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§ 740.11 Applicability.

(a) Except as provided in paragraph (g) of this section, both this subchapter and the pertinent State or Federal regulatory program in subchapter T of this chapter apply to:

(1) Coal exploration operations on Federal lands not subject to 43 CFR part 3400, and

(2) Surface coal mining and reclamation operations taking place on any Federal lands as defined in §700.5 of this chapter, and lands (except Indian lands) over leased or unleased Federal minerals.

(b) Where OSM is the regulatory authority, references in the State program to the State or an agency or official of the State (with respect to functions of the State acting as regulatory authority) shall be construed as referring to OSM.

(c) Where the Secretary and a State have entered into a cooperative agreement, the cooperative agreement shall delineate the responsibilities of the Secretary and the State with respect to the administration of the regulatory program and this subchapter.

(d) Nothing in this subchapter shall affect in any way the authority of the Secretary or any Federal land management agency to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate surface coal mining and reclamation operations under provisions of law other than the Act on land under their jurisdiction.

(e) This subchapter shall not apply to surface coal mining and reclamation operations within a State prior to approval or promulgation of a regulatory program for the State.

(f) Where coal exploration or surface coal mining and reclamation operations within a State are on Federal lands and where no State or Federal program has been approved for the State, this subchapter shall apply in that State upon the effective date of these regulations.

(g) The definition of valid existing rights in §761.5 of this chapter applies to any decision on a request for a determination of valid existing rights to conduct surface coal mining operations

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on the lands specified in §761.11(a) and (b) of this chapter.

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§ 740.13 Permits.

(a) *General requirements.* (1) No person shall conduct surface coal mining operations on lands subject to this part unless that person has first obtained a permit issued pursuant to the regulatory program and this part.

(2) Every person conducting surface coal mining and reclamation operations on lands subject to this part shall comply with the terms and conditions of the permit and the lease or license, the Act, this subchapter, the regulatory program and all other applicable State and Federal laws and regulations.

(3) Surface coal mining operations authorized under the initial regulatory program or 43 CFR parts 3400, as applicable, may be conducted beyond the eight-month period prescribed in the applicable regulatory program if all of the following conditions are present:

(i) A timely and administratively complete application for a permit to conduct those operations under this part has been made to the regulatory authority in accordance with the provisions of this part and the applicable regulatory program;

(ii) The regulatory authority has not yet rendered a final decision with respect to the permit application; and

(iii) Those operations are conducted in compliance with all terms and conditions of the initial regulatory program approval or permit, the requirements of the Act, 30 CFR chapter VII, subchapter B or 43 CFR parts 3400, as applicable, applicable State laws and regulations, and the requirements of the applicable lease or license.

(b) *Permit application package.* (1) Each application for a permit, or permit revision or renewal thereof to conduct surface coal mining and reclamation operations on lands subject to this part shall be accompanied by a fee

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made payable to the regulatory authority. The amount of the fee shall be determined in accordance with the permit fee criteria of the applicable regulatory program.

(2) Unless specified otherwise by the regulatory authority, seven copies of the complete permit application package shall be filed with the regulatory authority.

(3) Each permit application package shall include:

(i) The information required for a permit application or for an application for revision or renewal of a permit under the applicable regulatory program;

(ii) The resource recovery and protection plan required by 43 CFR parts 3400 for operations on lands containing leased Federal coal; and

(iii) Where OSM is the regulatory authority or where the proposed operations are on lands containing leased Federal coal, the following supplemental information to ensure compliance with Federal laws and regulations other than the Act:

(A) A description of the affected area of the proposed surface coal mining and reclamation operation with respect to: (1) Increases in employment, population and revenues to public and private entities, and (2) the ability of public and private entities to provide goods and services necessary to support surface coal mining and reclamation operations.

(B) An evaluation of impacts to the scenic and aesthetic resources, including noise on the surrounding area, due to the proposed surface coal mining and reclamation operation.

(C) A statement, including maps and ownership data as appropriate, of any cultural or historical sites listed on the National Register of Historic Places within the affected area of the proposed surface coal mining and reclamation operation.

(D) A statement of the classes of properties of potential significance within the disturbed area, and a plan for the identification and treatment, in accordance with 36 CFR part 800, of properties significant and listed or eligible for listing on the National Register of Historic Places within the disturbed area of the proposed surface

coal mining and reclamation operation.

(E) A description of the probable changes in air quality resulting from the mining operation and any necessary measures to comply with prevention of significant deterioration limitations, State Implementation Plans, or other Federal or State laws for air quality protection.

(F) A description of the location, acreage and condition of important habitats of selected indicator species located within the affected area of the proposed surface coal mining and reclamation operation.

(G) A description of active and inactive nests and prey areas of any Bald or Golden eagles located within the affected area of the proposed surface coal mining and reclamation operations.

(H) A description of all threatened and endangered species and their critical habitats located within the affected area of the proposed surface coal mining and reclamation operations.

(4) Where the surface of the Federal lands is subject to a lease or permit issued by the Federal government to a person other than the applicant, the permit application package shall contain information sufficient to demonstrate compliance with the requirements of § 740.15(c)(1). This requirement shall not apply to TVA-owned lands.

(c) *Permit review and processing.* Applications for permits, permit revisions or renewals thereof to conduct surface coal mining and reclamation operations on lands subject to this part shall be reviewed and processed in accordance with the requirements of the applicable regulatory program, subject to the following additional requirements:

(1) *Permit terms and conditions.* Permits shall include, as applicable, terms and conditions required by the lease issued pursuant to the Mineral Leasing Act and by other applicable Federal laws and regulations.

(2) *Criteria for permit approval or denial.* The regulatory authority shall not approve an application for a permit, or permit revision or renewal thereof for surface coal mining and reclamation operations on lands subject to this part unless the application is in accordance with the requirements of

the applicable regulatory program and this part or a cooperative agreement, as applicable.

(3) *Public participation in permit review process.* Where public hearings were held and determinations made under section 2(a)(3) (A), (B) and (C) of the Mineral Leasing Act (30 U.S.C. 201(a)(3) (A), (B) and (C)), such hearings may be made a part of the record of each public hearing on a permit application held pursuant to the requirements of the applicable regulatory program and this part. Matters covered at such hearings and determinations made at such hearings need not be readdressed.

(4) *Permit review processing for operations on lands administered by a Federal land management agency.* Upon receipt of a permit application package or a proposed revision or renewal of an approved permit that involves surface coal mining and reclamation operations on lands administered by an agency of the Federal Government, the regulatory authority shall transmit a copy of the complete permit application package, or proposed revision or renewal thereof, to the Federal land management agency, with a request for review and comment.

(5) *Consultation with other Federal agencies.* Prior to approving or disapproving a permit, permit revision or renewal thereof, the regulatory authority shall consider the comments of the Federal land management agency and include these comments in the record of permit decisions.

(6) *Permit processing schedule.* The regulatory authority shall process the permit application package within the time schedule established by the applicable regulatory program, except that the schedule may be extended if necessary to ensure compliance with Federal laws and regulations other than the Act.

(7) *Determination of operator compliance with the Act.* Where OSM is the regulatory authority, it shall afford the applicant or operator an opportunity for an adjudicatory hearing as provided in 43 CFR part 4 prior to a final determination on whether the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of the Act

of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of the Act.

(8) *Administrative review of decisions on permit applications.* Where OSM is the regulatory authority, the final decision on a permit application is subject to an appeal to the Department's Office of Hearings and Appeals as provided in part 775 of this chapter. Where the State is the regulatory authority under a cooperative agreement, the final decision on a permit application is subject to administrative review as provided under the approved State program.

(9) *Bonds and insurance required for issuance of permits.* After the approval of an application for a new or revised permit or for renewal of an existing permit, but prior to issuance of such permit, the applicant/permittee shall file with the regulatory authority: (i) A performance bond which meets the requirements of the applicable regulatory program; (ii) proof of liability insurance in accordance with the applicable regulatory program; and (iii) where required, evidence of the execution of a Federal lessee protection bond. Bonds required to be filed with OSM shall be in a form required by OSM and made payable to the United States.

(d) *Review of permit revisions.* (1) Where the State is the regulatory authority for surface coal mining and reclamation operations on lands subject to this subchapter, it shall inform OSM of each request for a permit revision with respect to operations on lands containing leased Federal coal.

(2) OSM shall review each permit revision in consultation with the Bureau of Land Management and the appropriate Federal land management agency to determine whether the permit revision constitutes a mining plan modification requiring the Secretary's approval under § 746.18 of this chapter.

(3) The regulatory authority shall consult with the Federal land management agency to determine whether any permit revision will adversely affect Federal resources other than coal and whether the revision is consistent with that agency's land use plans for other

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Federal laws, regulations and executive orders for which it is responsible.

(e) *Transfer, assignment or sale of rights.* (1) The regulatory authority, before approving or disapproving an application for transfer, assignment or sale of rights granted under a permit issued pursuant to this subchapter, shall consult with the appropriate Federal land management agency and the Bureau of Land Management, as applicable.

(2) Approval of a transfer, assignment or sale of rights granted under a permit issued pursuant to this subchapter shall not be construed to constitute a transfer or assignment of leasehold interests. Leasehold interests may be transferred or assigned only in accordance with 43 CFR part 3453.

(f) *Suspension or revocation of permits.* (1) A permit to conduct surface coal mining and reclamation operations on Federal lands may be suspended or revoked by the regulatory authority in accordance with part 843 of this chapter and the applicable regulatory program.

(2) If a permit to conduct surface coal mining and reclamation operations on lands containing leased Federal coal is suspended or revoked, the regulatory authority shall notify the Bureau of Land Management so that the Bureau of Land Management can determine whether action should be taken to cancel the Federal lease. This section does not release the Federal lessee from the diligent development or continued operation requirements of 43 CFR parts 3400.

[48 FR 6935, Feb. 16, 1983, as amended at 48 FR 44779, Sept. 30, 1983; 54 FR 13822, Apr. 5, 1989]

§ 740.15 Bonds on Federal lands.

(a) *Federal lease bonds.* (1) Each holder of a Federal coal lease that is covered by a Federal lease bond required under 43 CFR part 3474 may apply to the authorized officer for release of liability for that portion of the Federal lease bond that covers reclamation requirements.

(2) The authorized officer may release the liability for that portion of the Federal lease bond that covers reclamation requirements if:

(i) The lessee has secured a suitable performance bond covering the permit area under this part;

(ii) There are no pending actions or unresolved claims against existing bonds; and

(iii) The authorized officer has received concurrence from OSM and the Bureau of Land Management.

(b) *Performance bonds.* Where the State is the regulatory authority under a cooperative agreement, the performance bonds required for operations on Federal lands shall be made payable to the United States and the State. Where OSM is the regulatory authority, such bonds shall be payable only to the United States.

(c) *Federal lessee protection bonds.* (1) Where leased Federal coal is to be mined and the surface of the land is subject to a lease or permit issued by the United States for purposes other than surface coal mining, the applicant for a mining permit, if unable to obtain the written consent of the permittee or lessee of the surface to enter and commence surface coal mining operations, shall submit to the regulatory authority with his application evidence of execution of a bond or undertaking which meets the requirements of this section. The Federal lessee protection bond is in addition to the performance bond required by a regulatory program. This section does not apply to permits or licenses for the use of the surface that do not convey to the permittee or licensee the right of transfer, sale or consent to other uses.

(2) The bond shall be payable to the United States and, as applicable, the State for the use and benefit of the permittee or lessee of the surface lands involved.

(3) The bond shall secure payment to the surface estate for any damage which the surface coal mining and reclamation operation causes to the crops or tangible improvements of the permittee or lessee of the surface lands.

(4) The amount of the bond shall be determined either by the applicant and the Federal lessee or permittee or as determined in an action brought against the person conducting surface coal mining and reclamation operations or upon the bond in a court of competent jurisdiction.