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

SOURCE: 48 FR 16823, Apr. 19, 1983, unless otherwise noted.

§941.700 South Dakota Federal program.

(a) This part contains all rules that are applicable to surface coal mining operations in South Dakota 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 South Dakota Federal program.

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

(d) The recordkeeping and reporting requirements of this part are the same as those of the permanent program regulations which have been approved by

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the Office of Management and Budget under 44 U.S.C. 3507.

(e) The following provisions of South Dakota 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) South Dakota Compiled Laws Annotated (S. D. Comp. Laws Ann.) Chap. 45-6B, section 33(1)-(5) on lands unsuitable for mining.

(2) S. D. Comp. Laws Ann. Chap. 45-6C, sections 16, 19, 27, and 28.

(3) Weed Control, S. D. Comp. Laws Ann. Chap. 38-22.

(4) Protection of fishing waters, S. D. Comp. Laws Ann. Chap. 41-13.

(5) Remedies for protection of the environment, S. D. Comp. Laws Ann. Chap. 34A-10.

(6) Air pollution control, S. D. Comp. Laws Ann. Chap. 34A-1.

(7) Water pollution control, S. D. Comp. Laws Ann. Chap. 34A-2.

(8) Solid waste disposal, S. D. Comp. Laws Ann. Chap. 34A-6.

(9) Groundwater, S. D. Comp. Laws Ann. Chap. 46-6.

(f) The following are South Dakota 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of the purposes and requirements of the Act and are, in accordance with section 504(g) of the Act, preempted and superseded with respect to surface coal mining, except to the extent that they regulate surface coal mining operations which affect two acres or less, or which otherwise are not regulated by the Surface Mining Control and Reclamation Act.

(1) S. D. Comp. Laws Ann. Chap. 45-6B, except with respect to the criteria for designating lands unsuitable for mining, section 33(1)-(5).

(2) S. D. Comp. Laws Ann. Chap. 45-6C, except with respect to the requirements to consult with the owner of surface lands to be explored and the right of the owner to establish reasonable restrictions on exploration travel (section 16), the requirement to post an exploration reclamation bond (section 19), the prohibition of explosives use in exploration within one-half mile of a flowing water well or a domestic water

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well without the owner's permission (section 27), and the requirement to cap, plug, and seal all exploration test holes (section 28).

(g) The Secretary may grant a limited variance from the performance standards of §§ 941.815 through 941.828 of this part if the applicant for coal exploration approval or a surface mining permit submitted pursuant to §§ 941.772 through 941.785 demonstrates in the application that:

(1) Such variance is necessary because of the unique nature of South Dakota's terrain, climate, biological, chemical, or other relevant physical conditions; and

(2) The proposed alternative will achieve equal or greater environmental protection than does the performance requirement from which the variance is requested.

[48 FR 16823, Apr. 19, 1983, as amended at 52 FR 13814, Apr. 24, 1987]

§ 941.701 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 South Dakota.

§ 941.702 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]

§ 941.707 Exemption for coal extraction incident to Government-financed highway or other construction.

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

§ 941.761 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.

§ 941.762 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.

§ 941.764 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 regulatory responsibilities shall apply to surface coal mine operations beginning one year after the effective date of this program.

§ 941.772 Requirements for coal exploration.

(a) Part 772 of this chapter, *Requirements for Coal Exploration*, 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 that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

[52 FR 13814, Apr. 24, 1987]

§ 941.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, *Requirements for Permits and Permit Processing*, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.