice and upon presentation of appropriate credentials and without a search warrant, shall have the right of entry to, upon, or through any surface coal mining and reclamation operations or any premises in which any records required to be maintained are located.

(b) The authorized representatives may at reasonable times, and without delay, have access to and copy any records, and inspect any monitoring equipment or method of operation required under this Act, the regulations or the permit.

### § 721.13 Inspections based on citizen requests.

(a) *Citizens reports.* (1) Any person who believes that there is a violation of the Act, regulations or permit conditions required by the Act or that any imminent danger or harm exists may report this information to the Office of Surface Mining Reclamation and Enforcement. Written reports must be signed and include a phone number where the reporting party can be contacted. Oral reports will be accepted but must be followed by a written and

signed statement including the information reported. The complaint or other information shall be considered as having a reasonable basis if it alleges facts which, if proven to be true, would be sufficient to show a violation of the Act, regulations or permit. Unless the Office has reason to believe that the information is incorrect, or determines that even if true it would not constitute a violation, the Office shall conduct an inspection within 15 days of receipt of the complaint. If the complaint alleges an imminent danger or harm, the inspection shall be conducted promptly.

(2) The identity of any person supplying information to the Office relating to possible violations or imminent dangers or harms shall remain confidential with the Office, if requested by the person supplying the information, unless disclosure is required under the Freedom of Information Act (5 U.S.C. 552) or by other Federal law.

(b) *Right to accompany the authorized representative of the Secretary.* (1) If a Federal inspection is conducted as a result of information provided to the Office, the person who provided the information shall be notified when the inspection is to occur and the person will be allowed to accompany the authorized representative of the Secretary during the inspection.

(2) Any person accompanying an authorized representative of the Secretary has a right of entry to, upon and through the mining and reclamation operations about which he supplied information, only if he is in the presence of and is under the control, direction and supervision of the authorized representative while on the mine property.

(c) *Notification of results of investigation.* Within 10 days of the inspection or, if no inspection, within 15 days of the complaint, the Office shall notify the person in writing of the following—

(1) The results of the investigation, including a description of any inspection which occurred and any enforcement action taken; copies of Federal inspection reports, notices of violation, and cessation orders may be forwarded to the person in satisfaction of this requirement;

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(2) If no inspection was conducted, an explanation of the reason for not inspecting;

(3) A statement as to the person's right to informal review of the actions or inactions of the Office.

(4) The permittee shall receive copies of all such reports which have not already been given to the permittee, except that the name of the complainant shall be removed.

(d) *Review of action of local offices.* A person who does not agree with the action taken by the Office on their report may request the Regional Director to review the complaint and actions taken. The Regional Director shall advise the person in writing, within 30 days of the results of the review. Informal review under this subsection shall not affect any rights to formal review or a citizen's suit.

**§ 721.14 Failure to give notice and lack of reasonable belief.**

No notice of violation or cessation order may be vacated by reason of failure to give notice required by the Act or these regulations prior to the inspection; or by reason of a subsequent determination that prior to the inspection the Office did not have information sufficient to create a reasonable belief that a violation had occurred.

**PART 722—ENFORCEMENT PROCEDURES**

Sec.

722.1 Scope.

722.11 Imminent dangers and harms.

722.12 Non-imminent dangers or harms.

722.13 Failure to abate.

722.14 Service of notices of violation, cessation orders, and orders to show cause.

722.15 Informal public hearing.

722.16 Pattern of violations.

722.17 Inability to comply.

AUTHORITY: Secs. 201, 501, and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SOURCE: 42 FR 62701, Dec. 13, 1977, unless otherwise noted.

**§ 722.1 Scope.**

The regulations of this part set forth general procedures governing issuance of orders of cessation, notices of violation, and orders to show cause under section 521 of the Act.

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**§ 722.11 Imminent dangers and harms.**

(a) If an authorized representative of the Secretary finds conditions or practices, or violations of any requirement of the Act, or any requirement of this chapter applicable during the interim regulatory program, which create an imminent danger to the health or safety of the public, the authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or that portion of the operation relevant to the condition, practice, or violation.

(b) If an authorized representative of the Secretary finds conditions or practices, or violations of any requirement of the Act, or any requirement of this chapter applicable during the interim regulatory program, which are causing, or can reasonably be expected to cause, significant, imminent environmental harm to land, air, or water resources, the authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or that portion of the operation relevant to the condition, practice, or violation.

(c) Surface coal mining and reclamation operations conducted by any person without a valid surface coal mining permit required by this subchapter 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 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.

(d) An authorized representative of the Secretary shall impose affirmative obligations on an operator which the authorized representative deems necessary to abate the condition, practice, or violation if—

(1) A cessation order is issued under paragraph (a) or (b) of this section; and

(2) The cessation of mining or reclamation activities will not completely abate the imminent danger or harm or eliminate the practices or conditions that contributed to the imminent danger or harm.

(e) When imposing affirmative obligations under this section, the authorized representative of the Secretary shall require abatement of the imminent danger or harm in the most expeditious manner physically possible. The affirmative obligation shall include a time by which abatement shall be accomplished and may include, among other things, the use of existing or additional personnel and equipment.

(f) Reclamation operations not directly the subject of the order or affirmative obligation shall continue during any cessation order.

(g) An authorized representative of the Secretary shall terminate a cessation order issued under paragraph (a) or (b) of this section by written notice when the authorized representative determines that the conditions or practices or violations that contributed to the imminent danger to life or the environment have been eliminated.

[42 FR 62701, Dec. 13, 1977, as amended at 45 FR 67501, Oct. 10, 1980; 47 FR 18558, Apr. 29, 1982]

**§ 722.12 Non-imminent dangers or harms.**

(a) If an authorized representative of the Secretary finds conditions or practices, or violations of any requirement of the Act, or of any requirement of this chapter applicable during the interim regulatory program, but such violations do not create an imminent danger to the health or safety of the public, or are not causing and cannot reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the authorized representative shall issue a notice of violation fixing a reasonable time for abatement.

(b) An authorized representative of the Secretary may extend the time to abate a violation by written notice if the failure to abate within the time set was not caused by the permittee's lack of diligence.

(c) An authorized representative of the Secretary may establish interim steps in an abatement period. If the permittee fails to meet any interim step within the time set, the authorized representative may extend the time set for meeting the interim step, in accordance with this section, or may

issue a cessation order pursuant to § 722.13 of this part.

(d) The total time for abatement as originally fixed and subsequently extended shall not exceed 90 days 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 § 722.12(e). 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.

(e) 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:

(i) Would cause more environmental harm than it would prevent; or

(ii) Requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

(f) 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.

(g) If any of the conditions in paragraphs (e) (1) through (4) exist, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an

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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 § 722.12 (d) and (e). 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 inspector'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.

(h) Any determination made under paragraph (g) shall be in writing and 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.

(i) No extension granted under paragraph (b) 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 (g).

[42 FR 62701, Dec. 13, 1977; 43 FR 2722, Jan. 19, 1978, as amended at 45 FR 67501, Oct. 10, 1980; 46 FR 41704, Aug. 17, 1981]

### § 722.13 Failure to abate.

An authorized representative of the Secretary shall order cessation of surface coal mining and reclamation operations, or the portion relevant to the violation, when a notice of violation has been issued under § 722.12 of this part and the permittee fails to abate the violation within the time originally fixed or subsequently extended. In a cessation order issued under this section, the authorized representative shall impose affirmative obligations to abate the violation in the manner provided in § 722.11 of this part. Reclamation operations not directly the subject

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of the order or affirmative obligation shall continue during any cessation order. A cessation order issued under this section shall be terminated as provided in § 722.11 of this part.

### § 722.14 Service of notices of violation, cessation orders, and orders to show cause.

(a) A notice of violation or cessation order shall be served on the person to whom it is directed or his designated agent promptly after issuance, as follows:

(1) By tendering a copy at the surface coal mining and reclamation operation to the designated agent or to the person to whom it is directed. If no such agent is reasonably available, a copy may be tendered to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the surface coal mining and reclamation operation referred to in the notice or order. 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 person to whom it is issued or his or her designated agent, 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 or order or of the certified mail and shall not be deemed incomplete because of refusal to accept.

(b) A show cause order, or a vacation, modification or termination of a notice or order, may be served on the person to whom it is issued in either manner provided in paragraph (a) of this section.

(c) Designation by any person of an agent for service of notices and orders shall be made in a conspicuous, easy-

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to-read manner on the mine identification sign, or on the mine bulletin board posted by the minesite office.

(d) The Office shall furnish copies of notices and orders to the State regulatory authority, if any, after their issuance. The Office may furnish copies to any person having an interest in the surface coal mining and reclamation operation or the permit area, such as the owner of the fee, a corporate officer of the permittee, or the bonding company.

(Surface Mining Control and Reclamation Act of 1977, secs. 201, 501, 521(a)(5) (30 U.S.C. 1211, 1251, 1271(a)(5)))

[45 FR 2628, Jan. 11, 1980, as amended at 56 FR 28445, June 20, 1991]

### § 722.15 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 minesite 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 minesite shall be deemed to be reasonably close to the minesite 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 means (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 minesite.

(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 section:

(1) The informal public hearing will be deemed waived if the person to whom the notice or order is issued:

(i) Is informed, by written notice served in the manner provided in paragraph (b)(2) of this section, that he will be deemed to have waived an informal public hearing unless he requests one within 30 days after service of the notice or order, 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 five 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 request is received on or after the 21st day after the service of the notice of 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 the notice or order; and

(3) The State regulatory authority, if any.

(d) The Office shall also post notice of the hearing at the regional district or field office closest to the minesite, and publish it, where practicable, 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 the conduct of these 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.

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(f) Within five business days after the date of the informal public hearing, the Office shall affirm, modify, or vacate the notice or order in writing and send its decision 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 sections 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 minesite should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the minesite will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or the required remedial action.

(Surface Mining Control and Reclamation Act of 1977, secs. 201, 501, 521(a)(5) (30 U.S.C. 1211, 1251, 1271(a)(5)))

[45 FR 2628, Jan. 11, 1980]

§722.16 Pattern of violations.

(a) The regulations of this section set forth the procedures governing the suspension or revocation of State permits and rights to mine under this Act based on a pattern of violations arising during Federal inspections during the initial regulatory program.

(b) *Definitions.* As used in this section—

(1) *Violations of the same or related requirements of the Act, regulations or permit conditions* means noncompliance with any single section of parts 715, 716, or 717 of this chapter.

(2) *Violations of different requirements of the Act, regulations, or permit conditions* means noncompliance with different sections of parts 715, 716, or 717 of this chapter.

(3) *Unwarranted failure to comply* means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of the Act or these regulations due to indifference, lack of diligence, lack of reasonable care; or the failure to abate any violation of such permit, the Act

or regulations due to indifference, lack of diligence, or lack of reasonable care.

(4) *Willful violation* means an intentional action or omission which violates the Act, regulations or permit conditions required under the Act.

(5) *Inspection* as used in this section means any visit to the mine.

(c) *Order to show cause.* (1) If the Director determines that a pattern of violations of any requirements of the Act, the regulations, or a permit condition imposed under the Act or regulations exists, or has existed, and that such violations are caused by the unwarranted failure of the permittee or were willful violations, the Director shall issue an order to the permittee to show cause why the permit should not be suspended or revoked.

(2) The Director may determine that a pattern of violations exists or has existed, after considering the circumstances, including—

(i) The number of willful violations or violations caused by unwarranted failure to comply with the same or related requirements of the Act, regulations, or permit conditions during two or more Federal inspections;

(ii) The number of willful violations or violations caused by unwarranted failure to comply with different requirements of the Act, regulations, or permit conditions; and

(iii) The extent to which the violations were isolated departures from lawful conduct.

(3) Violations of the same or related requirements of the Act, regulations, or permit conditions required by the Act during three or more Federal inspections within any 12-month period which were either caused by the unwarranted failure of the permittee to comply with the Act, the regulations or permit conditions required by the Act, or were willful violations, shall constitute a pattern of violations. A show cause order shall issue unless the Director finds that it would not further enforcement of the performance standards of the Act.

(d) *Suspension or revocation of permit.*

(1) The order to show cause shall be issued and a public hearing, if requested, shall be conducted under the procedures of 43 CFR part 4.

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(2) If the Secretary finds that a pattern of violations exists or has existed, the permit and right to mine under this Act shall be either suspended or revoked and the permittee directed to complete necessary corrective measures and reclamation operations.

(e) 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 30 CFR 723.15(b)(2).

[42 FR 62701, Dec. 13, 1977 and 46 FR 58783, Sept. 4, 1980]

### § 722.17 Inability to comply.

(a) Neither a notice of violation nor a cessation order issued under this part may be vacated because of inability to comply.

(b) A permittee may not be deemed to have shown good cause for not suspending or revoking a permit by showing inability to comply.

(c) Unless caused by lack of diligence, inability to comply may be considered in mitigation of the amount of a civil penalty under part 723 of this chapter and of the duration of the suspension of the permit under § 722.16 of this part.

## PART 723—CIVIL PENALTIES

Sec.

723.1 Scope.

723.2 Objective.

723.11 How assessments are made.

723.12 When penalty will be assessed.

723.13 Point system for penalties.

723.14 Determination of amount of penalty.

723.15 Assessment of separate violations for each day.

723.16 Waiver of use of formula to determine civil penalty.

723.17 Procedures for assessment of civil penalties.

723.18 Procedures for assessment conference.

723.19 Request for hearing.

723.20 Final assessment and payment of penalty.

AUTHORITY: 30 U.S.C. 1201 *et seq.*, Pub. L. 100-34, Pub. L. 101-410, and Pub. L. 104-134.

SOURCE: 45 FR 58783, Sept. 4, 1980, unless otherwise noted.

### § 723.1 Scope.

This part covers the assessment of civil penalties under section 518 of the Act for violations of a permit condition, any provision of Title V of the Act, or any implementing regulations, except for the assessment of individual civil penalties under section 518(f), which is covered by part 724. This part governs when a civil penalty is assessed and how the amount is determined, and sets forth applicable procedures. This part applies to cessation orders and notices of violation issued under part 722 of this chapter during a Federal inspection.

[53 FR 3674, Feb. 8, 1988]

### § 723.2 Objective.

Civil penalties are assessed under section 518 of the Act and this part to deter violations and to ensure maximum compliance with the terms and purpose of the Act on the part of the coal mining industry.

### § 723.11 How assessments are made.

The Office shall review each notice of violation and cessation order in accordance with the assessment procedures described in §§ 723.12, 723.13, 723.14, 723.15, and 723.16 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.

### § 723.12 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 § 723.13.

(c) The Office may assess a penalty for each notice of violation assigned 30 points or less under the point system described in § 723.13. In determining whether to assess a penalty, the Office shall consider the factors listed in § 723.13(b).

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§ 723.13 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 § 723.12(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 violations. 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 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:

PROBABILITY OF OCCURRENCE	
	Points
None .....	0
Insignificant .....	1-4
Unlikely .....	5-9
Likely .....	10-14
Occurred .....	15

(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 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 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 (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

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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 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:

DEGREE OF GOOD FAITH	
	Points
Rapid compliance .....	- 1 to -10
Normal compliance .....	0

(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.

**§ 723.14 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 723.13 to a dollar

amount, according to the following schedule:

Points	Dollars
1 .....	22
2 .....	44
3 .....	66
4 .....	88
5 .....	110
6 .....	132
7 .....	154
8 .....	176
9 .....	198
10 .....	220
11 .....	242
12 .....	264
13 .....	286
14 .....	308
15 .....	330
16 .....	352
17 .....	374
18 .....	396
19 .....	418
20 .....	440
21 .....	462
22 .....	484
23 .....	506
24 .....	528
25 .....	550
26 .....	660
27 .....	770
28 .....	880
29 .....	990
30 .....	1,100
31 .....	1,210
32 .....	1,320
33 .....	1,430
34 .....	1,540
35 .....	1,650
36 .....	1,760
37 .....	1,870
38 .....	1,980
39 .....	2,090
40 .....	2,200
41 .....	2,310
42 .....	2,420
43 .....	2,530
44 .....	2,640
45 .....	2,750
46 .....	2,860
47 .....	2,970
48 .....	3,080
49 .....	3,190
50 .....	3,300
51 .....	3,410
52 .....	3,520
53 .....	3,630
54 .....	3,740
55 .....	3,850
56 .....	3,960
57 .....	4,070
58 .....	4,180
59 .....	4,290
60 .....	4,400
61 .....	4,510
62 .....	4,620
63 .....	4,730
64 .....	4,840
65 .....	4,950
66 .....	5,060
67 .....	5,170
68 .....	5,280
69 .....	5,390
70 .....	5,500

## § 723.15

[45 FR 58783, Sept. 4, 1980, as amended at 62 FR 63276, Nov. 28, 1997]

### § 723.15 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 723.13 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 30 CFR 723.13(b), the Office shall assess a civil 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 Hearing 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 a violation shall not be assessed for more than 30 days for such viola-

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tion. If the permittee has not abated the violation within the 30-day period, the Office shall take appropriate action pursuant to sections 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 re-occurrence of the failure to abate.

[45 FR 58783, Sept. 4, 1980, as amended at 62 FR 63276, Nov. 28, 1997]

### § 723.16 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 formula contained in 30 CFR 723.13 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 723.13(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.

### § 723.17 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

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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 and complaint under Rule 4 of the Federal Rules of Civil Procedure, within 30 days of the issuance of the notice or order. If a copy of the proposed assessment and work sheet or the certified mail is tendered at the address of that person set forth in the sign required under 30 CFR 715.12(b) or at any address at which that person is in fact located, and he or she refuses to accept delivery or to collect such documents, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

(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) of this section, within 30 days after the date the violation is abated.

[45 FR 58783, Sept. 4, 1980, as amended at 56 FR 28445, June 20, 1991]

### § 723.18 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.

(2) The Office shall post notice of the time and place of the conference at the regional, district 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 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 723.17(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) of this section within 30 days from the date of the rescission.

(e) The conference officer may terminate the conference when he determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

[45 FR 58783, Sept. 4, 1980, as amended at 53 FR 3674, Feb. 8, 1988; 56 FR 10063, Mar. 8, 1991]

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§ 723.19 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 section 525 of the Act and 43 CFR part 4.

(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 723.20.

[45 FR 58783, Sept. 4, 1980, as amended at 56 FR 10063, Mar. 8, 1991]

§ 723.20 Final assessment and payment of penalty.

(a) If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in 30 CFR 723.19, the proposed assessment shall become a final order of the Secretary and the penalty assessed shall become 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 penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to paragraph (c) of this section, the escrowed funds shall be transferred to the Office in payment of the penalty, and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order eliminating the proposed penalty assessed under this part, the Office shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed account, with interest from the date of payment

into escrow to the date of the refund at the rate of 6 percent or at the prevailing Department of the Treasury rate, whichever is greater.

(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 Office within 15 days after the order is mailed to such person.

PART 724—INDIVIDUAL CIVIL PENALTIES

Sec.

724.1 Scope.

724.5 Definitions.

724.12 When an individual civil penalty may be assessed.

724.14 Amount of individual civil penalty.

724.17 Procedure for assessment of individual civil penalty.

724.18 Payment of penalty.

AUTHORITY: 30 U.S.C. 1201 *et seq.*, Pub. L. 100-34, Pub. L. 101-410, and Pub. L. 104-134.

SOURCE: 53 FR 3674, Feb. 8, 1988, unless otherwise noted.

§ 724.1 Scope.

This part covers the assessment of individual civil penalties under section 518(f) of the Act.

§ 724.5 Definitions.

For purposes of this part:

*Knowingly* means that an individual knew or had reason to know in authorizing, ordering or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure or refusal.

*Violation, failure or refusal* means—

(1) A violation of a condition of a permit issued pursuant to a Federal program, a Federal lands program, Federal enforcement pursuant to section 502 of the Act, or Federal enforcement of a State program pursuant to section 521 of the Act; 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.

*Willfully* means that an individual acted

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(1) Either intentionally, voluntarily or consciously, and

(2) With intentional disregard or plain indifference to legal requirements in authorizing, ordering or carrying out a corporate permittee's action or omission that constituted a violation, failure or refusal.

### § 724.12 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.

### § 724.14 Amount of individual civil penalty.

(a) In determining the amount of an individual civil penalty assessed under § 724.12, the Office shall consider the criteria specified in § 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 vio-

lation, cessation order or other order incorporated in a final decision issued by the Secretary, until abatement or compliance is achieved.

[53 FR 3674, Feb. 8, 1988, as amended at 62 FR 63276, Nov. 28, 1997]

### § 724.17 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 3674, Feb. 8, 1988, as amended at 56 FR 28445, June 20, 1991]

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**§ 724.18 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.

(d) *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 late payments to the Federal Government, pursuant to 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 actions specified in §§870.15 (e)(1) through (e)(5) of this chapter. Delinquent penalties are subject to late payment penalties specified in §870.15(f) of this chapter and processing and handling charges specified in §870.15(g) of this chapter.

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**PART 725—REIMBURSEMENTS TO STATES**

**Sec.**

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AUTHORITY: Secs. 201, 501, and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SOURCE: 42 FR 62704, Dec. 13, 1977, unless otherwise noted.

**§ 725.1 Scope.**

This part sets forth policies and procedures for reimbursements to States for costs of enforcing the initial performance standards set forth in this chapter.

**§ 725.2 Objectives.**

The objectives of assistance under this part are:

- (a) To assist the States in meeting the increased costs of administering the initial performance standards.
- (b) To encourage the States to build strong reclamation and enforcement programs.

**§ 725.3 Authority.**

Section 502(e)(4) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201) authorizes the Secretary to reimburse States for costs of enforcing the performance standards of the initial regulatory program.

**§ 725.4 Responsibility.**

- (a) The Director shall administer the grant program for reimbursement to

States for costs of enforcing performance standards during the initial regulatory program.

(b) The Director or his authorized designee shall receive, review and approve grant applications under this part.

[42 FR 62704, Dec. 13, 1977, as amended at 47 FR 38490, Aug. 31, 1982]

#### § 725.5 Definitions.

As used in this part, the following terms have the specified meanings:

*Agency* means the State agency designated by the Governor to receive and administer grants under this part.

*Base program* means the State program to regulate surface coal mining prior to August 3, 1977.

#### § 725.10 Information collection.

The information collection requirements contained in 30 CFR 725.15, 725.23(a) and 725.24 have fewer than 10 respondents per year, they are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and do not require clearance by OMB.

[47 FR 38490, Aug. 31, 1982]

#### § 725.11 Eligibility.

(a) *Assumption of responsibility.* To be eligible for a grant for reimbursements for the cost of enforcing performance standards during the initial regulatory program the State shall assume responsibility for enforcement of the initial regulatory program including the specific responsibilities identified under § 710.4(b) and part 720 of this chapter.

(b) *Designation of State agency.* In order to receive a grant for reimbursements for costs of enforcing performance standards during the initial regulatory program, the Governor of a State shall designate in writing one agency to submit grant applications, receive and administer grants under this part.

(c) *Periods covered by reimbursement grants.* An agency may apply for a reimbursement grant for any period during the initial regulatory program and for a reasonable start-up period beginning no later than August 3, 1977.

#### § 725.12 Coverage of grants.

An agency may use grant money under this part to cover costs in excess of the base program for administering and enforcing the initial regulatory program. The Director or his authorized designee shall determine the base program from the State fiscal year budget in effect on August 3, 1977. Costs of the following items are eligible for reimbursement—

(a) Incorporation of the initial performance standards of this chapter in new permits issued by the State.

(b) Modification of existing permits to include the initial performance standards of this chapter.

(c) Additional inspections required to enforce the initial performance standards of this chapter.

(d) Inspections which are more detailed than inspections before the initial regulatory program.

(e) Responses to complaints related to the initial performance standards of this chapter.

(f) Enforcement actions required to secure compliance with the initial performance standards of this chapter.

(g) Additional administrative activities and supporting costs related to hiring additional inspectors and other personnel, revising permits, conducting inspections, preparing, copying and submitting reports required by part 720, and submitting applications for reimbursement grants under this part.

(h) Additional equipment required for inspection or support of inspections, as follows:

(1) An agency may charge any required item of equipment to the grant on a use bases in accordance with the principles set forth in Federal Management Circular 74-4, "Cost principles applicable to grants and contracts with State and local governments" (34 CFR part 255).

(2) An agency may purchase equipment, with grant funds where cost recovery through use charges is prohibited, made impractical or more costly than purchase by existing State laws or procedures.

[42 FR 62704, Dec. 13, 1977, as amended at 45 FR 34880, May 23, 1980]

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### § 725.13 Amount of grants.

The Office shall pay up to 100 percent of the costs to the agency in excess of the base program for administering and enforcing the performance standards during the initial regulatory program.

### § 725.14 Grant periods.

The Director or his authorized designee shall normally approve a grant for a period of one year or less. OSM shall fund a program that extends over more than one year by consecutive annual grants or amendments to the existing grant.

[47 FR 38490, Aug. 31, 1982]

### § 725.15 Grant application procedures.

(a) The agency may submit its application (three copies) for a grant to the Director or his authorized designee at least sixty days prior to the beginning of the intended grant period, or as soon thereafter as possible.

(b) The agency shall use the application forms and procedures applicable to non-construction and/or construction programs specified by OSM in accordance with Office of Management and Budget Circular No. A-102, "Uniform administrative requirements for grants-in-aid to State and local governments" (42 FR 45828). No preapplication is required. Each application must include the following:

(1) Part I, Application Form coversheet, SF 424.

(2) Part II, Project Approval Information.

(i) For non-construction grants use Form OSM-50A, Project Approval Information—Section A.

(ii) For construction grants use Form OSM-50A, Project Approval Information—Section A and Form OSM-50B, Project Approval Information—Section B.

(3) Part III, Budget Information.

(i) For non-construction grants use Form OSM-47, Budget Information Report, with a narrative explanation of computations.

(ii) For construction grants use Form OSM-48, Budget Information—Construction with a narrative explanation of computations.

(4) Part IV, Program Narrative Statement, Form OSM-51, providing

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the narrative for the goals to be achieved for both construction and non-construction grants.

(i) Form OSM-51 is supplemented by completion of column 5A of Forms OSM-51A and OSM-51B which reports the quantitative program management information of the Interim Regulatory grants.

(ii) Form OSM-51 is supplemented by completion of Column 5A of Form OSM-51C which reports the quantitative program management information of the Small Operator Program Administration and Operational grants.

(5) Part V, The standard assurance for non-construction activities or construction activities as specified in Office of Management and Budget Circular No. A-102, Attachment M.

(c) The agency shall include sufficient information to enable the Director or his authorized designee to determine the agency's base program and increases over the base program eligible for reimbursement grants. The agency shall include the following information, plus any other relevant data:

(1) A summary of the State permit, inspection and enforcement program prior to the addition of the requirements of the Act of 1977, including—

(i) Permit requirements and the system for issuing permits;

(ii) Mining-and-reclamation plan requirements;

(iii) Coverage and frequency of inspections;

(iv) Actions required to enforce mining and reclamation requirements;

(v) The number and nature of responses to complaints; and

(vi) Other regulatory activities and related administrative functions affected by the performance standards of the initial regulatory program of this chapter.

(2) A statement of the number of employees and annual budget required to carry out functions described in paragraph (c)(1) of this section.

(3) A copy of all State constitutional, statutory and regulatory provisions applicable to the enforcement and administration of the initial regulatory program.

(4) An opinion of the State's chief legal officer as to whether and to what

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extent the State is authorized to enforce and administer the initial regulatory program.

(5) A statement of the additional work required to enforce the initial regulatory program for each of the agency activities described in paragraph (c)(1) of this section.

(6) The additional staff and funds required for the increased workload described in paragraph (c)(5) of this section.

(7) The number and types of major equipment (equipment with a unit acquisition cost of \$500 or more and having a life of more than two years) which the agency plans to purchase with grant funds.

(d) The Director or his authorized designee may waive the resubmission of information required by paragraphs (c) (1), (2), (3) and (4) of this section in applications for the following grants.

(e) The Director or his authorized designee shall notify the agency within thirty days after the receipt of a complete application, or as soon thereafter as possible, whether it is or is not approved. If the application is not approved, the Director or his authorized designee shall set forth in writing the reasons it is not approved, and may propose modifications if appropriate. The agency may resubmit the application within thirty days. The Director or his authorized designee shall process the revised application as an original application.

[42 FR 62704, Dec. 13, 1977, as amended at 47 FR 38490, Aug. 31, 1982]

### § 725.16 Grant agreement.

(a) If a Director or his authorized designee approves an agency's grant application, the Director or his authorized designee shall prepare a grant agreement which includes—

(1) The approved scope of the program to be covered by the grant, including functions to be accomplished by other agencies.

(2) The base program budget and estimated costs in excess of the base program.

(3) The amount of the grant.

(4) Commencement and completion dates for the segment of the program covered by this grant and for major

phases of the program to be completed during the grant period.

(5) Permissible transfers of funds to other State agencies.

(b) The Director or his authorized designee shall limit grants under this part to the additional costs to an agency for administering and enforcing the initial regulatory program.

(c) The Director or his authorized designee may permit the agency to assign functions and funds to other State agencies. The Director or his authorized designee shall require the grantee agency to retain responsibility for overall administration of the grant, including use of funds, accomplishment of functions and reporting.

(d) Except as may be provided by the grant agreement, costs may not be incurred prior to the execution of the agreement.

(e) The Director or his authorized designee shall transmit four copies of the grant agreement, by certified mail, return receipt requested, to the agency for signature. The agency shall execute the grant agreement and return all copies within 3 calendar weeks after receipt, or within an extension of such time that may be granted by the Director or his authorized designee.

(f) The Director or his authorized designee shall sign the grant agreement upon its return from the agency and return one copy to the agency. The grant is effective and constitutes an obligation of Federal funds in the amount and for the purposes stated in the grant agreement at the time the Director or his authorized designee signs the agreement.

(g) Neither the approval of a program nor the award of any grant will commit or obligate the United States to award any continuation grant or to enter into any grant amendment, including grant increases to cover cost overruns.

### § 725.17 Grant amendments.

(a) A grant amendment is a written alteration to the grant amount, grant terms or conditions, budget or period, or other administrative, technical, or financial agreement whether accomplished on the initiative of the agency

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or the Director or his authorized designee or by mutual action of the agency and the Director or his authorized designee.

(b) The agency shall promptly notify the Director or his authorized designee in writing of events or proposed changes which require a grant amendment, such as:

- (1) Rebudgeting;
- (2) Changes which may affect the approved scope or objective of a program; or
- (3) Changes which may increase or substantially decrease the total cost of a program.

(c) The Director or his authorized designee shall approve or disapprove each proposed amendment within 30 days of receipt, or as soon thereafter as possible, and shall notify the agency in writing of the approval or disapproval of the amendment.

(d) The date the Director or his authorized designee signs the grant amendment establishes the effective date of the action. If no time period is specified in the grant amendment then the amendment applies to the entire grant period.

[42 FR 62704, Dec. 13, 1977, as amended at 47 FR 38490, Aug. 31, 1982]

**§ 725.18 Grant reduction and termination.**

(a) *Conditions for reduction or termination.* (1) If an agency fails to carry out its responsibilities pursuant to § 710.4(b) and part 720 of this chapter the Director or his authorized designee shall reduce or terminate the grant.

(2) If an agency violates the terms of a grant agreement, the Director or his authorized designee may reduce or terminate the grant.

(3) If an agency fails to enforce the initial performance standards of this chapter the Director or his authorized designee may reduce or terminate the grant.

(4) If an agency is not in compliance with the following nondiscrimination provisions, the Director or his authorized designee shall terminate the grant—

(i) Title VI of the Civil Rights Act of 1964 (78 Stat. 252), Nondiscrimination in Federally Assisted Programs, which provides that no person in the United

States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations at 43 CFR 17.

(ii) Executive Order 11246, as amended by Executive Order 11375, Equal Employment Opportunity, requiring that employees or applicants for employment not be discriminated against because of race, creed, color, sex or national origin, and the implementing regulations at 41 CFR 60.

(iii) Section 504 of the Rehabilitation Act of 1973, as amended by Executive Order 11914, Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs.

(5) If an agency fails to enforce the financial interest provisions of part 705 of this chapter the Director shall terminate the grant.

(6) If an agency fails to submit reports required by this part or parts 705 and 720 of this chapter the Director shall reduce or terminate the grant.

(b) *Grant reduction and termination procedures.* (1) The Director or his authorized designee shall give at least 10 days written notice to the agency by certified mail, return receipt requested, of intent to reduce or terminate a grant. The Director or his authorized designee shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

(2) The Director or his authorized designee shall afford the agency opportunity for consultation and remedial action prior to reducing or terminating a grant.

(3) The Director or his authorized designee shall notify the agency of the termination or reduction of the grant in writing by certified mail, return receipt requested.

(4) Upon termination the agency shall refund or credit to the United States that portion of the grant money paid or owed to the agency and allocated to the terminated portion of the grant. However any portion of the grant that is required to meet commitments made prior to the effective date

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of termination shall be retained by the agency.

(5) Upon termination, the agency shall reduce the amount of outstanding commitments insofar as possible and report to the Director or his authorized designee the uncommitted balance of funds awarded under the grant.

(6) Upon notification of intent to terminate, the agency shall not make any new commitments without the approval of the Director or his authorized designee.

(7) The Director or his authorized designee may allow termination costs as determined by applicable Federal cost principles listed in Federal management Circular 74-4.

(c) *Appeals.* (1) An Agency may appeal the Director or his authorized designee's decision to reduce or terminate a grant to the Director within 30 days of the Director or his authorized designee's decision.

(2) An Agency shall include in an appeal:

(i) The decision being appealed, and  
(ii) The facts which the Agency believes justify a reversal or modification of the decision.

(3) The Director shall act on appeals within 30 days of their receipt, or as soon thereafter as possible.

### § 725.19 Audit.

The agency shall arrange for an independent audit no less frequently than once every two years, pursuant to the requirements of Office of Management and Budget Circular No. A-102, Attachment P. The audits will be performed in accordance with the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" and the "Guidelines for Financial and Compliance Audits of Federally Assisted Programs" published by the Comptroller General of the United States and guidance provided by the cognizant Federal audit agency.

[48 FR 38490, Aug. 31, 1983]

### § 725.20 Administrative procedures.

The Agency shall follow administrative procedures governing accounting, payment property, and related requirements contained in Office of Management and Budget Circular No. A-102.

### § 725.21 Allowable costs.

(a) The Director or his authorized designee shall determine costs which may be reimbursed according to Office of Management and Budget Circular No. A-87.

(b) Costs must be in conformity with any limitations conditions or exclusions set forth in the grant agreement or this part.

(c) Costs must be allocated to the grant to the extent of benefit properly attributable to the period covered by the grant.

(d) Costs must not be allocated to or included as a cost of any other federally assisted program.

[42 FR 62704, Dec. 13, 1977, as amended at 47 FR 38490, Aug. 31, 1982]

### § 725.22 Financial management.

(a) The agency shall account for grant funds in accordance with the requirements of Office of Management and Budget Circular A-102. An agency shall use generally accepted accounting principles and practices, consistently applied. Accounting for grant funds must be accurate and current.

(b) The agency shall adequately safeguard all funds, property, and other assets and shall assure that they are used solely for authorized purposes.

(c) The agency shall provide a comparison of actual amounts spent with budgeted amounts for each grant.

(d) When advances are made by a letter-of-credit method, the agency shall make drawdowns from the U.S. Treasury through its commercial bank as closely as possible to the time of making the disbursements.

(e) The agency shall support accounting records by source documentation.

(f) The agency shall design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

### § 725.23 Reports.

(a) The agency shall, for each grant made under this part, submit semi-annually to the Director or his authorized designee a Financial Status Report, SF 269, for non-construction grant activities in accordance with Office of Management and Budget Circular No. A-102, Attachment H and

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OSM requirements. This report shall be accompanied by a Performance Report, Form OSM-51, comparing actual accomplishments to the goals established for the period, prepared according to Attachment I of OMB Circular No. A-102 and OSM requirements. The agency shall also submit semiannually a separate Outlay Report and Request for Reimbursement for Construction Programs, SF 271, and accompanying narrative performance report comparing actual accomplishments with planned goals on grant funded construction activities.

(b) The Director or his authorized designee shall require through the grant agreement that semiannual reports also describe the relationship of financial information to performance and productivity data, including unit cost information. This quantitative information will be reported on Forms OSM-51A and OSM-51B or OSM-51C, Quantitative Program Management Information, as applicable.

(c) The Director or his authorized designee shall require that when a grant is closed out in accordance with Attachment L to Office of Management and Budget Circular No. A-102 the following actions are taken:

(1) The grantee shall account for any property acquired with grant funds or received from the Government in accordance with the provisions of Attachment N to Office of Management and Budget Circular No. A-102. This may be accomplished by the submission of the Report of Government Property, Form OSM-60.

(2) The grantee shall submit a final financial report and thus release OSM from obligations under each grant or cooperative agreement that is being closed out.

[47 FR 38491, Aug. 31, 1982]

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**§ 725.24 Records.**

(a) The agency shall maintain complete records in accordance with Office of Management and Budget Circular No. A-102. This includes books, records, documents, maps, and other evidence and accounting procedures and practices, sufficient to reflect properly—

(1) The amount, receipt, and disposition by the agency of all assistance received for the program.

(2) The total costs of the program, including all direct and indirect costs of whatever nature incurred for the performance of the program for which the grant has been awarded.

(b) Subgrantees and contractors, including contractors for professional services, shall maintain books, documents, papers, maps, and records which are pertinent to a specific grant award.

(c) The agency's records and the records of its subgrantees and contractors, including professional services contracts, shall be subject at all reasonable times to inspection, reproduction, copying, and audit by the Office, the Department of the Interior, the Comptroller General of the United States, the Department of Labor, or any authorized representative.

(d) For completed or terminated grants, the agency, subgrantees and contractors shall preserve and make their records available to the Office, the Department of the Interior, the Comptroller General of the United States, Department of Labor, or any authorized representative pursuant to OMB Circular A-102.

**§ 725.25 Disclosure of information.**

All grant applications received by the Director or his authorized designee constitute agency records. As such, their release may be requested by any member of the public under the Freedom of Information Act (5 U.S.C. 552), and shall be disclosed unless exempt from disclosure under 5 U.S.C. 552(b).