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## PART 903—ARIZONA

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AUTHORITY: 30 U.S.C. 1201 *et seq.*

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### § 903.700 Arizona Federal program.

(a) This part establishes a Federal program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and applies to all coal exploration and surface coal mining and reclamation operations in Arizona conducted on non-Federal and non-Indian lands. To the extent required by 30 CFR Part 740, this part also applies to surface coal mining and reclamation operations on Federal lands in Arizona.

(b) Some rules in this part cross-reference pertinent parts of the permanent program rules in this chapter. The full text of a cross-referenced rule is in the permanent program rule cited under the relevant section of the Arizona Federal program.

(c) The following provisions of Arizona law generally provide for more stringent environmental control and regulation of some aspects of surface coal mining and reclamation operations than do the provisions of the Surface Mining Control and Reclamation Act of 1977, and the regulations in this chapter. Therefore, pursuant to section 505(b) of the Act, OSM will not generally construe such laws to be inconsistent with the Act, unless in a particular instance OSM determines that the rules in this chapter establish

more stringent environmental or land use controls:

(1) The Arizona Department of Agriculture has authority to abate public nuisances, including noxious weeds and noxious weed seeds, under A.R.S. Section 3-231 to 3-242. Violation of this statute is a misdemeanor.

(2) It is unlawful to injure any bird or harass any bird upon its nest or remove the nests or eggs of any bird without prior authorization of the Arizona Game and Fish Commission. A.R.S. Section 17-236.

(3) A bridge, dam, dike or causeway may not be constructed over or in a navigable river or other navigable water without the authorization of the Governor. A.R.S. Section 18-301.

(4) The Department of Mineral Resources has jurisdiction over the mining of minerals, and oil and gas under Title 27 of the Arizona Revised Statutes. One of the functions of that Department is the prevention and elimination of hazardous dust conditions. A.R.S. Section 27-128. Violation of orders of State mine inspectors respecting dust prevention and control is a misdemeanor.

(5) Roads leading into waste dump areas and tailing areas from inhabited or public areas are required to be blocked off and warning signs posted on the perimeter of such areas. A.R.S. Section 27-317.

(6) The primary responsibility for the control and abatement of air pollution rests with the Arizona Department of Environmental Quality and its Hearing Board. The Department is responsible for the establishment and enforcement of air pollution emission standards and ambient air quality standards as a part of a comprehensive air quality plan for Arizona. A.R.S. Title 49.

(7) The Arizona Department of Water Resources has jurisdiction over State water, including "surface waters." "Surface waters" means "the waters of all sources, flowing in streams, canyons, ravines or other natural channels, or in definite underground channels, whether perennial or intermittent, flood, waste or surplus water, and of lakes, ponds and springs on the surface. For the purposes of administering this title, surface water is deemed to

include Central Arizona Project Water." A.R.S. Section 45-101. It is a misdemeanor to knowingly use the water of another, or divert water from a stream, waste water or obstruct water flowing into a water work. A.R.S. Section 45-112. Possession of water lawfully denied to the possessor is prima facie evidence of one's guilt. A.R.S. Section 45-112. If water is to be used for mining purposes the water rights may be severed from the land rights and transferred separately. The separation and transference of water rights is subject to numerous limitations, under A.R.S. Section 45-172.

(8) Dams are defined as "any artificial barrier, including appurtenant works for the impounding or diversion of water except those barriers for the purpose of controlling liquid borne material, twenty-five feet or more in height or the storage capacity of which will be more than fifty acre feet, but does not include any such barrier which is or will be less than six feet in height, regardless of storage capacity, or which has or will have a storage capacity not in excess of fifteen acre feet, regardless of height." A.R.S. Section 45-701. The construction, operation, repair or alteration of any dam without the prior approval of the Director of Water Resources is a misdemeanor. A.R.S. Section 45-702 to Section 45-716.

(d) Any Arizona law or regulation which may be found to interfere with the purposes and achievements of the Act, shall be preempted and superseded to the extent that the State law or regulation is inconsistent with, or precludes implementation of, requirements of the Act or this chapter under the Federal program for Arizona. The Director shall publish a notice to that effect in the FEDERAL REGISTER following the procedures set forth in § 730.11(a) of this chapter.

(e) The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 in its approval of the information collection requirements contained in the permanent regulatory program.

## § 903.701

### § 903.701 General.

(a) Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter apply to coal exploration and surface coal mining and reclamation operations in Arizona.

(b) Beginning on May 12, 1995, each surface coal mining and reclamation operation in Arizona must comply with Subchapter B of this chapter until issuance of a permanent program permit under the provisions of Subchapter C of this chapter.

(c) Records required by § 700.14 of this chapter to be made available locally to the public shall be made available in the county recorder's office of the county in which an operation is located, and at the OSM Albuquerque Field Office.

### § 903.702 Exemption for coal extraction incidental to the extraction of other minerals.

Part 702 of this chapter, *Exemption for Coal Extraction Incidental to the Extraction of Other Minerals*, applies to any person who conducts coal extraction incidental to the extraction of other minerals for purposes of commercial use or sale.

### § 903.707 Exemption for coal extraction incidental to government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incidental to Government-Financed Highway or Other Construction*, applies to surface coal mining and reclamation operations.

### § 903.736 Permit fees.

Section 736.25 of this chapter, *Permit fees* applies to any person who makes application for a permit to conduct surface coal mining and reclamation operations in Arizona.

### § 903.761 Areas designated unsuitable for surface coal mining by act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, applies to surface coal mining operations.

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### § 903.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, applies to surface coal mining operations.

### § 903.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitions, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities, applies to surface coal mining operations beginning June 24, 1996, one year after the effective date of this program.

### § 903.772 Requirements for coal exploration.

(a) Part 772 of this chapter, *Requirements for Coal Exploration*, applies to any person who conducts coal exploration. For those applications where § 772.12 of this chapter applies, the requirements of paragraphs (b) through (d) of this section shall apply in place of § 772.12(c) (1) and (3) and § 772.12(d)(1) of this chapter.

(b) The applicant, upon receipt of notification from the regulatory authority of the submission of an administratively complete application for an exploration permit, must:

(1) Publish one public notice of the filing in a newspaper of general circulation in the county of the proposed exploration area; and

(2) Provide proof of this publication to the regulatory authority within one week of publication.

(c) Any person having an interest which is or may be adversely affected, shall have the right to file written comments within 30 days after the notice is published.

(d) The regulatory authority shall act upon an administratively complete application for a coal exploration permit and any written comments within 15 days from the close of the comment

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period unless additional time is necessary due to the number or complexity of the issues. The regulatory authority may approve a coal exploration permit only if based upon a complete and accurate application.

applies to any person who applies for a permit for surface coal mining and reclamation operations.

**§ 903.773 Requirements for permits and permit processing.**

(b) The Secretary will coordinate, to the extent practicable, his/her responsibilities under the following Federal laws with the relevant Arizona laws to avoid duplication:

(a) Part 773 of this chapter, *Requirements for Permits and Permit Processing*,

| Federal law  | State law   |
|--|---|
| (1) Clean Water Act, as amended, 33 U.S.C. 1251 et seq .....               | A.R.S Title 49, Art. 2, Sec 221–225; A.R.S Title 49, Art. 3, Sec 241–251; A.R.S Title 49, Art. 10, Sec 361–363; A.R.S Title 49, Art. 11, Sec 371–381. |
| (2) Clean Air Act, as amended, 42 U.S.C. 7401 et seq .....                 | A.R.S. Title 49.  |
| (3) Resource Conservation and Recovery Act, 42 U.S.C. 3251, et seq.        | A.R.S. Title 49, sections 921–932.  |
| (4) National Environmental Policy Act, 42 U.S.C. 4321 et seq ..            | A.R.S. Title 49, section 104.   |
| (5) Archeological and Historic Preservation Act, 16 U.S.C. 469 et seq.     | Arizona Antiquities Act—A.R.S. Title 41 secs. 821, 841–846, 861, 862, 865, 1352.  |
| (6) National Historic Preservation Act, 16 U.S.C. 470 et seq .....         | A.R.S. Title 13 Secs. 3702, 3702.1; Title 41 secs. 511, 511.04, 821, 861, 862, 1352; Title 44 sec. 123.   |
| (7) Section 208 of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq. | A.R.S. Sections 49–101, 201 and 371.  |
| (8) Endangered Species Act, 16 U.S.C. 1531 et seq .....                    | A.R.S. Title 17 Section 231A.2 Arizona Admin. Code Title 18 Chapter 10, Article 1.  |
| (9) Fish and Wildlife Coordination Act, 16 U.S.C. 661–667.                 |   |
| (10) Noise Control Act, 42 U.S.C. 4903.                                    |   |
| (11) Bald Eagle Protection Act, 16 U.S.C. 668–668(d) .....                 | A.R.S. Title 17 Section 235.  |

(c) No person may conduct coal exploration operations that result in removal of more than 250 tons of coal in one location or surface coal mining and reclamation operations:

(v) Mineral prospecting permits for State lands (A.R.S. Section 37-231);

(1) Without a permit issued by the Secretary as required under 30 CFR part 772 or 773; and

(vi) Permits for discharge into or use of State waters and permits for secondary use of reservoir waters (A.R.S. Title 45).

(2) Without permits, leases and/or certificates required by the State of Arizona, including, but not limited to the following:

(d) In addition to the requirements of part 773 of this chapter, the following permit application review procedures apply:

(i) Municipal planning statutes (A.R.S. Section 9-461 to 9-462.01); County planning and zoning statutes (A.R.S. Sections 11-322 et seq., 11-803, 11-808, 11-821);

(1) Any person applying for a permit must submit at least five copies of the application to OSM’s Western Support Center (WSC) in Denver, Colorado.

(ii) Statutes governing perfection and recordation of mining claims (A.R.S. Section 27-201 to 27-210);

(2) WSC shall review an application for administrative completeness and acceptability for further review, and notify the applicant in writing of the findings. WSC may:

(iii) Statutes requiring mineral exploration permits (A.R.S. Section 27-251 to 27-256);

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(iv) Solid waste and air pollution discharge permits, installation and operation permits required for equipment causing air pollution and water pollution discharge permits (A.R.S. Title 49);

(ii) Request additional information required for completeness, stating specifically what information must be supplied; or

(iii) Determine the application administratively complete and acceptable for further review.

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(3) When WSC determines the application to be administratively complete, it will notify the applicant. Upon such notification, the applicant must publish the public notice required by § 773.6(a)(1) of this chapter.

(4) A representative of WSC may visit the proposed permit area if necessary to determine whether the operation and reclamation plans are consistent with actual site conditions. WSC will provide the applicant advance notice of the time of the visit.

(5) In determining the completeness of an application, WSC will consider whether the information provided in the application is adequate for OSM to comply with the National Environmental Policy Act, 42 U.S.C. 4322. If necessary, WSC may require specific

additional information from the applicant as any environmental review progresses.

(e) In addition to the information required by subchapter G of this chapter, WSC may require an applicant to submit supplemental information to ensure compliance with applicable Federal laws and regulations other than the Act and 30 CFR chapter VII.

(f) In making a decision on an application, the regulatory authority shall review any written comments or objections it has received and the records of any informal conference or hearing it has held on the application. The regulatory authority shall issue a written decision in accordance with the timeframes in the following table:

| If * * *                      | And * * *                                 | Then a written decision shall be issued * * *   |
|-------------------------------|---|---|
| OSM has not prepared an EIS   | An informal conference has not been held. | Within 60 days of the close of the comment period.  |
| OSM has not prepared an EIS   | An informal conference has been held.     | Within 60 days of the conclusion of the informal conference (unless additional time is needed because of the number or complexity of the issues). |
| OSM has prepared an EIS ..... | .....                                     | No earlier than 30 days after the Environmental Protection Agency publishes the notice of availability of the final EIS in the FEDERAL REGISTER.  |

(g) OSM will consider withholding information from public disclosure under § 773.6(d) of this chapter if the applicant labels the information confidential and submits it separately from the rest of the application.

(1) If the applicant submits information identified as confidential, the notice required by § 773.6(a)(1) of this chapter shall state this and identify the type of information that the applicant has submitted.

(2) OSM shall determine the qualification of any application information labeled confidential within 10 days of the last publication of the notice required under § 773.6(a)(1) of this chapter, unless additional time is necessary to obtain public comment or in the event of unforeseen circumstances.

[60 FR 18716, Apr. 12, 1995, as amended at 65 FR 79671, Dec. 19, 2000]

**§ 903.774 Revision; renewal; and transfer, assignment, or sale of permit rights.**

(a) Part 774 of this chapter, *Revision; Renewal; and Transfer, Assignment, or*

*Sale of Permit Rights*, applies to any such actions involving surface coal mining and reclamation operations permits, except as specified in this section.

(b) No revision to an approved mining or reclamation plan shall be effective until reviewed and approved by WSC.

(c) Any significant revision to the approved mining or reclamation plan shall be subject to the public notice and hearing provisions of §§ 903.773(d)(3) and 773.6(b) and (c) of this chapter before it is approved and implemented. Any revision to an approved reclamation plan that may have the potential to adversely affect the achievement of reclamation and the post-mining land use is a significant permit revision. In addition, WSC will consider the following factors, as well as other relevant factors, in determining the significance of a proposed revision:

- (1) Changes in production or recoverability of the coal resource;
- (2) Environmental effects;

(3) Public interest in the operation, or likely interest in the proposed revision; and

(4) Possible adverse impacts from the proposed revision on fish or wildlife, endangered species, bald or golden eagles, or cultural resources.

(d) The regulatory authority will approve or disapprove non-significant permit revisions within a reasonable time after receiving a complete and accurate revision application. Significant revisions and renewals shall be approved or disapproved under the provisions of § 903.773(f).

(e) Any person having an interest that is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, may submit written comments on the application to WSC. Comments may be submitted within 30 days of either the publication of the newspaper notice required by § 774.17(b)(2) of this chapter, or receipt of an administratively complete application, whichever is later. For purposes of this paragraph, a person includes, but is not limited to an official of any Federal, State, or local government agency.

(f) Within 30 days from the last publication of the newspaper notice, written comments or objections to an application for significant revision or renewal of a permit may be submitted to the regulatory authority by:

(1) Any person having an interest that is or may be adversely affected by the decision on the application; or

(2) Public entities notified under § 773.6(a)(3) of this chapter of the proposed mining operations on the environment within their areas of responsibility.

[60 FR 18716, Apr. 12, 1995, as amended at 65 FR 79671, Dec. 19, 2000]

**§ 903.775 Administrative and judicial review of decisions.**

Part 775 of this chapter, *Administrative and Judicial Review of Decisions*, applies to all decisions on permits.

**§ 903.777 General content requirements for permit applications.**

(a) Part 777 of this chapter, *General Content Requirements for Permit Applications*, applies to any person who makes application for a permit to conduct

surface coal mining and reclamation operations.

(b) Any person who wishes to conduct surface coal mining and reclamation operations must file a complete application as early as possible before the date the permit is desired and pay to OSM a permit fee in accordance with § 903.736.

(c) Any person who wishes to revise a permit shall submit a complete application as early as possible before the desired approval date of the permit revision and shall pay a permit fee in accordance with 30 CFR 777.17.

**§ 903.778 Permit applications—Minimum requirements for legal, financial, compliance, and related information.**

Part 778 of this chapter, *Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*, applies to any person who submits an application for a permit to conduct surface coal mining and reclamation operations.

**§ 903.779 Surface mining permit applications—Minimum requirements for information on environmental resources.**

(a) Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, applies to any person who submits an application to conduct surface coal mining and reclamation operations.

(b) Each permit application must include a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area.

**§ 903.780 Surface mining permit applications—Minimum requirements for reclamation and operation plan.**

Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, applies to any person who submits an application to conduct surface coal mining and reclamation operations.

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### **§ 903.783 Underground mining permit applications—Minimum requirements for information on environmental resources.**

(a) Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, applies to any person who submits an application to conduct underground coal mining operations.

(b) Each permit application must include a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area.

### **§ 903.784 Underground mining permit applications—Minimum requirements for reclamation and operation plan.**

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, applies to any person who submits an application to conduct underground coal mining operations.

### **§ 903.785 Requirements for permits for special categories of mining.**

Part 785 of this chapter, *Requirements for permits for Special Categories of Mining*, applies to any person who submits an application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

### **§ 903.795 Small operator assistance program.**

Part 795 of this chapter, *Small Operator Assistance Program*, applies to any person who submits an application for assistance under the small operator assistance program.

### **§ 903.800 Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs.**

(a) Part 800 of this chapter, *Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs*, applies to all surface coal mining and reclamation operations, except for § 800.40(a)(1) of this chapter regarding the bond release application, for which paragraph (b) of this section substitutes.

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(b) The permittee may file an application with the regulatory authority for the release of all or part of a performance bond. The application must be filed no later than 30 days before the end of the vegetation growing season in order to allow time for the regulatory authority to properly evaluate the completed reclamation operations. The appropriate times or seasons for the evaluation of certain types of reclamation shall be identified in the mining and reclamation plan required in subchapter G of this chapter and approved by the regulatory authority.

### **§ 903.815 Performance standards—Coal exploration.**

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration*, applies to any person who conducts coal exploration.

### **§ 903.816 Performance standards—Surface mining activities.**

(a) Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities*, applies to any person who conducts surface mining activities, except § 816.116(a)(1) of this chapter regarding revegetation success standards, for which paragraph (b) of this section substitutes.

(b) Standards for success shall be those identified at § 816.116(a)(2) and (b) of this chapter. Statistically valid sampling techniques for measuring success shall be included in the mining and reclamation plan and approved by the regulatory authority.

### **§ 903.817 Performance standards—Underground mining activities.**

(a) Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities*, applies to any person who conducts underground mining activities, except § 817.116(a)(1) of this chapter regarding revegetation success standards, for which paragraph (b) of this section substitutes.

(b) Standards for success shall be those identified at § 817.116(a)(2) and (b) of this chapter. Statistically valid sampling techniques for measuring success shall be included in the mining and reclamation plan and approved by the regulatory authority.

**§ 903.819 Special performance standards—Auger mining.**

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining*, applies to any person who conducts surface coal mining operations that include auger mining.

**§ 903.822 Special performance standards—Operations in alluvial valley floors.**

Part 822 of this chapter, *Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors*, applies to any person who conducts surface coal mining and reclamation operations on alluvial valley floors.

**§ 903.823 Special performance standards—Operations on prime farmland.**

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland*, applies to any person who conducts surface coal mining and reclamation operations on prime farmland.

**§ 903.824 Special performance standards—Mountaintop removal.**

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal*, applies to any person who conducts surface coal mining and reclamation operations constituting mountaintop removal mining.

**§ 903.827 Special performance standards—Coal preparation plants not located within the permit area of a mine.**

Part 827 of this chapter, *Permanent Program Performance Standards—Coal Preparation Plants Not Located Within the Permit Area of a Mine*, applies to any person who conducts surface coal mining and reclamation operations which include the operation of a coal preparation plant not located within the permit area of a mine.

**§ 903.828 Special performance standards—In situ processing.**

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, applies to any person who conducts surface coal min-

ing and reclamation operations that include the in situ processing of coal.

**§ 903.842 Federal inspections.**

(a) Part 842 of this chapter, *Federal Inspections*, applies to all coal exploration and surface coal mining and reclamation operations.

(b) In addition to the requirements of part 842 of this chapter, OSM will furnish copies of inspection reports when requested by a designated Arizona State agency with jurisdiction over mining.

**§ 903.843 Federal enforcement.**

(a) Part 843 of this chapter, *Federal Enforcement*, applies regarding enforcement action on coal exploration and surface coal mining and reclamation operations.

(b) In addition to the requirements of part 843 of this chapter, OSM will furnish copies of enforcement actions and orders to show cause, upon request, to a designated Arizona State agency with jurisdiction over mining.

**§ 903.845 Civil penalties.**

Part 845 of this chapter, *Civil Penalties*, applies to the assessment of civil penalties for violations on coal exploration and surface coal mining and reclamation operations.

**§ 903.846 Individual civil penalties.**

Part 846 of this chapter, *Individual Civil Penalties*, applies to the assessment of individual civil penalties under section 518(f) of the Act.

**§ 903.955 Certification of blasters.**

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, applies to the training, examination and certification of blasters for surface coal mining and reclamation operations.

**PART 904—ARKANSAS**

Sec.

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