B. Description of Function

— Coordination of Federal agency plans and procedures for the initial appraisal of the types of emergency support needed. Complete information to assure that the input to release of information by the State and affected local governments.

A. Assignments


Support: Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of the Interior, Department of Justice, Department of Labor, Department of Transportation, American Red Cross, Corps of Engineers, Environmental Protection Agency, Federal Communications Commission, General Services Administration, Interstate Commerce Commission, National Aeronautics and Space Administration, National Communications System, Nuclear Regulatory Commission, U.S. Postal Service, Veterans Administration.

B. Description of Function

— Initial appraisal of the types of Federal assistance needed. Complete overall damage assessment report.

— Plans and procedures for the management of the systems needed to facilitate the coordination of Federal assistance including establishment of field office(s) at the disaster site.

— Coordination of Federal agency emergency relief efforts with those of the State and affected local governments.

— Coordination of national volunteer agency disaster relief activities.

— Provide emergency information to decisionmakers responsible for the management of the Federal response.

— Establish emergency support teams to be deployed to the disaster site.

— Coordination of Federal public information to assure that the response and recovery effort is described comprehensively, consistently, and accurately.

— Coordination of requirements of special interest groups, such as congressional staffs and scientific research teams.

— Input to release of information by State and local officials advising the public of actions to take to insure their safety.

V. Relationship of Planning Effort to Site-Specific Regional Plans

This national planning effort is intended to establish the policies and procedures that should be applied throughout the Federal establishment in development of a national Federal emergency response plan to a catastrophic earthquake. At present, there have been developed three site-specific plans under the leadership of FEMA Regions VIII, IX, and X. Other federal agencies have been involved to one degree or another in these ongoing efforts. In some cases, functional assignments and other relationships may differ from the assignments and relationships addressed in this notice. This should be recognized as the planning process continues and flexibility allowed to recognize constraints that are unique to a particular geographic risk area. These situations will be handled on a case-by-case basis with the goal of keeping the national plan as uniform as possible.

Planning and related issues, concerns, and problems that have been identified in the development of the existing site-specific plans should now become not only the responsibility of the FEMA regional staffs, and other Federal regional or field offices, but also the concerns of the headquarters level in such respective Federal agency.

VI. Schedule for Plan Development and Exercises

Realizing that extensive effort will be required to develop a plan to provide support for life-saving, life-protecting functions, the following schedule for plan development and testing has been established based on realistic expectations. The schedule covers a two-year timeframe which projects initiation of the planning in March 1983—upon notification of the requirement in the Federal Register—and continues through full-scale exercise of the plan in April 1985. The plan as established will also satisfy the requirements of the assignments in the Federal Plan of Action for Emergency Mobilization, which requires development and exercise of a national response plan.

Other Federal government planning and exercising requirements have been taken into consideration as known at the time the schedule was developed. Although there may be adjustments necessary in the schedule to accomplish a well developed and coordinated plan, it should serve as a guide for accomplishments. The Subcommittee on Federal Earthquake Response Planning will consider adjustments and resolve conflicts with other priority requirements as they occur.

VII. General and Administrative Guidance

Through the efforts of the Subcommittee on Federal Earthquake Response Planning, a planning guide was developed from which this notice has been extracted. FEMA intends to publish and maintain the planning guide for plan development. It will be provided to the agencies involved in the planning process and will be changed and updated as necessary to assure that the most complete and current information is available to those involved in development of Federal plans.

Included in the planning guide will be a proposed format for the national Federal plan and the supporting functional annexes. As developed, guidance will also be provided on the administrative processes involved in the planning, mechanisms established for liaison between agencies, administrative support and information requirements, and guidelines for plan accomplishment, revisions, and review.

Approved for the Federal Emergency Management Agency.


Lee M. Thomas,
Executive Deputy Director.

BILLING CODE 6718-01-M
Part VI

Department of Labor

Mine Safety and Health Administration

Alternate Product Approval Procedure; Proposed Rule
DEPARTMENT OF LABOR
Mine Safety and Health Administration

30 CFR Part 37
Alternate Product Approval Procedure.

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of availability of preproposal draft.

SUMMARY: The Mine Safety and Health Administration (MSHA) has developed a preproposal draft of a new Part 37, Alternate Product Approval Procedure. The proposal would provide an expedited application procedure for manufacturers of mining equipment which have certain design characteristics and features. MSHA seeks comments on the preproposal draft from all interested parties. Copies of the draft may be obtained by contacting the Agency.

DATES: Comments must be received by May 3, 1983.


FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Director, Office of Standards, Regulations, and Variances, MSHA (703) 235-1910.

SUPPLEMENTARY INFORMATION: Under the Federal Mine Safety and Health Act of 1977 (Pub. L. 91-173 as amended by Pub. L. 95-164), MSHA is required to approve certain products for use in underground mines. MSHA’s current regulations in 30 CFR Parts 15 through 36 govern the process through which manufacturers may obtain MSHA approval of a product for use underground. The alternate procedure contained in the preproposal draft would permit applicants to certify that the technical requirements specified for the product by MSHA have been met. This procedure would permit applicants or independent laboratories to conduct the necessary testing. Applicants’ use of the proposed procedure would also involve testing the product according to test procedures specified by MSHA, implementing a quality control procedure accepted by MSHA, consent to MSHA quality control audits at the factory, and random ‘off the shelf’ product examinations conducted by MSHA. This new procedure would be an alternative to the existing application procedures, which manufacturers could continue to use if they so choose.

To implement the alternate procedure, MSHA, would develop appendices to Part 37 for products which require MSHA approval. These appendices would specify the design characteristics and features a product would be required to have in order to be considered under the proposed alternate procedure. Concurrent with the development of this proposal, MSHA has developed a draft appendix consistent with Part 22 for portable, battery-powered, intrinsically safe methane-indicating detectors. The draft appendix is included with the preproposal draft of Part 37 so that commenters may see the relationship of proposed Part 37 and an appendix. The draft appendix, however, is not the subject of this rulemaking.

Copies of the preproposal draft of Part 37 and the draft appendix have been mailed to persons and organizations who have expressed an interest in this rulemaking. All other interested persons and organizations may obtain copies of the documents by submitting a request to the address provided above.

Dated: March 1, 1983.
Ford B. Ford,
Assistant Secretary for Mine Safety and Health.

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BILLING CODE 4510-43-M
Part VII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program Experimental Practices; Final Rule
DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement
30 CFR Part 785

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program Experimental Practices

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The final rule adopted by the Office of Surface Mining Reclamation and Enforcement (OSM) for experimental practices will provide that an operator may obtain a variance from the environmental protection performance standards of Subchapter K of the permanent program regulations for an experimental practice after submitting an application which contains the information asked for by the rule, complying with the public notice requirements of Subchapter G of the permanent program regulations and receiving approval from the regulatory authority based on certain findings set out in the rule and concurrence from the Director of OSM.

Section 711 of the Surface Mining Control and Reclamation Act of 1977 (Act), provides authorization for variances in individual cases on an experimental basis from the environmental protection performance standards promulgated under Sections 515 and 516 of the Act. The objective of such departures, as authorized by the regulatory authority with the concurrence of the Director, is to encourage advances in mining and reclamation practices or to allow alternative postmining land uses. OSM encourages industry and State regulatory authority participation in the experimental practices program. OSM is willing to work with industry and State regulatory authorities to develop innovative and beneficial experimental practice proposals.

On March 19, 1982 (47 FR 12082), OSM proposed to amend 30 CFR 785.13 of the permanent program regulations in order to clarify certain subsections and to eliminate unnecessary requirements for operators. The proposal also called for consultation with the U.S. Department of Agriculture prior to approval of an experimental practice on prime farmlands in accordance with Section 510(d) of the Act and for simple notification of the regulatory authority by an operator prior to the implementation of minor revisions to an experimental practice permit. A public hearing was held on April 9, 1982.

However, the proceeding was adjourned because no member of the public appeared to give oral testimony. The comment period remained open until August 25, 1982 and later was reopened from September 7, 1982 through September 16, 1982.

During the comment period, OSM received comments from 40 sources representing industry, trade associations, environmental groups, and Federal and State agencies. After analyzing the recommendations made by the various commenters, OSM has decided to adopt the rule as proposed with certain modifications which are set out below.

II. Discussion of Comments and Rule Adopted

A. Section 785.13(a) General Requirements

In response to comments, this paragraph has been revised by including language to clarify that an experimental practice variance is part of an approved surface coal mining and reclamation operation permit or permit revision and that it may be for experimental or research purposes, or to allow an alternative postmining land use. In addition, language has been inserted stating that the approved permit or permit revision must meet the requirements of Subchapter G of 30 CFR Chapter VII. In the proposal this reference appeared in § 785.13(b) which deals with the special information operators must provide in their applications for an experimental practice variance. However, the processing and application requirements of Subchapter G are not part of the entire section and therefore reference to them has been placed in the more appropriate provision.

Several commenters expressed concern that issuance of an experimental practice permit would only be possible during the initial application process for a surface mining and reclamation operation permit. OSM believes that an application for an experimental practice may be submitted at any time during the life of a mining operation. The experimental practice application may be made when submitting the original permit application or, at a later time, as a permit revision application.

A commenter felt that the proposed rule was not consistent with the Congressional intent for Section 711 of the Act and that OSM was mistaken if it assumed that the goal of the provision was to obtain economic advantages for operators. Instead, the commenter saw the goal of Section 711 as improving environmental protection over the standards of Sections 515 and 516.

The language of the provision clearly states that the variances are to be approved in order to encourage advances in technology or to allow alternative postmining land uses. However, such approvals may not be given unless certain conditions are met. Therefore, while an experimental practice could lead to improvements in environmental protection, it could also result in a technological improvement. In both cases, in order to be approved, the experimental practice must be potentially more or at least as environmentally protective as the environmental protection performance standards which were promulgated pursuant to Sections 515 and 516 of the Act and from which a variance is being sought.

Several commenters objected to language in the proposal which suggested that the variances would be from performance standards of the Act. OSM has rejected this comment. The performance standards of Subchapter K of 30 CFR Chapter VII are merely an extension of the standards of Sections 515 and 516 of the Act. Thus, to provide a variance from these standards it is also necessary to recognize that the variance could also be to the standards of the Act. The legislative history of this provision demonstrates that Congress contemplated that the experimental practices section would be used in just such a manner. The revised rule does not change the meaning of the
provisions in the rule which went practices. OSM has not included this Requirements of the Act should be deleted. These been revised to state the purposes of retaining § 785.13(b) of the previous rule will encourage advances in mining or performance standards that are being experimental practice.

the earliest possible time potential risk and sufficient to enable operator shall undertake. In the case of monitoring efforts which the information that shall be provided by an experimental practice. Among other things, this information shall include a description of the variances from performance standards that are being requested, show how use of the practice will encourage advances in mining or reclamation technology or allow alternative postmining land uses on an experimental basis, provide assurances that the practice is potentially more or at least as environmentally protective as required under Subchapter K and set out the monitoring efforts which the operator shall undertake. In the case of the monitoring efforts, the data collected shall be reliable and sufficient to enable the regulatory authority and OSM to evaluate the effectiveness of the experimental practice and to identify at the earliest possible time potential risk to the environment and public health and safety which may be caused by the experimental practice.

One commenter recommended retaining § 785.13(b) of the previous rule as being the only language seeking to encourage the use of experimental practices. OSM has not included this paragraph in the final rule because it is unnecessary. However, § 785.13(a) has been revised to state the purposes of experimental practices. Two commenters believed that any provisions in the rule which went beyond the requirements of Section 711 of the Act should be deleted. These comments are rejected. Section 201(c)(2) of the Act provides the Secretary with authority to promulgate such rules and regulations as may be necessary to carry out its purpose. 30 U.S.C. 1211(c)(2). As the District Court found in In re: Permanent Surface Mining Reclamation Litigation, Civ. No. 79–1144, Slip op. at 5–6 (D.D.C. February 26, 1980), "An agency's regulations may cover items not specifically delineated in a statute so long as the regulations conform to an Act's purposes and policies." In promulgating this rule, OSM believes that the requirements of § 785.13 are appropriate to carry out the purposes of Section 711 specifically, and the Act in general.

Several commentators were confused as to whether the rule would require a separate experimental practice permit application or whether the request would be part of the surface mining operation permit application. OSM believes that the information required for approval of an experimental practice is in addition to that required for a surface coal mining and reclamation operation permit application. This information can be submitted with the general permit application or separately as a revision to the permit. OSM considers that the language changes which were made to § 785.13(a), and discussed above, are sufficient to clarify the relationship of an experimental practice variance to the general permit for the operation. Several commenters stated that under the Act both the permit applicant and regulatory authority have the responsibility to assure that an approved practice is not larger or more numerous than necessary to determine its effectiveness and economic feasibility. The commenter disagreed with OSM's proposal not to require an operator to demonstrate in its permit application that the proposed variances are not larger or more numerous than necessary to determine its effectiveness and economic feasibility. The commenter believed that it was incumbent upon the operator, who had the data and self-interest in expanding the scope or duration of the variance, to establish the need for the magnitude and scope of the proposal. The commenter also believed that there must come a point when the regulatory authority would conclude that sufficient experimentation had taken place on a new technology or alternative postmining land use so that additional experimentation would not be permissible under the Act. By contrast, another commenter recommended deleting as redundant the proposed § 785.13(d)(3) finding by the regulatory authority concerning the size and number of the experimental practices. OSM rejects both of these recommendations. OSM believes the Act requires the regulatory authority to make a specific finding as to the size and number of the experimental practice to determine its effectiveness and economic feasibility. Under this final rule, the regulatory authority and the Director must evaluate the proposed experimental practice to make the necessary findings. Information necessary to determine that the experimental practice is not larger or more numerous than necessary will generally be readily available to the regulatory authority.

One commenter endorsed the elaboration of information to be provided by the applicant concerning the nature of the proposed experimental practice. The commenters recommended revising proposed § 785.13(b)(1) to read "a description of the performance standards for which variances are requested." This change has been adopted.

One commenter was concerned that OSM's reference in § 785.13(b)(2) and (d)(1) in the proposal to "postmining land use" as a possible experimental practice could be interpreted to mean that whenever an operator proposed an alternative postmining land use in its surface mining permit application, such would have to be couched as an experimental practice. The commenter's fear is unfounded. An operator need apply for an experimental practice only when it is necessary to obtain a variance from the environmental protection performance standards. Two commenters objected to the deletion of an application requirement showing the necessity for obtaining a variance from the performance standards. According to one of the commenters, without such a showing experimental practices could become a way to circumvent the requirements of not only Sections 515(b)(2) and 515(c) of the Act, but also those of Section 511 relating to procedures for surface mining permit revisions. For two reasons OSM has not required information as to whether the ends sought through the experimental practice could not be otherwise attained under the regulatory program. First, OSM believes that the intent of Section 711 is to encourage advances in technology and alternative postmining land uses. Thus, even if an end product could be obtained through the existing regulatory program, improved procedures for attaining that goal could possibly also be developed through the
successful experimental practices. Finally, OSM considers it has sufficient authority under the Act to require the monitoring data.

Two commenters recommended deleting language in proposed § 785.13(b)(4) referring to monitoring “during and after the operation involved.” Instead, they thought that the regulatory authority should set the monitoring requirement in the experimental practice permit. The commenters wished to do away with open-ended monitoring requirements after the experimental practice was completed.

OSM rejects this suggestion in part because the degree of monitoring being specified follows the Act which provides for the experimental practice potentially to be “more or at least as environmentally protective, during and after mining operations” [emphasis added] as the promulgated performance standards. In order to ensure that this mandate is followed, a monitoring program both before and after the operation may be necessary. However, OSM agrees that the extent and scope of required monitoring should be determined and established in the experimental practices permit. For this reason the language has been revised by not adopting the proposed phrase “during and after the operation involved” in the first sentence of § 785.13(b)(4). Instead, the phrase “during and after mining” has been added to § 785.13(b)(4)(ii). This will assure that postmining monitoring need only be conducted if necessary to identify the risk to the environment and public health and safety during and after mining. Whether monitoring after mining may be required to meet this objective can be determined within the context of the individual experimental practices permit.

One commenter thought that the proposed language in § 785.13(b)(4)(i) would create a major loophole to compliance with the performance standards by deleting the previous requirement for a monitoring program to evaluate and compare experimental practices. Another commenter believed the proposal was in direct conflict with the Section 711 limitation on experimental practices to be “not larger or more numerous than necessary” to determine their effectiveness and economic feasibility. According to that commenter, unless the monitoring data were given in a form to enable comparison with other experimental practices, the regulatory authority or Director might approve practices more numerous than necessary or approve one already shown to be ineffective or infeasible.

OSM rejects these comments because the regulatory authority and the Director will have sufficient information from the experimental practice permit application to evaluate a given experimental practice on its own merit as well as in comparison with other similar experiments. Under this provision, reviewers will be provided with data as to the effectiveness of the practice. Likewise, under § 785.13(b)(1), all performance standards for which variances are requested are identified, thus providing reviewers with a basis for comparison if and when necessary. Several commenters opposed the proposed rule’s requirement for operators to provide information on permits free in the permit application concerning the mitigative measures which would be taken in the event the experimental practice failed to meet its objectives. This was unacceptable to the commenters because they believed that experimental practices must be limited to situations where the worst case situation will not fall beyond the Subchapter K standards in environmental and public health and safety protection.

OSM has reviewed the legislative history for Section 711 and does not agree that experimental practices need be evaluated based upon the worst case possible if the practices were to fail. OSM believes the commenter’s position is internally inconsistent. On the one hand it asserts that mitigative measures are inappropriate because the Subchapter K performance standards are minimum criteria which the operation must meet even under the worst possible circumstance of an experimental practice failure. On the other hand, the commenter recognizes that, in fact, an experimental practice may carry with it a risk of failure in which the Subchapter K performance standards cannot be met. In such a situation, the commenter urges that mitigative measures are insufficient because affirmative remedial measures are required. OSM is of the opinion that an experimental practice is exactly that, “experimental,” and carries with it a certain level of uncertainty of success. However, OSM agrees with the commenters that, if additional measures are required to make the findings under § 785.13(d) (2) and (4) that the experimental practice is potentially more or at least as environmentally protective as the standards of Subchapter K and that equivalent protection is afforded the public health and safety, then the regulatory authority...
and the Director have the responsibility to find under § 785.13(f), that such measures be incorporated in the experimental practice. Accordingly, the proposed requirement to specifically identify mitigative measures in the experimental practice application has not been adopted in the final rule.

C. Section 788.13(c) Public Notice

Under this paragraph an operator and the regulatory authority shall comply with the public notice requirements of proposed 30 CFR 773.13, as set forth in Volume III of OSM's "Final Environmental Impact Statement OSM-EIS-1: Supplement." (The use of proposed sections is discussed under "Procedural Matters.") This means that specific reference to a proposed experimental practice shall appear in the newspaper advertisement and in the notification to Federal, State and local government agencies with jurisdiction over or an interest in the proposed operation that are required by proposed § 773.13.

One commenter questioned requiring a newspaper advertisement in all cases when experimental practices permit applications are made. The commenter believed there were times when the proposed experimental practice would not change the surface mining permit at all. OSM rejects this comment because, at a minimum, an experimental practice will result in a variance from the applicable performance standards. Another commenter was concerned that, as proposed, § 785.13(c) applied only to initial permit applications, and, therefore, permit revisions would not be subject to the same degree of public notice and participation. The commenter thought that the requirements of 30 CFR 786.11 applied only to initial permit applications.

The commenter is referred to 30 CFR 783.12(b)(2) which stated that significant alterations to a permit had to meet the same notice requirements as the initial application. Under the preferred alternative in Volume III of "Final Environmental Impact Statement OSM EIS-1: Supplement" for permit revisions, OSM would retain this requirement. See proposed 30 CFR 774.13 as set forth in OSM EIS-1: Supplement.

D. Section 785.13(d) Approval Requirements

Section 785.13(d) requires the regulatory authority to find in writing that the proposed experimental practice will encourage advances in technology or allow an alternative postmining land use is potentially more or at least as environmentally protective during and after mining operations as the promulgated standards of Subchapter K; is not larger or its operations more numerous than necessary to determine its effectiveness and economic feasibility; and does not reduce the protection afforded public health and safety below that provided by standards promulgated under Subchapter K. Once the regulatory authority has made its findings, the Director will review them along with the permit application to reach a decision on concurrence.

Several commenters were concerned that there would be delays in the issuance of approvals for experimental practices due to confusion over the order of review between the regulatory authority and the Director. Others wanted it clear that the State regulatory authorities had the lead in initially reviewing and determining the merits of a proposal. In order to lessen the possibility of delay in approvals or confusion about the order of review, OSM has written the final rule so that it is clear that the Director will not concur in an application until after the regulatory authority has made its specific findings.

One commenter recommended that the rule should provide explicit recognition that the statutory principle of "** better than or equivalent environmental protection ** **" contemplates a balancing of various environmental effects and standards with emphasis on the final product. OSM believes that no revision to the rule is necessary. The level of environmental protection provided by each experimental practice must be compared to the minimum level of environmental protection provided under the regulatory standards of Subchapter K. No change is necessary to provide emphasis in the final product.

One commenter objected to the deletion in the proposed rule of the requirement conditioning approval of an experimental practice upon the imposition of enforceable alternative environmental protection performance standards in the event the specific variance is departed from or the experiment fails. The same commenter, however, objected to the provision requiring the operator to include potential mitigative measures in the permit application for the experimental practice. As indicated above, OSM has deleted both provisions from the final rule. As revised, the standard for approval of the experimental practice will be the statutory standard. Potential mitigative measures may be included in the experimental practice approval as appropriate and considered by the regulatory authority and the Director in evaluating whether the statutory standard is met. Regardless of whether mitigative measures are prescribed in advance, if a failure of the experimental practice leads to a degradation of the environment, the Director and the regulatory authority will have the responsibility to order measures to ensure protection of the environment and public health and safety.

The same commenter thought that the revised language in § 785.13(d)(4) was vague regarding the "promulgated standards" below which the experimental practice could not fall with respect to health, safety and environmental protection.

The commenter believed that specific references to standards required by Subchapter K and the regulatory authority's program should be included. OSM has accepted the commenter's suggestion with respect to Subchapter K and has revised paragraph (d)(4) accordingly. OSM has not, however, included reference to the standards of the regulatory program, since a State, under Section 505 of the Act, may include standards more stringent than the standards of Subchapter K. Departures from such requirements only require an experimental practice permit when they would also result in a variance to the Subchapter K standards.

E. Section 785.13(e) Consultation With USDA

Section 785.13(e) requires consultation with the U.S. Department of Agriculture, Soil Conservation Service (SCS), prior to granting variances from the special environmental performance standards for prime farmlands in keeping with the provisions of Section 510(d)(1) of the Act. Under 30 CFR 785.17, the Secretary of Agriculture has assigned these responsibilities to the SCS.

One commenter endorsed this provision provided that no deviation from the prime farmlands productivity requirements would be allowed. OSM agrees that Section 771 of the Act allows variances only from the environmental protection performance standards established by Sections 515 and 516 of the Act. Thus an experimental practice can be approved which provides a variance from the prime farmland soil reconstruction standards of Section 515(b)(7) of the Act. However, variances are not allowed from the productivity standards established separately under Sections 510(d) and 519(c)(2) of the Act. A conforming reference to Sections 515 and 516 of the Act has been included in § 785.13(e).

Another commenter recommended deleting the new requirement as duplicative of requirements found at 30
CFR 785.17 for prime farmlands. This comment is rejected. Section 785.17 deals with permit requirements for prime farmlands and does not cover the variances from performance standards allowed by Section 711 of the Act.

F. Section 785.13(f) Monitoring/ Additional Requirements

Section 785.13(f) will require that anyone undertaking an approved experimental practice shall conduct the periodic monitoring, recording and reporting program set forth in the application as well as fulfill any additional steps the regulatory authority or the Director may require to ensure protection of the public health and safety and the environment.

One commenter recommended deleting proposed § 785.13(f) as being redundant with the monitoring requirements of paragraph 785.13(b)(4). OSM has rejected this suggestion because new § 785.13(f) serves a different purpose than the referenced paragraph. Section 785.13(b)(4) concerns information which an operation must provide in an application for an experimental practice. On the other hand, § 785.13(f) indicates that the operator shall perform monitoring activities as well as any other requirements the regulatory authority or the Director may specify. OSM has adopted the word change recommended by another commenter in order to make it clear that the paragraph involves two distinct requirements.

G. Section 785.13(g) and (h) Permit Review/Revision Requirements

Proposed §§ 785.13(g)(1) and (g)(2) are adopted as new §§ 785.13(g) and (h). Section 785.13(g) will require each experimental practice to be reviewed by the regulatory authority at a frequency set forth in the approved permit, but no less than every two and a half years. Two and a half years will generally correspond to the mid-term of the permit. After any such review, the regulatory authority may require modifications of the practice which are necessary to ensure that the operation fully protects the environment and public health and safety. OSM has made clear that the administrative and judicial review provisions attendant to permits also apply to modifications of experimental practices. Under § 785.13(f), in the event an operator wishes to revise an approved experimental practice, it will be necessary first to submit an application for a permit revision subject to the requirements of Subchapter G.

One commenter argued that there was no statutory authority justifying the proposed yearly review of experimental practices. While OSM has modified its review proposal as described above, it rejects the general assertion that periodically establishing a review procedure is somehow outside the purview of its authority. The Act provides OSM with ample authority to promulgate those rules it believes are necessary to carry out the purposes of the Act.

Several commenters objected to the proposed annual review of each experimental practice. Some felt that the data accumulated from one year could be inadequate to determine the effectiveness of the practice. Also, they thought that the frequent review with possibilities for unlimited modification by the regulatory authority could act as a disincentive to participation in the program and could be unnecessarily burdensome to the regulatory authority as well. The commenters recommended having the review period determined by the regulatory authority on a case-by-case basis so as to take into account the specific nature and location of the practice and the parties involved. Some commenters thought it was better not to have the review set by an arbitrary schedule. They believed that State regulatory authorities wishing to have more frequent reviews would be able to establish this in their State programs. OSM agrees with the thrust of these comments and has written the final rule so that the review period shall be set by the regulatory authority in the approved permit, but shall be no less frequent than every two and one half years. OSM believes this provision will give the regulatory authorities sufficient flexibility to establish an appropriate review process without creating unnecessary burden.

Another commenter objected to the proposed rule because he felt the review should be of the entire permit and not just the experimental "practice." The commenter was also concerned that citizen participation was being deleted. OSM considers § 785.13(g) to include review of the experimental practices and any directly related provisions of the permit. The regulatory authority need not review unrelated aspects of the permit at the same time. Review of other aspects of the entire permit is governed by 30 CFR 786.11. (See also proposed 30 CFR 774.11 as set forth in OSM EIS-1: Supplement.) OSM has also revised paragraph 785.13(g) to assure public participation when modifications occur in accordance with the administrative and judicial review provisions of proposed 30 CFR Part 775, as set forth in OSM EIS-1: Supplement.

One commenter found the language of proposed § 785.13(g)(1) and (2) to be inconsistent. The commenter thought it was necessary to have language in each paragraph making it clear that it is necessary to obtain the approval of the regulatory authority for any permit modifications. OSM agrees with the observation of the commenter and has rewritten both paragraphs accordingly.

In the proposed rule, OSM distinguished between major and minor revisions to the experimental practice approval. Under proposed § 785.13(g)(2), prior to the implementation of a minor revision, an operator would have only needed to provide the regulatory authority with written notice. In the case of a major revision, approval by the regulatory authority and the Director would have been necessary before implementation. Much discussion with respect to the major/minor dichotomy and who should retain responsibility for approval was generated as a result of OSM's proposal.

Two commenters wanted the term "major" and "minor" revisions to be defined. Others thought that simplifying the notice to the regulatory authority in all cases was sufficient. A third commenter believed that while the regulatory authority should retain control over major revisions, the full permitting process should not be necessary. One State commenter preferred to see the regulatory authority provide written approval. Another State commenter wanted the role of the Director to be limited in the approval process. A different State wished to require regulatory authority approval in all instances. Two commenters thought there should be a deadline within which a regulatory authority must act or be deemed to have approved the revision. Another commenter made the point that any revision to an experimental practice may be significant and, therefore, there was no basis for distinctions concerning the significance of revisions.

OSM has decided not to adopt the major/minor distinction. Instead the final rule, in § 785.13(h), requires processing and approval by the regulatory authority consistent with the provisions of the proposed new rule for permit revisions, § 774.13, as set forth in OSM EIS-1: Supplement. Revisions that propose significant alterations to the experimental practice must also be subject to notice, hearing and public participation requirements and concurrence by the Director. OSM believes this comports with Section 511(a)(2) of the Act requiring that revisions which propose significant alterations in the permit be subject to notice and hearing requirements. Non-significant revisions may be handled.
more expeditiously. Under Subchapter G, such applications must be processed within a reasonable time. However, no specific time limit has been included in the final rule.

**H. Miscellaneous Recommendations**

One commenter recommended several new provisions. One of these would require a regulatory authority to designate contact persons on its technical staff for monitoring experimental practices who would be immediately notified by an operator in the event problems developed in the course of an experiment. The proposed provision would also authorize the issuance of a notice of violation only if an experimental practice plan were not followed or if appropriate action as required by the regulatory authority were not taken.

OSM believes that regulatory authorities will set up appropriate contact arrangements and therefore specific directions to this effect are not warranted in this rulemaking. With respect to the issuance of notices of violation, the experimental practice variance becomes part of the surface mining permit and, if followed, would not lead to the issuance of a notice of violation or a cessation order with regard to those standards from which a variance was granted.

The same commenter proposed including provisions which would identify what constitutes a successful experimental practice; would require a regulatory authority to notify all operators in the State of a practice that was deemed successful; would permit the practice’s use on a case-by-case basis; and would require the Director to circulate to the State regulatory authorities technical memoranda informing them of practices deemed to be successful.

OSM has not adopted any of these suggestions in this rulemaking, because it believes that whether an experimental practice is completely or partially successful will be apparent. As for how dissemination of the new information will be accomplished within a State, OSM believes that those decisions are within the prerogative of the regulatory authority. Since an experimental practice permit is issued to allow a variance from performance standards, it will be necessary to revise regulations before widespread use of a successful practice can occur. Merely circulating notices or technical memoranda would not be sufficient.

Several commenters raised questions about the bonding requirements that apply to experimental practices. One believed that small and medium sized operations had little inducement to provide an investigator with areas for experimental research, if those locations might not qualify for bond release as quickly as conventionally reclaimed areas. Moreover, the commenter felt that operators could not be required to rework failed experimental plots at added cost. To counter these perceived problems, the commenter suggested lessening the performance bond requirements for areas where experimentation was taking place and having the organization sponsoring the research assume some or all of the liability of any performance bond. A Federal agency suggested, as a way of promoting cooperation between research organizations and mine operators, providing early release from reclamation bonds for specific areas dedicated to reclamation research and demonstration of reclamation technology. The commenter thought that research areas would seldom encompass an entire permitted area, and therefore the incremental release could occur provided the area otherwise qualified for such status. At the recent oversight hearings of the House Subcommittee on Energy and Environment, a mining industry spokesman testified that under the proposed rule there was at least one issue which remained an obstacle to enhancing reclamation technology. The witness said there was no statutory provision for establishing designated post-mining research and demonstration areas on bonded surface mining lands. According to the spokesman, Section 711 was seen by the regulatory authorities as applying to alternative design work and engineering practices. Therefore, research groups (universities and government agencies) had to assume responsibility for the long term performance bonds. The witness recommended that Section 711 be expanded or a new provision enacted to encourage research groups and operators to participate in revegetation research.

Bonding amounts and length of liability are governed by Sections 509 and 519 of the Act and 30 CFR Parts 800–809. No provision is included in the Act for waiver of bonding requirements for experimental or research purposes. However, the bond amount can include consideration of the provisions of the experimental practice. As for whether Section 711 of the Act can be expanded to cover revegetation research not considered an experimental practice, such action is outside the scope of this rulemaking.

One commenter thought that simply preparing an environmental assessment on the experimental practice rulemaking did not meet the requirements of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 et seq., or Section 702(d) of the Act.

The Office has prepared an environmental impact statement which analyzes the impacts on the quality of the human environment resulting from changes to the permanent program regulations.

**III. Procedural Matters**

For convenience, certain references in the final rule are to proposed section numbers that have not been finalized. If such sections are not adopted as proposed, conforming technical amendments will be issued.

**Executive Order 12291 and the Regulatory Flexibility Act**

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

**National Environmental Policy Act**

OSM has analyzed the impacts of these final rules in the final Environmental Impact Statement OSM EIS-1: Supplement and has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

**Paperwork Reduction Act**

The information collection requirements contained in § 785.13 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0040. The information is being collected by the regulatory authority in determining whether the applicant meets the applicable performance standards for experimental practices mining activities. This information will be used to give the regulatory authority a sufficient baseline upon which to assess the impact of the proposed
operation during the permanent regulatory program. The obligation to respond is mandatory.

List of Subjects in 30 CFR Part 785

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

For the reasons set forth in the preamble, Part 785 of Chapter VII, Title 30, of the Code of Federal Regulations is amended as set forth herein.


William P. Pendley, Acting Assistant Secretary, Energy and Minerals.

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

1. Section 785.13 is revised to read as follows:

§ 785.13 Experimental practices mining.

(a) Experimental practices provide a variance from environmental protection performance standards of the Act, of Subchapter K of this chapter, and the regulatory program for experimental or research purposes, or to allow an alternative postmining land use, and may be undertaken if they are approved by the regulatory authority and the Director if they are incorporated in a permit or permit revision issued in accordance with the requirements of Subchapter G of this chapter.

(b) An application for an experimental practice shall contain descriptions, maps, plans, and data which show—

(1) The nature of the experimental practice, including a description of the performance standards for which variances are requested, the duration of the experimental practice, and any special monitoring which will be conducted;

(2) How use of the experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreation facilities) on an experimental basis;

(3) That the experimental practice—

(i) Is potentially more, or at least as, environmentally protective, during and after mining operations, as would otherwise be required by standards promulgated under Subchapter K of this chapter; and

(ii) Will not reduce the protection afforded public health and safety below that provided by the requirements of Subchapter K of this chapter; and

(4) That the applicant will conduct monitoring of the effects of the experimental practice. The monitoring program shall ensure the collection, analysis, and reporting of reliable data that are sufficient to enable the regulatory authority and the Director to—

(i) Evaluate the effectiveness of the experimental practice; and

(ii) Identify, at the earliest possible time, potential risk to the environment and public health and safety which may be caused by the experimental practice during and after mining.

(c) Applications for experimental practices shall comply with the public notice requirements of § 773.13 of this chapter.

(d) No application for an experimental practice under this section shall be approved until the regulatory authority first finds in writing and the Director then concurs that—

(1) The experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities) on an experimental basis;

(2) The experimental practice is potentially more, or at least as, environmentally protective, during and after mining operations, as would otherwise be required by standards promulgated under Subchapter K of this chapter;

(3) The mining operations approved for a particular land-use or other purpose are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice; and

(4) The experimental practice does not reduce the protection afforded public health and safety below that provided by standards promulgated under Subchapter K of this chapter.

(e) Experimental practices granting variances from the special environmental protection performance standards of Sections 515 and 516 of the Act applicable to prime farmlands shall be approved only after consultation with the U.S. Department of Agriculture, Soil Conservation Service.

(f) Each person undertaking an experimental practice shall conduct the periodic monitoring, recording and reporting program set forth in the application, and shall satisfy such additional requirements as the regulatory authority or the Director may impose to ensure protection of the public health and safety and the environment.

(g) Each experimental practice shall be reviewed by the regulatory authority at a frequency set forth in the approved permit, but no less frequently than every 2 years. After review, the regulatory authority may require such reasonable modifications of the experimental practices as are necessary to ensure that the activities fully protect the environment and the public health and safety. Copies of the decision of the regulatory authority shall be sent to the permittee and shall be subject to the provisions for administrative and judicial review of Part 775 of this chapter.

(h) Revisions or modifications to an experimental practice shall be processed in accordance with the requirements of § 774.13 of this chapter and approved by the regulatory authority. Any revisions which propose significant alterations in the experimental practice shall, at a minimum, be subject to notice, hearing, and public participation requirements of § 773.13 of this chapter and concurrence by the Director.

Revisions that do not propose significant alterations in the experimental practice shall not require concurrence by the Director.

(30 U.S.C. 1201 et seq.)

[FR Doc. 83-5583 Filed 3-3-83; 8:45 am]

BILLING CODE 4310-05-M
Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Training, Examination, and Certification of Blasters; Final Rule
DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement
30 CFR Parts 816, 817, and 850
Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Training, Examination, and Certification of Blasters
AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Final rule.
SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is issuing final rules that delegate responsibility to develop and implement of blaster certification programs to regulatory authorities with permanent regulatory programs. Additional amendments have been adopted to ensure that blasts are conducted only by certified blasters. The Office of Surface Mining today is issuing final rules within which a State with an approved State regulatory program can implement and design its own blaster certification program. OSM today is issuing final rules as indicated.
EFFECTIVE DATE: April 14, 1983.
SUPPLEMENTARY INFORMATION:
I. Background
II. Rules Adopted and Responses to Public Comments on Proposed Rules
III. Procedural Matters
I. Background
Section 515(b)(15)(D) of the Surface Mining Control and Reclamation Act of 1977, as amended, 30 U.S.C. 1251 et seq. (the Act), requires that all blasting operations be conducted by trained and competent persons as certified by the regulatory authority. Section 719 of the Act directs that regulations be promulgated which require "the training, examination, and certification of persons engaging in blasting or use of explosives in surface coal mining operations." Section 719 also states that such regulations may be promulgated by the "Secretary of the Interior (or the approved State regulatory authority as provided for in Section 503 of the Act)." Final regulations to implement those sections were published at 45 FR 82092-82100 (December 12, 1980). Previous proposals were published at 43 FR 41834 (September 16, 1978) and at 44 FR 30316 (June 29, 1979). In the December 12, 1980, rules adopting the old blaster certification program OSM interpreted Section 719 of the Act as providing statutory authority to promulgate rules for a comprehensive national program to train, examine, and certify "blasters-in-charge," a term not found in the Act (45 FR 82092-84). Section 719 of the Act also allows approved State regulatory authorities to develop and implement blaster certification programs.
On January 29, 1981, the Secretary of the Interior ordered that all regulations which were excessive, burdensome, or counterproductive be identified and asked States and industry to recommend sections to be revised. OSM, in compliance with the administrative mandate to simplify and remove excessive regulatory burdens, reproposed rules governing training, examination, and certification of blasters in surface operations of coal mines. The reproposed rules were published on March 24, 1982 (47 FR 12779).
II. Rules Adopted and Responses to Public Comments on Proposed Rules
OSM today is issuing final rules as indicated.
OSM today is issuing final rules within which a State with an approved State regulatory program can implement and design its own blaster certification program. The rules adopted today require regulatory authorities to ensure that all blasting operations are conducted by qualified and trained blasters. Under the rules adopted today each State must choose and develop the method of training, examining, and certifying blasters which best meets local needs within the regulatory framework adopted herein. In States with Federal programs, OSM must assume the responsibility to develop such programs. In the rules adopted today, the training of blasters is mandatory. A May mandate blaster training at specified schools based on curriculum developed under its guidance, or choose to require all applicants to demonstrate and/or document that they have received training in some other way prior to examination or certification. The State may impose retraining or choose to find another method to ensure continued blaster competence. Initial evaluation of competence by written exam is mandated by these rules and must reflect certain subject areas. It will, however, be left to the State to develop and implement the exam. The State regulatory authority must also review and verify the practical field experience of persons seeking blaster certification. Each State may build additional procedures, conditions and criteria into its program as long as the program satisfies the basic requirements cited. OSM received comments from industry, citizens and State regulatory authorities discussing the proposed amendments. Many commenters agreed with the concept of State responsibility for blaster training, examination and certification, but felt the proposed program previously proposed. All comments received have been considered and incorporate into the rules as indicated.
General Comments on Part 850
OSM had specifically solicited comments on whether it could promulgate National standards for blaster certification. Some commenters believed that OSM had correctly proposed to allow exclusive State jurisdiction for blaster training, examinations and certification. Other commenters believed it is beyond the authority of OSM to issue any regulations governing blaster certification and that each State must be responsible for developing provisions implementing a blaster certification program in its State program.
OSM believes that the provisions of a training, examination and certification program can be developed at the State level based on a general National programmatic rule.
OSM's authority to issue regulations establishing the framework for State certification is incident to Sections 593(a)(1), 515(b)(15)(D), and 719 of the Act. States will have responsibility to develop specific provisions. Subchapter M will ensure consistency and provide a yardstick by which OSM can approve State programs and conduct oversight.
A commenter objected to OSM's interpretation of the Act, especialy when read in conjuction with Section 102 of the Act, which allows each State to develop its own program and procedures governing blaster training, examination, and certification. This commenter preferred a standardized, nationally uniform program. The commenter pointed out that in the initial years since the statute has been in effect, no State has implemented an acceptable blaster certification program.
OSM believes that Section 719 of the Act, especially when read in conjunction with Section 102 of the Act provides ample authority for these regulations. In considering whether to develop a national exam and training program, OSM requested comments from the coal-producing States who would otherwise bear the burden of this task. Most States preferred to take the initiative in this area. Some States raised concerns over funding, but nevertheless preferred to be given the opportunity to take control...
over this aspect of the program. This concept will allow training to be adapted to local blasting techniques. Practices used in local mines and under particular local geologic conditions may be designed to emphasize local and regional characteristics. Moreover, since the publication of the December 12, 1980, final rule, at least one State (West Virginia) has developed blaster certification exams, and other States in cooperation with West Virginia have given consideration to training programs and facilities. States such as Alabama, Pennsylvania, Oklahoma and Kentucky already have programs which, with certain modification to course content and/or procedures, could be used to implement the blaster certification concept.

A commenter asserted that proposed §§ 850.13, 850.14, and 850.15 exceed OSM's authority because they set work practice standards and procedures better left to the State's discretion. OSM believes that the criteria established in §§ 850.13, 850.14 and 850.15 serve to standardize subject areas and program procedures, allowing the industry to more easily tailor design courses to this purpose and enhance the likelihood of reciprocity between States. These are not work practice standards. Based on these reasons, OSM has chosen to retain the minimum criteria, with minor changes as noted elsewhere.

Section 850.1 Scope.

New § 850.1 specified that 30 CFR Part 850 sets requirements and procedures applicable to the development of regulatory programs for the training, examination, and certification of persons engaging in or directly responsible for the use of explosives in surface coal mining operations.

Section 850.5 Definition.

OSM has adopted a definition of “blaster” similar to the one proposed. “Blaster” is defined as a person certified to be directly responsible for the use of explosives in surface coal mining operations. The proposed words “for blasting” which would have modified the words “use of explosives” have not been adopted. The words could have created the misimpression that handling of explosives in surface coal mining operations for non-blasting purposes need not be supervised by a certified blaster. Non-blasting aspects of explosives use such as transportation and storage are to be conducted under the supervision of a blaster.

Commenters were concerned that OSM's proposal would have required that all persons “engaging in” blasting be trained and certified in all topics of blasting. These commenters felt it was unnecessary for all individuals who are involved with explosives such as those receiving explosives or drilling holes, to be certified. They pointed out that "the man who loads the holes most often is not the man who designs the holes." The commenter recommended a two part certification: (1) Office personnel, and (2) field personnel.

In the rules adopted today OSM has clarified its intent. Surface mining operations using explosives must be conducted under the direction of a “certified blaster.” The rule does not mandate that all personnel “engaging in” blasting operations be certified as blasters. The blasting crew member or members responsible solely for receiving, drilling, loading, or transporting explosives would report to and be controlled and trained by the “certified blaster.” Only individuals responsible for the conduct of blasting operations must be certified. Section 850.13(a)(2) specifically refers to and requires training for non-certified employees working in a blasting crew. It requires that these persons work under and receive direction and training from the certified person. OSM has not accepted the commenter's suggestion that certification be divided because a responsible blaster needs to know both office and field blasting operations to ensure the successful achievement of the requirements of the Act.

A commenter suggested that the proposed definition of blaster might conflict with the present United Mine Workers of America definition of a “supervisor.” The commenter believed that the phrase “engaging in” put the blasters into the category of “classified work” which would prevent supervisors from serving as “blasters.” The comment proposed the alternative of “direct responsibility for” rather than “engaging in” the work of blasting.

OSM has adopted the recommendation as proposed. In proposing the definition OSM did not intend to include or exclude anyone from union coverage, not to alter employee-union relations. For each mine, however, at least one person must be directly responsible for the use of explosives at any time. That person must be a certified blaster and must be present at each blast. Such a person may engage in, as well as be directly responsible for, the use of explosives.

Persons who merely “engage in” the use of explosives without the responsibility for their use need not be certified. Similarly, some supervisory personnel may not be directly responsible for the use of explosives, even though some of the people they supervise may engage in blasting operations. These persons need not be certified either. But all persons who are directly responsible for the use of explosives must be certified. At some operations the person who is directly responsible may design as well as drill and load or perform other functions. These persons are required to be certified.

Corresponding changes have been made to §§ 850.12(b) and 850.13(b) to include the phrase “responsible for” the use of explosives rather than “engaging in.”

Section 850.11 Applicability.

As proposed, the applicability section would have specified that part 850 applies to regulatory authorities responsible for enforcing a permanent surface coal mining regulatory program. OSM believes this section is redundant and has not adopted it.

Section 850.12 Responsibility.

Section 850.12(a) requires regulatory authorities to promulgate rules governing the training, examination, and certification of blasters in surface coal mining operations. States are to submit rules governing blasting certification to OSM for approval as a State program provisions under 30 CFR Parts 731 and 732.

Section 850.12(b) requires each regulatory authority with an approved regulatory program to submit a program for the examination and certification of persons responsible for the use of explosives in surface coal mining operations within 12 months of State program approval or implementation of a Federal program or within 12 months after the effective date of these rules, whichever is later.

A State regulatory authority objected to OSM's delegation of the responsibility for blaster training, examination and certification to the States because of the financial and programmatic burden this places on the State regulatory authority. This State criticized the existing funding levels as inadequate to produce a training and certification program. The commenter did not object to taking program responsibility, but objected to lack of specific programmatic guidance and funding.

OSM proposed to change its earlier emphasis on a national training program and exam, based on comments from the majority of coal-producing States which preferred to take responsibility for the program. OSM expects to work with the States to provide grant assistance and technical assistance to States in developing or reviewing blaster programs.
OSM believes that in a State with a cooperative agreement, an approved State certification program should apply to blasting on Federal lands within the State. Because many mining operations may involve coal both on non-Federal and Federal lands, and because other State requirements are imposed on Federal lands, it is appropriate to require the certification of blasters only by one regulatory authority. This, however, will be pursued on a case-by-case basis under specific cooperative agreements.

OSM will promulgate rules at a later date governing certification of blasters for operations on Federal lands within States without cooperative agreements. At a minimum, OSM will recognize certification issued under an approved State program for operations on Federal lands within the particular State.

Commenters further endorsed reciprocity among States in order to facilitate blasters working in more than one State. OSM endorses the concept of State certification reciprocity. This should be facilitated by the State program review and approval process, under which all States with approved programs must conform with the rules adopted today and the Act. It is expected that the individual States will work out the details of mutual acceptance under licensing procedures.

Section 850.13 Training.

Section 850.13 (a) requires the regulatory authority to adopt procedures to ensure that prospective blaster operators receive training, including but not limited to technical aspects of blasting operations and the requirements of State and Federal laws governing the storage, transportation, and use of explosives. The rule also requires that all uncertified persons in blasting crews receive direction and on-the-job training from those certified as blasters. This ensures that workers involved in the use of explosives receive direction from trained persons who are knowledgeable in the proper use and handling of explosives.

OSM's proposed rule would have required that "blasters" receive training. A commenter suggested adding the word "certified" to modify "blaster" in the requirement for blasters to receive training. The commenter noted that under the definition a blaster must be certified. In proposing the rule, OSM did not intend to require those already certified to be trained. Rather, the intent was that the requirement apply to those who seek to become certified. As suggested by other commenters, a further provision has been added at § 850.15 (c) (1) which allows a regulatory authority to require retraining for continued licensing. This is discussed below.

A commenter recommended deletion of "storage and transportation of explosives" from the training requirements of § 850.13 and the exam requirements of § 850.14. The commenter asserted that this requirement was not authorized by the Act.

The Act requires that the use of explosives be under the direction of a certified blaster. OSM interprets "use of" to include transportation and storage. Since the blaster directs the receipt, storage and movement of explosives, it is essential that he must be trained in the proper methods of storage and transportation.

OSM does not intend to govern the facets of explosives use regulated by other Federal or State agencies, but rather to ensure that as a condition of certification a blaster is knowledgeable of all these aspects. Accordingly, the rule governing storage and transportation of explosives has been adopted without change.

A commenter objected to the proposed requirement of "on-the-job training" in § 850.13 (a) (2) because it appeared to duplicate MSHA's requirement with respect to health and safety.

OSM recognizes that MSHA, as well as OSM, requires on-the-job training of those involved in the use of explosives in underground mines. MSHA's requirements for non-certified persons assisting blasters will also include health and safety matters. OSM's on-the-job training requirements include technical aspects of the use of explosives that are not necessarily covered by MSHA's rules.

Section 850.13 (b) requires training courses to be available and sets forth specific subjects to be included in training courses. Rather than have a separate list of subjects for training in § 850.13 and another list of subjects to be included in an exam in § 850.14 as was proposed, OSM has consolidated them into one list of subjects for both purposes. These subjects include:

- Explosives, including—
  - Selection of the type of explosives to be used;
  - Determination of the properties of explosives which will produce desired results at an acceptable level of risk; and
  - Handling, transportation, and storage.
...initiation systems and ground vibration... blast patterns, blasting machines, priming and boosting. The methods for handling those factors vary from site to site. The properties of explosives, geology and the intensity of ground movement required will be included in topics such as the design and not an aspect requiring extra consideration; these factors have to be known. OSM agrees that a detailed knowledge of the chemical properties is unnecessary and in the corresponding provision of the final rule, § 850.13(b)(1) includes training in the selection of explosives and a knowledge of the relevant properties of explosives to produce desired results at an acceptable level of risk. This would require a general knowledge of the properties of most explosive materials such as specific gravity, water resistance and detonating velocity, as well as the hazard and dangers associated with specific types of explosive materials. A commenter suggested separating unpredictable hazards from effects of blasting such as flyrock and ground vibration, in the list of training subjects. The commenter also recommended use of in-blast design. OSM recognizes powder factor as a significant component of blast design. However, this calculation is only one facet of blast design and not an aspect requiring extra emphasis. The study of powder factors will be included in topics such as the properties of explosives, geology and the intensity of ground movement required. These factors vary from site to site. Misfires. The training and testing for subjects such as blast design, initiation systems, and loading techniques will cover prevention of misfires from such occurrences as cutoffs and improper priming. The methods for handling misfires after they occur has been added to the list of unpredictable hazards and has been included in the list of required topics. Delay systems. The commenter suggested added emphasis on "delay systems" in the requirement for initiation systems. Concepts such as blast patterns, blasting machines, initiation systems and ground vibration mitigation include application of delay blasting techniques. OSM believes that...
brochures and the submission of records require the ability to read, write and perform basic mathematic functions. OSM therefore believes that the blaster, as a person responsible for complying with laws, designs and records, and for controlling the adverse effects of blasting, must demonstrate a written ability to communicate in the subject area. In previous rules OSM had also adopted the requirement of a written exam in order to evaluate the blasters' ability to use explosives as well as in order to ensure at least a minimal reading ability.

Commenters suggested adjusting the emphasis on blaster certification to allow more credit for work experience or perhaps “grandfathering” blasters with more than five years of experience. Regulations or practical exams for specific topics. OSM believes, however, that a written exam represents the minimum allowable demonstration of ability.

A commenter suggested that OSM emphasize the concept of practical field experience, and recommended that a provision be added requiring 2 years of field experience as part of the qualifications. Other commenters believed that the requirement for practical field experience was not necessary to be a trained and competent blaster, rather that competence should be based solely upon tests. OSM recognizes the value of practical field experience and has adopted it as part of the qualifications for candidates, in §850.14(a)(2). OSM intends that States include minimum experience criteria in their acceptance of candidates for certification. OSM has reconsidered this requirement and believes that adequate latitude is provided to State regulatory authorities to emphasize or deemphasize practical experience within limits. In some blasting operations practical work experience may be more important than the ability to provide textbook solutions. Those States which already have blaster certification programs have generally required established minimum experience levels. OSM supports the evaluation of experience as part of a blaster certification program.

Section 850.15 Certification requirements.

Section 850.15(a) requires the regulatory authority to certify, for fixed periods, candidates who are found to be competent and to have the necessary experience to accept responsibility for blasting operations in surface coal mining operations.

Section 650.15(b) provides procedures for suspension and revocation of blasters certification. Suspension or revocation may and, upon a finding of willful conduct, must occur when, after notice and hearing, certain conditions are found to exist. Notice and hearing may be provided after suspension only if it would not be practicable to provide it before. The conditions are:

(i) Noncompliance with any order of the regulatory authority.
(ii) Unlawful use in the work place of, or current addiction to, alcohol, narcotics, or other dangerous drugs.
(iii) Violation of any provision of the State or Federal explosives laws or regulations.
(iv) Providing false information or a misrepresentation to obtain certification.

Section 850.15(c) allows the regulatory authority to impose additional educational or other requirements for the maintenance of certification. Section 850.15(d) requires the regulatory authority to adopt regulations which require blasters to take precautions to protect their certificates from loss, theft, or unauthorized duplication, and to require immediate reporting of any loss, theft, or duplication.

Section 850.15(e) requires regulatory authorities to impose certain conditions for maintaining certifications. Three minimum conditions are stated: (1) That blasters immediately exhibit certificates to authorized representatives of OSM or the regulatory authority on request; (2) that blaster certificates are not transferable or assignable; and (3) blasters cannot delegate their responsibilities to anyone who is not a certified blaster. OSM had proposed to require that certification be for a fixed period. A commenter did not like the concept of a “fixed period” and noted that other certified persons such as doctors and lawyers have licenses which remain valid indefinitely. Other commenters felt that OSM’s proposal did not go far enough; they suggested a mandatory retraining requirement as well.

In some professions licensing is conducted on a recurring basis (often yearly) and other professions require extensive retraining or continuing education to continue practice. Renewal provisions vary, but they are generally less stringent than initial certification. OSM believes that a one time certification would simplify the process, but in so doing would miss the important opportunity to weed out those who are unable to continue to conduct blasts effectively and safely. Therefore OSM has retained the concept of certifications lasting “for a fixed period,” and endorses the concept of periodic retraining and/or continuing education in order to assure continuing competence with competence requirements. OSM has not, however, adopted mandatory retraining requirements.

A commenter suggested that a provision be added for recertification after revocation in §850.15. Such a provision is not necessary. An individual is not precluded from applying anew to be certified under §850.15(a) even after his or her certificate is revoked. However, the reasons for the earlier revocation could act as a bar to future certification.

A commenter recommended deletion of proposed §850.15(b)(1)(v) that would have allowed prevention or suspension of a certification for “other good cause.” The commenter asserted that the provision did not add beneficial details to the reasons for suspension and revocation of a blaster’s certification and was ambiguous. OSM concurs with this recommendation and has not adopted proposed §850.15(b)(1)(v). It is believed that remaining §§850.15(b)(1)(i)–(iv), especially paragraph (i) allowing suspension for noncompliance with orders of the regulatory authority, provide adequate grounds for action.

A commenter described the provisions for suspension and revocation of certificates under §850.15 as not rigorous enough, explaining that infractions of the laws governing the use of explosives are very serious and warrant specified action. The commenter suggested changing the discretion afforded in §850.15(b) in suspending or revoking a blaster’s certificate to mandatory action. Other commenters believed that sanctions should be placed on basic qualifying criteria and that certain actions be consistent with Section 518 of the Act with respect to penalties, opting for terms such as “willful” and “flagrant” violation rather than minor or unknown occurrences. OSM believes that suspension or revocation is appropriate if a violation is willful, but does not believe that suspension should be mandatory in all cases. OSM has accepted this suggestion in part, and has adopted stronger language in this provision.

Another commenter requested addition of a provision which would mandate suspension at the request of an operator. The concept of an operator
causing the suspension of the certificate of one of its employees has not been incorporated because the actual decision to suspend should be retained by regulatory authority; employer-employee differences should be resolved in other forums.

Sections 816.61 and 817.61 (Proposed § 850.16).

OSM had proposed in § 850.16 to require regulatory programs to ensure that: (1) The blast is to be fired only under the direction of a certified blaster; (2) no person is to be permitted to detonate explosives unless another person is present; and (3) persons responsible for blasting operations at a blasting site are to be familiar with the blasting plan and site-specific performance standards to be attained. While OSM has decided to adopt variants of these requirements, they have been adopted in §§ 816.61(c) and 817.61(c) because they pertain to conduct at the blasting site and are not components of a certification program.

A commenter suggested deletion of proposed § 850.16 because it was viewed as redundant with the requirements of §§ 816.61 through 816.68. These requirements add specifics not included in the performance standards set forth in §§ 816.61 through 816.68 and 817.61 through 817.68 and therefore are not redundant.

New §§ 816.61(c)(1) and 817.61(c)(1) requires that no later than 12 months after a blaster certification program for a State has been approved by OSM, all blasting operations in that State must be conducted under the direction of a certified blaster. The time frame was inserted for two reasons. First OSM recognizes that it will take time for blaster programs to be approved. Second, even after the approval of the blaster certification program, a reasonable time has to be provided for blasters to get certified. Twelve additional months is considered sufficient. Prior to the time a blaster certification program for a State has been approved under 30 CFR Chapter VII, Subchapter C, OSM is requiring that all blasting operations be conducted by competent experienced persons who understand the hazards involved. This is a continuation of previous §§ 816.61(c) and 817.61(c).

A commenter recommended inserting "personal" in proposed § 850.16(a) to modify the word "direction." This would require the physical presence of the certified blaster to give direction to the shot firer. OSM has adopted the substance of this suggestion in §§ 816.61(c)(3) and 817.61(c)(3)

the presence of the certified blaster when the blast is detonated.

A commenter recommended that the provision in proposed § 850.15(c)(1) requiring a blaster to carry a valid certificate be reconsidered to allow that such certificates be on file in the mine office. OSM concurs with this recommendation, and has adopted language such that the certificate need not be carried by the blaster. However, proof of credentials should be readily available. Therefore, new §§ 816.61(c)(2) and 817.61(c)(2) require the blaster to either carry a valid certificate or have a copy of his or her certificate on file at the permit site.

Commenters objected to the provisions of proposed § 850.16(b), because the presence of more than one person would be dangerous. The commenters stated that only one person is necessary to detonate explosives. OSM disagrees. OSM's performance standards require (1) access control within the blast area, (2) blast recordkeeping, (3) warning and all clear signals and (4) assessing the blast site after the blast for hazards. OSM believes that all of these duties cannot be adequately performed by one person. Also, in the event one person is required to leave the site or is incapacitated, another person should be available to ensure that the proper procedures are followed. The intent of the rule is not to crowd the blast area with onlookers, but to protect the blaster and other people entering the mine site, and to ensure compliance with other performance standards as listed above. Therefore, a provision has been incorporated into §§ 816.61(c)(3) and 816.61(c)(4) which requires the presence of a blaster and at least one other person at the firing of each blast. OSM believes that the rule as written provides necessary backup responsibility and safety precautions.

IV. Procedural Matters

Executive Order 12291

The Department of the Interior (DOI) has examined these proposed rules according to the criteria of Executive Order 12291 (February 17, 1981). OSM has determined that this is not a major rule and does not require a regulatory impact analysis because it will impose only minor costs on the coal industry and coal consumers.

OSM received one comment from a State regulatory authority questioning how it could conclude that only minor costs will be imposed by the blaster certification program without soliciting the opinion of industry on the costs. OSM must consider the incremental impact of adopting the proposal or allowing the previous final rule to remain in effect. Under Executive Order 12291 (February 17, 1981), OSM is required to assess the costs imposed by a proposed rule and to determine whether a regulatory impact analysis is required. After its own examination OSM has determined that this rule does not meet the criteria of a major rule.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., that these rules will not have significant economic impacts on a substantial number of small entities.

One commenter noted that OSM’s proposed rule would require blaster certification, which had not been effectively required before, and questioned how that could “ease the regulatory burden on small coal operations in Appalachia.” Under the rules in effect on the date of proposal all blasters would have eventually been required to obtain a certificate under a national testing program. Under the rules adopted today, State certificates, based on a State’s specific requirements will be accepted. Because the requirements will be more localized, OSM expects that small entities, especially those in Appalachia, will be able to acquire certified blasters at less cost. In any case OSM believes it has properly concluded that the impacts of the proposal on small operations will not be “significant.”

Paperwork Reduction Act

The information collection requirement contained in 30 CFR Part 850 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq., and assigned control number 1028-0060. This approval is being codified under § 850.10.

The information required by 30 CFR Part 850 will be used by the regulatory authority in monitoring the implementation of the blaster certification programs.

National Environmental Policy Act

OSM has analyzed the impacts of these final rules in the Final Environmental Impact Statement OSM EIS-1: Supplement according to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)). The final supplement is available in OSM’s Administrative Record in Room 3315, 1100 L Street, N.W., Washington, D.C. or by mail request to Mark Boster, Chief, Branch of Environmental Analysis, Room 334, Interior South Building, U.S. Department
of the Interior, Washington, DC 20240. This preamble serves as the record of decision under NEPA. This rule adopts the preferred alternative published in Volume III of the EIS which is analyzed in the EIS.

Agency Approval

Section 516(a) requires that, with regard to rules directed toward the surface effects of underground mining, OSM must obtain written concurrence from the head of the department which administers the Federal Mine Safety and Health Act of 1977, the successor to the Federal Coal Mine Health and Safety Act of 1969. OSM has obtained the written concurrence of the Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.

List of Subjects

30 CFR Part 816
Corrections, Reporting requirements, Surface mining.

30 CFR Part 817
Coal mining, Environmental protection, Reporting requirements, Under ground mining.

30 CFR Part 850
Explosives, Mining, Training program.

For the reasons stated above, 30 CFR Parts 816, 817 and 850 are amended as follows:


William P. Pendley,
Acting Assistant Secretary for Energy and Minerals.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

1. Paragraph (c) of § 816.61 is revised to read as follows:

§ 816.61 Use of explosives: General requirements.

(c) Blasters. (1) No later than 12 months after the blaster certification program for a State required by Part 850 of this chapter has been approved under the procedures of Subchapter C of this chapter, all surface blasting operations incident to underground mining in that State shall be conducted under the direction of a certified blaster. Before that time, all such blasting operations in that State shall be conducted by competent, experienced persons who understand the hazards involved. (2) Certificates of blaster certification shall be carried by blasters or shall be on file at the permit area during blasting operations. (3) A blaster and at least one other person shall be present at the firing of a blast. (4) Persons responsible for blasting operations at a blasting site shall be familiar with the blasting plan and site-specific performance standards.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

2. Paragraph (c) of § 817.61 is revised to read as follows:

§ 817.61 Use of explosives: General requirements.

(c) Blasters. (1) No later than 12 months after the blaster certification program for a State required by Part 850 of this chapter has been approved under the procedures of Subchapter C of this chapter, all surface blasting operations incident to underground mining in that State shall be conducted under the direction of a certified blaster. Before that time, all such blasting operations in that State shall be conducted by competent, experienced persons who understand the hazards involved. (2) Certificates of blaster certification shall be carried by blasters or shall be on file at the permit area during blasting operations. (3) A blaster and at least one other person shall be present at the firing of a blast. (4) Persons responsible for blasting operations at a blasting site shall be familiar with the blasting plan and site-specific performance standards.

PART 850—PERMANENT REGULATORY PROGRAM REQUIREMENTS

§ 850.1 Scope.

This part establishes the requirements and the procedures applicable to the development of regulatory programs for training, examination, and certification of persons engaging in or directly responsible for the use of explosives in surface coal mining operations.
explosives in surface coal mining operations. The courses shall provide training and discuss practical applications of—

(1) Explosives, including—
(ii) Determination of the properties of explosives which will produce desired results at an acceptable level of risk; and
(iii) Handling, transportation, and storage;
(2) Blast designs, including—
(i) Geologic and topographic considerations;
(ii) Design of a blast hole, with critical dimensions;
(iii) Pattern design, field layout, and timing of blast holes; and
(iv) Field applications;
(3) Loading blastholes, including priming and boostering;
(4) Initiation systems and blasting machines;
(5) Blasting vibrations, airblast, and flyrock, including—
(i) Monitoring techniques, and
(ii) Methods to control adverse affects;
(6) Secondary blasting applications;
(7) Current Federal and State rules applicable to the use of explosives;
(8) Blast records;
(9) Schedules;
(10) Preblasting surveys, including—
(i) Availability,
(ii) Coverage, and
(iii) Use of in-blast design;
(11) Blast-plan requirements;
(12) Certification and training;
(13) Signs, warning signals, and site control;
(14) Unpredictable hazards, including—
(i) Lightning,
(ii) Stray currents,
(iii) Radio waves, and
(iv) Misfires.

§ 850.14 Examination.
(a) The regulatory authority shall ensure that candidates for blaster certification are examined by reviewing and verifying the—
(1) Competence of persons directly responsible for the use of explosives in surface coal mining operations through a written examination in technical aspects of blasting and State and Federal laws governing the storage, use, and transportation of explosives; and
(2) Practical field experience of the candidates as necessary to qualify a person to accept the responsibility for blasting operations in surface coal mining operations. Such experience shall demonstrate that the candidate possesses practical knowledge of blasting techniques, understands the hazards involved in the use of explosives, and otherwise has exhibited a pattern of conduct consistent with the acceptance of responsibility for blasting operations.

(b) Applicants for blaster certification shall be examined, at a minimum, in the topics set forth in § 850.13(b).

§ 850.15 Certification.
(a) Issuance of certification. The regulatory authority shall certify for a fixed period those candidates examined and found to be competent and to have the necessary experience to accept responsibility for blasting operations in surface coal mining operations.

(b) Suspension and revocation. (1) The regulatory authority, when practicable, following written notice and opportunity for a hearing, may, and upon a finding of willful conduct, shall suspend or revoke the certification of a blaster during the term of the certification or take other necessary action for any of the following reasons:

(i) Unlawful use in the work place of, or current addiction to, alcohol, narcotics, or other dangerous drugs.
(ii) Violation of any provision of the State or Federal explosives laws or regulations.
(iii) Providing false information or a misrepresentation to obtain certification.
(2) If advance notice and opportunity for hearing cannot be provided, an opportunity for a hearing shall be provided as soon as practical following the suspension, revocation, or other adverse action.
(3) Upon notice of a revocation, the blaster shall immediately surrender to the regulatory authority the revoked certificate.

(c) Recertification. The regulatory authority may require the periodic reexamination, training, or other demonstration of continued blaster competency.

(d) Protection of Certification. Certified blasters shall take every reasonable precaution to protect their certificates from loss, theft, or unauthorized duplication. Any such occurrence shall be reported immediately to the certifying authority.

(e) Conditions. The regulatory authority shall specify conditions for maintaining certification which shall include the following:

(1) A blaster shall immediately exhibit his or her certificate to any authorized representative of the regulatory authority or the Office upon request.
(2) Blasters' certifications shall not be assigned or transferred.
(3) Blasters shall not delegate their responsibility to any individual who is not a certified blaster.

(Pub. L. 95-87, 30 U.S.C. 1201 et seq.)

BILLING CODE 4310-05-M
Part IX

Tennessee Valley Authority

Intergovernmental Review of Tennessee Valley Authority Programs and Activities; Proposed Regulation
TENNESSEE VALLEY AUTHORITY

18 CFR Part 1311

Intergovernmental Review of Tennessee Valley Authority; Programs and Activities

AGENCY: Tennessee Valley Authority.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would implement Executive Order No. 12372 ("Intergovernmental Review of Federal Programs") and the Intergovernmental Cooperation Act of 1968 and would assist TVA in carrying out its responsibilities under the TVA Act. They apply to Federal financial assistance and direct Federal development programs and activities of TVA. Executive Order No. 12372, and these proposed regulations, are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95.

DATE: Comments must be received on or before April 4, 1983.

ADDRESS: Interested persons should submit comments to: Richard L. Morgan, Manager, Economic and Community Development, Tennessee Valley Authority, 201 Summer Place Building, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Richard Ginn, 615-632-6005.

SUPPLEMENTARY INFORMATION: Background

For many years, consultation between State and local officials and Federal agencies concerning Federal programs and activities has taken place through an elaborate regulatory and organizational framework created under OMB Circular A-95. The A-95 system required State and local governments to follow prescribed review procedures and to review specified Federal programs, regardless of the circumstances affecting particular State and local governments. The system also required review of Federal programs by State and local agencies without regard to the priorities of their elected leadership. TVA used this system to supplement the many other opportunities TVA provides for involvement in TVA decisionmaking and thought that it strengthened TVA's relationship with the States of the Tennessee Valley region.

These regulations and the order's coordination process are not intended to displace the many other ways TVA coordinates its activities. TVA makes a concerted effort to ensure that its activities are coordinated with and reviewed by the citizens and State and local officials of the Tennessee Valley region.

The meetings of TVA's Board of Directors are open to the public, and the public, including any State or local officials present, is encouraged to discuss matters of interest with the Board. In addition to the regularly scheduled Board meetings held at different locations throughout the Tennessee Valley, the Board held 22 townhall-type listening sessions in the Valley during 1982. TVA also conducts public meetings on matters of general interest. In 1982, 76 such meetings were held in the Valley. The TVA region is divided into districts and an administrator appointed for each district whose job it is to act as TVA's local liaison with State and local officials and the public. TVA also has toll-free "Citizen Action Lines" to take questions from and provide answers to callers.

In addition to these opportunities for providing comments on TVA programs and activities, all of TVA's major activities which have a significant impact on the quality of the human environment are coordinated under TVA's procedures implementing the National Environmental Policy Act. NEPA coordination includes a specific request for comments from State and local officials whose jurisdictions are affected by the proposal. For example, all of TVA's major construction projects, whether funded with appropriations or by the TVA power program, are reviewed under the NEPA process.

On July 14, 1982, President Reagan signed Executive Order No. 12372, "Intergovernmental Review of Federal Programs." The Executive order is reproduced as Attachment B to the OMB notice published in the January 27 Federal Register (48 FR 3929 (1983)). This letter explains the role of the "single point of contact." A "single point of contact" is the one office or official in a State that transmits the result of the State review and coordination with recommendations that may differ from the proposal to TVA and other Federal agencies and to which TVA directs official communications (e.g., explanations of nonaccommodation) to the State under the order. A State may have as few as or as many entities as it chooses to perform review and coordination and to conduct discussions under the order with TVA. However, there should be only one point of contact to officially transmit recommendations for change to Federal agencies under the order. It is up to the State whether the single point of contact plays a substantive role with respect to the State's views, or simply acts as a focal point for official communications.

OMB Guidance to States

In order to assist States as they begin their work in implementing the order, OMB wrote to each State concerning the establishment of an official State process. This letter is reproduced as Attachment B to the OMB notice published in the January 27 Federal Register (48 FR 3929 (1983)). This letter explains the role of the "single point of contact." A "single point of contact" is the one office or official in a State that transmits the result of the State review and coordination with recommendations that may differ from the proposal to TVA and other Federal agencies and to which TVA directs official communications (e.g., explanations of nonaccommodation) to the State under the order. A State may have as few as or as many entities as it chooses to perform review and coordination and to conduct discussions under the order with TVA. However, there should be only one point of contact to officially transmit recommendations for change to Federal agencies under the order. It is up to the State whether the single point of contact plays a substantive role with respect to the State's views, or simply acts as a focal point for official communications.

It is also worth emphasizing that States are not required to adopt an official State process at all. However, after final rules implementing the order become effective (they will be published on or about April 30, 1983), the existing Federal consultation system will no longer be in effect. Other existing TVA consultation and coordination processes are not affected by these proposed procedures, and TVA will continue to seek State and local

the agency will have to make efforts to accommodate the concerns, and, if it does not accommodate them, explain why not. This "accommodate or explain" provision gives greater weight to State and local views than circular A-95 did and is consistent with TVA's existing policy of close cooperation and consultation with State and local officials.

As to some Federal agencies, the federally required procedures for consultation under circular A-95 created a substantial regulatory burden. The Executive order's system of consultation will significantly reduce that burden. In contrast to the A-95 system, which relied heavily on Clearinghouses, planning organizations, and other bodies which are not elected by the jurisdictions they serve, the order, consistent with the President's federalism policy, emphasizes the role of elected State and local officials.

officials’ and the public’s views on the entire range of TVA’s programs and activities under these other processes.

OMB will have general government-wide oversight responsibility for the implementation of the order, but will not attempt to exercise any day-to-day, operational control of agency actions. Nor will OMB act as a forum for “appeals of agency actions by non-Federal parties.”

Development of Proposed Regulations

The Executive order mandates the implementation of final regulations by April 30, 1983. It will not be possible to have an adequate comment period and meet this deadline if a 30-day delay between the publication date of the final regulations and their effective date is observed. Consequently, TVA proposes to make the final regulations effective immediately upon publication on April 30. There would be no further rulemaking with respect to the Executive order.

As a matter of style, the proposed regulations use the present tense when describing TVA’s obligations. For example, when the proposed regulation says that TVA “provides the State with a timely explanation,” the provision requires TVA to do so.

In order to provide consistency among the various Federal agencies in their dealings with the States under the order, the agencies and OMB worked together to the extent feasible to arrive at common policy decisions and common regulatory language. This should assist the State in developing its procedures under the order for communicating with the various Federal agencies.

Removal of Procedures Implementing OMB Circular A-95

In connection with these proposed regulations, TVA is proposing to remove its existing procedures implementing former OMB Circular A-95 published at 42 FR 30,959-61 (1977). Executive Order No. 12372 directed OMB to revoke the circular itself, and the OMB directive revoking the circular told Federal agencies to leave their A-95 regulations or procedures in place only until new regulations implementing the order were published on or about April 30, 1983.

Executive Order 12291, Regulatory Flexibility Act and Paperwork Reduction

TVA has determined that this is not a major rule under Executive Order 12291. The proposed rule would simplify consultation with TVA and allow State and local governments to establish cost-effective consultation procedures. For this reason, TVA believes that any economic impact the regulation has will be positive. It is unlikely that its economic impacts will be significant, in any case. Consequently, TVA certifies, under the Regulatory Flexibility Act, that this rule would not have a substantial economic impact on a significant number of small entities. This proposed rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it would not require the collection or retention of information.

Section-by-Section Analysis

Section 1311.1 What is the purpose of these regulations?

This section briefly states the purpose of the regulations, which is to implement Executive Order No. 12372 and the Intergovernmental Cooperation Act, foster an improved system of intergovernmental consultation, and assist TVA in carrying out its responsibilities under the TVA Act. Paragraph (c) states the important point that the order, and these regulations, are intended only to improve TVA’s internal management of its consultation with State and local governments. Neither the order nor these regulations are intended to create any right of judicial review of TVA’s actions.

Section 1311.2 What definitions apply to these regulations?

This section defines several terms used frequently in the proposed regulations. “Order” means Executive Order No. 12372. “State” means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, or the trust territory of the Pacific Islands. The definition of “State” means that the District of Columbia, Puerto Rico, and the other jurisdictions mentioned may create an official consultation process and consult with Federal agencies on the same basis as each of the 50 States. Several other terms appearing in the order are not defined in this section, but are used in the regulations in a way that makes their operational meaning clear (e.g., accommodate and explain in §1311.7).

Section 1311.3 What programs and activities of TVA are subject to these regulations?

Paragraph (a) provides that TVA will publish a Federal Register notice, in conjunction with the publication of its final Executive Order No. 12372 regulations, listing the programs and activities that are subject to the regulations. Updated lists will be published when necessary in order to let States know which of TVA’s programs and activities they may choose to cover. The attachment to this preamble contains a list of those Federal financial assistance and direct Federal development programs and activities that TVA proposes to exclude from coverage under these regulations. The reason for each proposed exclusion is also listed. TVA seeks comments on the proposed exclusions. After promulgation of the final rules, if TVA wants to exclude new or additional programs or activities from coverage under the regulations, it will publish a Federal Register notice requesting comment on the proposed exclusions.

At this time, States should assume that all TVA’s other Federal financial assistance and direct Federal development programs will be subject to the regulations. Of course, activities and programs that already receive Federal financial assistance or TVA’s power program are not subject to the order or the Intergovernmental Cooperation Act. Despite this, TVA does intend to coordinate its power-program construction activities with a State’s single point of contact as a matter of policy if the State desires. As more fully explained in the exclusion attachment, TVA already widely coordinates these activities and will continue to do so. Also, the order and these regulations do not apply to proposed regulations, legislation, or budget formulation.

Even if a program or activity is excluded from the consultation system established by the order, State and local officials would still have an opportunity to have their views considered by TVA. The order’s consultation system is only one of many opportunities TVA provides for State and local officials to inform TVA of the programs and activities. Moreover, any official or member of the public has the opportunity to address the TVA Board at its Board meetings which are open to the public. There also are other statutory requirements for coordination with which TVA complies, such as the coordination process established under the National Environmental Policy Act.

Paragraph (b) simply states that TVA, to the extent permitted by law, will use a State’s official process to determine official views of State and local officials. This commitment extends only to programs and activities subject to these procedures that a State has selected for coverage under §1311.5 of these regulations. If at any time a State believes that TVA has not made appropriate use of the official State process, the State is invited to raise this directly with TVA’s General Manager.
Section 1311.4 [Reserved].
Section 1311.5 What procedures apply to a State's choice of programs?

States may choose to consult with TVA under the order concerning any of TVA's Federal financial assistance and direct Federal development programs or activities that TVA's Federal Register notice lists as subject to the regulations. However, these regulations do not require States to consult with TVA concerning any particular program or activity.

TVA emphasizes that the choice of whether to cover a particular Federal financial assistance or direct Federal development program or activity listed in TVA's Federal Register notice is entirely up to each State. While TVA will be happy to discuss with States the most effective ways of carrying out consultation concerning these programs and activities, TVA will not attempt to constrain the State's discretion with respect to program selection.

Paragraph (a) of this section sets out a purely administrative requirement pertaining to program selection. The State should notify TVA of the programs and activities it chooses to cover. When it first establishes its official process, the State can meet this requirement by sending to OMB, along with other information required to establish the process, a list of the Federal programs and activities it wishes to cover. OMB will inform each Federal agency of the program and activities of each that the State has chosen to cover. Subsequently, the State should provide coverage information (additions, deletions, other changes) directly to TVA.

Paragraph (b) provides that, once a State has established a process and made its program selections known to TVA, TVA will use the State's process concerning the programs and activities selected by the State as soon as feasible. While TVA will make every effort to use the State's process, there may be situations, on individual programs or projects, where TVA may not be able to do so for a time. TVA will make determinations concerning when to begin using the State's official process on a case-by-case basis and will let the States know when it will start to use the State process.

Paragraph (c) provides that TVA may establish deadlines by which States should inform TVA of changes in their program selection choices. A State may add or delete a program or activity from those it wishes to cover under the order at any time. However, in order for meaningful consultation to occur under the regulations, TVA may need a certain amount of "lead time" before it can adapt its procedures to the changed circumstances. For this reason, TVA may find it necessary to establish deadlines for program selection changes. These deadlines would simply be notifications to the States that, for example, if they wished to have consultation under the order begin with respect to a particular program on a given date, they would have to inform TVA of their program selection change a certain time (e.g., 30 days, 45 days) prior to that date.

Section 1311.6 How does TVA give States an opportunity to comment on proposed financial assistance and direct development?

Paragraph (d) points out that the order would apply only to comments prepared pursuant to the official State process but also to comments formulated by local elected officials to whom the State's consultation role has been delegated in specific instances. Section 3(a) of the order permits States to delegate to local elected officials in specific instances, the review, coordination, and communication with Federal agencies that normally take place under the State process. This means that States may choose not only which programs and activities to cover but also who within the State has the opportunity to carry out the consultation. States have complete discretion concerning delegation of their consultation role.

For example, a State could delegate to a single mayor the State's consultation role with respect to a project occurring in his or her city. The State could delegate all consultation under a particular program to officials of the local governments whose jurisdictions are affected by projects under the program. The State could delegate its consultation role for a particular program to local elected officials in cities above 250,000 population but not to local officials in smaller jurisdictions, or vice versa. In any case of delegation, the local official to whom the State's consultation role is delegated stands in the shoes of the official State process with respect to the order's consultation process. For example, efforts by TVA to reach a negotiated solution with the local official will be pursued directly with the official, not with the State itself.

The local official to whom the State's consultation role had been delegated would not send his or her comment directly to TVA under the order's process. Rather, the official would send the comment to TVA through the State single point of contact. TVA would work with the local official in attempting to reach an accommodation, but, if efforts at accommodation were unsuccessful, TVA would explain the nonaccommodation to the single point of contact as well as to the local official. Routing the delegated comment through the State single point of contact would alert TVA to the fact that the local official's comments should be dealt with under these procedures and make unnecessary a separate communication from the State to TVA informing TVA that the comment was an official comment of the State.

Section 2(b) of the order requires Federal agencies to communicate with State and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions. Paragraph (b) incorporates this provision of the order into these procedures. What the requirement means is TVA makes an effort to ensure that information on proposed actions or decisions of TVA is available to the States in sufficient time to be able to contribute meaningfully to TVA's decisionmaking process. For example, TVA would make sure that the State learned of a proposed Federal development project in time to make a meaningful response.

Paragraph (c) states that, as a general rule, States choosing to cover a particular program or activity will have at least 30 days (45 days in the case of interstate situations) to comment on proposed Federal financial assistance or direct Federal development activities before TVA commits itself to a given course of action. TVA, on a case-by-case basis, may allow a shorter period for comment if unusual circumstances make the shorter period necessary. Among the kinds of unusual circumstances that might necessitate a shorter comment period are, for example, an emergency or a statutory deadline. Paragraph (c) also provides that TVA may establish deadlines or timeframes for comment on particular actions.

Paragraph (d) makes an important point with respect to the way that communications between States and TVA would work under the order's process. Under the order, a State may organize the mechanics of its consultation process any way it chooses. However, in order to ensure that communications between TVA and the official State process flow efficiently, TVA strongly encourages States to establish a "single point of contact" for State communications with Federal agencies under the order's process. Channeling communications from the States to Federal agencies and from agencies back to the States through
a single point has obvious benefits from the point of view of administrative simplicity. In addition, it will enable TVA to know which communications to treat as official under the regulations. TVA needs a means of separating the letters from State and local elected officials to which it will respond through normal correspondence channels from those letters to which it will respond under the provisions of these regulations. States' use of a single point of contact will permit TVA to make this necessary administrative distinction. In the absence of a State process, or with respect to a program that a State has not selected for coverage, the provisions of the order and these procedures will not apply, however.

As stated earlier, issuance of these procedures is not intended to displace the many other opportunities TVA provides for the public and State and local officials to communicate their views on TVA programs and activities. These opportunities extend to all of TVA's activities, including its power program, and are not limited to just Federal financial assistance and direct Federal development programs. To the extent the State desires to use the formal Executive order process to communicate its views on TVA's Federal financial assistance and direct Federal development activities and programs, these regulations provide it the opportunity of doing so. The choice is left to the State.

In order to assist TVA in responding to a State's comments under the order and to make any comments as meaningful as possible, TVA encourages the States to take into account in their comments any statutory or regulatory requirements or criteria which apply to the proposed activity, to include the magnitude of the State's concerns, and to reconcile any differences of opinion among State agencies or State and local officials to the extent feasible.

Section 1311.7 How does TVA make efforts to accommodate State and local concerns?

Paragraph (a) provides that when a State comments to TVA under the order and these regulations, TVA has three choices. First, TVA can accept the State's comments (i.e., do as the State recommends). Second, TVA can reach a mutually agreeable solution with the State. This solution could differ from the original State position on the matter. Third, if TVA cannot accept the State's comments or reach a mutually agreeable solution, TVA will give the State a timely, simple explanation of TVA's reasons for not doing so. While TVA is not required to accept the State's comments or to begin discussions towards another solution, TVA does have an obligation under these procedures to provide a simple explanation of its decision.

Normally, the explanation could take any form which adequately communicates TVA's reasons for its decision to the State. A telephone call, a meeting, or a letter would perform this function. TVA has the discretion to choose the most appropriate mode of communicating the explanation in each case. TVA will, however, always respond in writing to any correspondence from a Governor.

Subdivision (a)(3)(iii) spells out the role of the single point of contact in receiving explanations from TVA. TVA will direct all such explanations to the single point of contact in each State that has one. Where accommodation discussions have occurred between TVA and another party in the State, the other party will also be provided such explanation.

Subparagraph (b)(1) provides that a nonaccommodation explanation will state that TVA will not implement its decision until 10 days after the explanation is provided to the single point of contact, except as provided in subparagraph (b)(2). This waiting period is intended to permit States to respond to TVA in cases of nonaccommodation before the program or activity is commenced. In a case in which TVA has provided a verbal explanation of a decision to the single point of contact, and the Governor subsequently has requested a written explanation, the 10-day period will start to run from the date of the original explanation to the single point of contact.

Subparagraph (b)(2) recognizes that there will be some situations in which TVA cannot observe the 10-day waiting period. These unusual circumstances could include, for example, a statutory deadline or an emergency that may make it infeasible for TVA to wait 10 days before implementing its decision. In a situation where TVA cannot observe the waiting period, the General Manager will review the decision before the nonaccommodation explanation is made and before TVA implements the decision. The nonaccommodation explanation will include TVA's reasons for determining that the 10-day waiting period is not feasible.

Section 1311.8 What are TVA's obligations in interstate situations?

In some cases, action taken by TVA in Federal financial assistance and direct Federal development programs may have an impact on interstate areas. In these situations, TVA has certain additional obligations. First, TVA will identify its direct Federal development of Federal financial assistance actions or decisions that have an impact on interstate areas. Having done so, TVA will, as provided in paragraph (b), notify the potentially affected States, whether or not they have established an official State process under the order. Except in unusual circumstances, TVA will provide the affected States an opportunity for comment of at least 45 days before TVA commits itself to a course of action. The increase in the minimum comment period from 30 to 45 days in interstate situations allows extra time for States to coordinate among themselves before providing views to TVA.

TVA, obviously, cannot require States to coordinate with each other on proposed Federal assistance or direct development having an impact on an interstate area. However, TVA strongly encourages each affected State to share its comments with and obtain the views of other affected States, using the other State's single point of contact, if there is one, or an appropriate State official if there is not a single point of contact. TVA encourages States to reconcile differences where they exist so that the States can present TVA with a unified position. If the affected States provide TVA with conflicting recommendations, TVA will attempt to reconcile such conflicts before making a decision.

Section 1311.9 [Reserved].

Section 1311.10 May TVA waive any provision of these regulations?

This section allows TVA to waive any provision of these regulations in an emergency. TVA expects to use this provision sparingly, since TVA's policy is to carry out the order as fully as it can.

Attachment—List of Proposed Exclusions

TVA proposes to exclude the below listed categories of Federal financial assistance and direct Federal development activities from coverage under these procedures:

1. Agreements involving minor land uses—TVA's experience has been that these kinds of actions normally do not have a significant impact on area and community planning or on the physical environment.

2. Transfer or acquisition of land or landrights except transfers or acquisitions for major industrial, recreation or commercial developments—it has been TVA's experience that these kinds of actions normally do not have a significant impact on area or community planning.

3. Minor research or demonstration projects with State and local agencies or
private organizations — TVA's experience has been that these kinds of activities normally do not have a significant impact on area or community planning.

4. Technical and planning assistance activities — TVA's experience has been that these kinds of activities do not have a significant impact on area or community planning.

5. Approvals under section 26a of the TVA Act of minor structures, boat docks, or shoreline facilities — TVA's experience has been that these kinds of activities normally do not have a significant impact on area or community planning.

6. TVA's power program — TVA's power program is self-financing and does not use appropriated funds. It is neither a Federal financial assistance program nor a direct Federal development activity and, accordingly, not subject to the Executive order or these regulations. TVA presently coordinates with State and local governments all power program construction activities for which an environmental impact statement is prepared under TVA's NEPA procedures or which significantly affect the governmental responsibilities of a State or local government (those power-construction activities which would place potential demands on or impact State or local services such as police and fire protection, health care, sewage treatment, solid waste disposal, and transportation. TVA intends to continue to coordinate such activities and will include coordination with the State single point of contact if a State desires.

W. F. Willis,
General Manager.

List of Subjects in 18 CFR Part 1311

Intergovernmental relations.

It is proposed to amend Title 10 of the Code of Federal Regulations by adding Part 1311 as follows:

PART 1311 — INTERGOVERNMENTAL REVIEW OF TENNESSEE VALLEY AUTHORITY FEDERAL FINANCIAL ASSISTANCE AND DIRECT FEDERAL DEVELOPMENT PROGRAMS

Sec. 1311.1 What is the purpose of these regulations?

1311.2 What definitions apply to these regulations?

1311.3 What programs and activities of TVA are subject to these regulations?

1311.4 [Reserved]

1311.5 What procedures apply to a State's choice of programs under the order?

(a) Each State that adopts a process under the order notifies TVA of TVA's Federal financial assistance and Federal direct development programs that the State chooses to cover under the order.

(b) TVA uses a State's process under the order as soon as feasible, depending on individual programs and projects, after the State notifies TVA of its program choices.

(c) States may change their program choices under the order at any time.

TVA may establish deadlines by which States are required to inform TVA of changes in their program choices.

1311.6 How does TVA give States an opportunity to comment on proposed Federal financial assistance and direct Federal development?

(a) This section applies to all comments received from a State pursuant to an official process it has established under the order, including comments where the State has delegated to local elected officials the review, coordination, and communication with TVA. This section and the order's process supplement TVA's many other coordination processes and do not replace such processes.

(b) With respect to programs and activities that are subject to the order and these procedures and that a State chooses to cover under § 1311.5 of this Part, TVA, to the extent permitted by law, uses the official State process to determine official views of State and local elected officials. TVA will utilize other means to respond to any substantive comments it receives on any of its other programs and activities.

§ 1311.1 (Reserved)
§ 1311.7 How does TVA make efforts to accommodate State and local concerns?

(a) If a State provides comments to TVA in accordance with §1311.6(d) of this Part, TVA:
(1) Accepts the State’s comments;
(2) Reaches a mutually agreeable solution with the State; or
(3) (i) Provides the State with a timely explanation of the basis for TVA’s decision;
(ii) TVA always responds in writing to correspondence from Governors.
(iii) If the State has designated a State office or official as a single point of contact between the State and all Federal agencies, TVA provides any explanation under paragraph (a)(3) of this section to that office or official as well as to any local official who acted for the State on the proposed action.

(b) In any explanation under subparagraph (a)(3) of this section, TVA informs the State that:
(1) TVA will not implement its decision for 10 days after the explanation is provided; or
(2) The General Manager has reviewed the decision and determined that, because of unusual circumstances, the 10-day waiting period should be waived.

§ 1311.8 What are TVA’s obligations in interstate situations?

TVA is responsible for:

(a) Identifying proposed TVA Federal financial assistance and TVA direct Federal development that have an impact on interstate areas;
(b) Notifying the affected States, including States that have not adopted a process under the order; and
(c) Except in unusual circumstances, providing the affected States an opportunity of at least 45 days to comment.

§ 1311.9 [Reserved]

§ 1311.10 May TVA waive any provision of these regulations?

In an emergency, TVA may waive any provision of these regulations.