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

SOURCE: 47 FR 49822, Nov. 2, 1982, unless otherwise noted.

## § 937.700 Oregon Federal program.

(a) This part contains all rules that are applicable to surface coal mining operations in Oregon which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

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

(c) The rules in this part apply to all surface coal mining operations in Oregon conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in Oregon.

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of Oregon laws provide, where applicable, for more stringent environmental control and regulation of surface coal mining operations than do the provisions of the Act and the regulations in this chapter. Therefore, pursuant to Section 505(b) of the Act, they shall not be construed to be inconsistent with the Act:

(1) Oregon Revised Statutes (ORS) 468.700–468.997, pertaining to the control of water pollution.

(2) ORS 498.002 and ORS 498.705, protecting fish and wildlife and their habitats.

(3) ORS 509.125, prohibiting deleterious substances from being introduced into State waters.

(4) ORS 509.140, requiring the approval of the Fish and Wildlife Commission before explosives may be used to construct a dam or similar structure.

(5) ORS 509.600, prohibiting the injury or destruction of fish within 600 feet of any fishway. Prior approval of the Director, the Department of Fish and Wildlife, is required before constructing a dam or obstruction in State waters.

(6) ORS 509.615, requiring that artificial watercourses must be screened.

(f) The following are Oregon laws that interfere with the achievement of the purposes and requirements of the Act and are, in accordance with section 504(g) of the Act, pre-empted and superseded with respect to coal mining, except to the extent they provide for regulation of surface coal mining and reclamation operations which are exempt from the Surface Mining Control and Reclamation Act of 1977:

(1) Oregon Surface Mining and Mine Land Reclamation Act, as amended, ORS 517.750–ORS 517.990.

(2) Oregon Administrative Rules (OAR), Department of Geology and Mineral Industries, Division 30, Rules and Regulations, Oregon Mined Land Reclamation Act, OAR 632–30–005 through OAR 632–30–060.

(3) ORS 273.551 and ORS 273.775 to ORS 273.790. The contractual and leasing responsibility of the Division of Lands over State lands and minerals is not affected by this Federal program.

(4) ORS 275.340. Pre-empted to the extent that the State of Oregon construes this statute as delegating to cities and counties the authority to issue surface coal mining permits and related exploration permits.

[47 FR 49822, Nov. 2, 1982, as amended at 52 FR 13812, Apr. 24, 1987]

#### § 937.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and part 701 of this chapter shall apply to surface coal mining operations in Oregon.

#### § 937.702 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*, shall apply to any person who conducts coal extraction incidental to the extraction of

other minerals for purposes of commercial use or sale.

[54 FR 52123, Dec. 20, 1989]

#### § 937.707 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*, shall apply to surface coal mining and reclamation operations.

#### § 937.761 Areas designated unsuitable for surface coal mining by Act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, shall apply to surface coal mining and reclamation operations.

#### § 937.762 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*, shall apply to surface coal mine operations beginning one year after May 28, 1982.

#### § 937.764 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 petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and with the February 26, 1980, May 16, 1980, and August 15, 1980, opinions and orders of the U.S. District Court for the District of Columbia (*In re: Permanent Surface Mining Regulation Litigation* (Civ. Action No. 79–1144)).

(a) NDAC 69–05.2–25–0 shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the