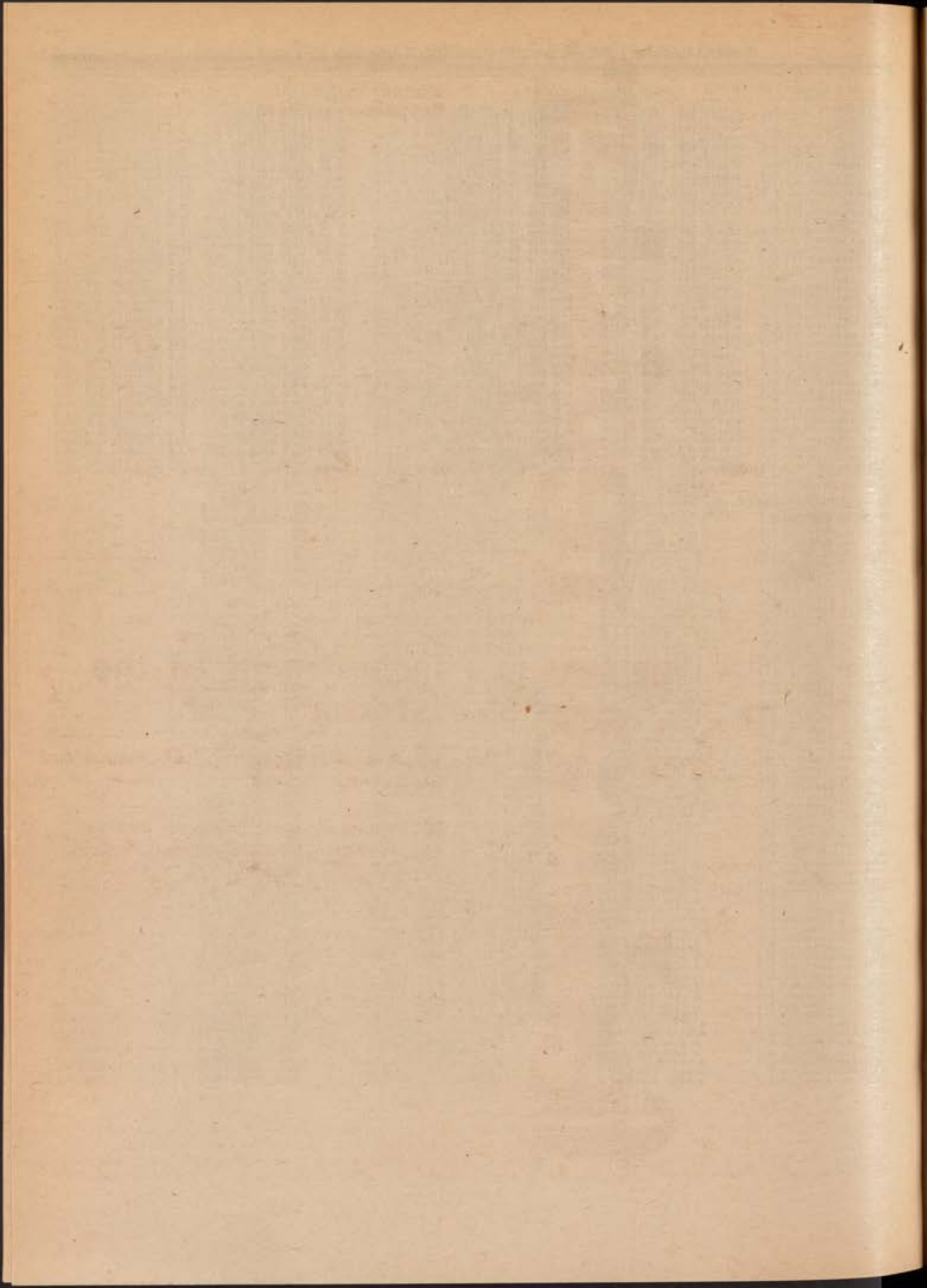


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8351457		4704301234	108		TCO MIN TR #1 808146	W VA FIELD AREA B	3.0	COLUMBIA GAS TRAN
8351452		4704301141	108		TCO MIN TR #1 808161	W VA FIELD AREA B	15.0	COLUMBIA GAS TRAN
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Monday
September 12, 1983

Part III

Department of the Interior

**Office of Surface Mining Reclamation and
Enforcement**

**Rhode Island; Surface Mining and
Reclamation Operations Under Federal
Program; Final Rules**

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 939

Surface Mining and Reclamation Operations Under Federal Program for Rhode Island

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior promulgates a Federal program for regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in Rhode Island. This includes surface effects of underground coal mining. This program is necessary in order to regulate surface coal mining activities in the absence of a State program.

EFFECTIVE DATE: October 12, 1983.

ADDRESSES: The Federal program for Rhode Island will be administered and enforced by OSM's Pennsylvania Field Office, 100 Chestnut St., Suite 300, Harrisburg, Pennsylvania 17101.

FOR FURTHER INFORMATION CONTACT: James M. Kress, Office of Surface Mining, Branch of Regulatory Programs, Branch 222, 1951 Constitution Avenue NW., Washington, D.C. 20240. Telephone: (202) 343-5866.

SUPPLEMENTARY INFORMATION:**Availability of Copies**

Copies of the Federal program for Rhode Island are available for inspection and may be obtained at the OSM office listed above in "ADDRESSES."

Background

Under Section 504(a) of the Surface Mining Control and Reclamation Act of 1977 (the Act), Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, the Secretary of the Interior (the Secretary) is required to promulgate a Federal program within 34 months after passage of the Act if a State fails to submit a program to assume responsibility for regulating surface mining activities, fails to resubmit a program within 60 days of disapproval, or fails at any time to implement, enforce, or maintain an approved State program.

Rhode Island has identifiable coal reserves, but has failed to submit a program to the Secretary to obtain primary regulatory responsibility. The Director believes that it is reasonable to

expect that coal exploration or surface coal mining could occur in Rhode Island before June 1985. Therefore, pursuant to 30 CFR 736.11, the Director must promulgate and implement a Federal program.

This decision does not necessarily imply and expectation of imminent mining in Rhode Island. It instead recognizes that the Act prohibits coal exploration or surface coal mining in States which do not have either an approved State program or a fully promulgated Federal program. Accordingly, OSM believes it prudent to put the required regulatory framework into place so that any future coal exploration or mining may be conducted in Rhode Island legally, without unnecessary delay, and in an environmentally sound manner.

Once a decision is made that a Federal program is necessary for a State, the Secretary must make several determinations before promulgating a program. Section 504(a) of the Act requires that in implementing a Federal program the Secretary take into consideration the nature of the State's terrain, climate, biological, chemical, and other relevant physical conditions. This requirement is also found in the regulations, 30 CFR 736.22(a)(1). The Act (Section 505(b)) and the regulations (§ 736.23(b)) also provide that if a State has more stringent land use and environmental laws or regulations, they shall not be construed to be inconsistent with the Act of the Secretary's regulations. If the State's laws or regulations establish more stringent standards regulating surface mining control and reclamation procedures than those found in the Act or the Secretary's regulations, or if the State regulates or protects an aspect of the environment affected by surface mining operations which neither the Act nor the Secretary's regulations protect, then those State standards are specifically preserved. Thus, the Secretary believes that the requirements of Section 505(b) can best be met by identifying Rhode Island laws and regulations which impose equivalent or more stringent environmental controls, and by listing them in § 939.700(e).

Also, in promulgating a program for a State, Section 504(g) of the Act specifies that State statute or regulation which regulates surface mining and reclamation operations subject to the Act will be superseded and preempted by the Federal program to the extent that it interferes with the achievement of the purposes and requirements of the Act and the Federal program. This provision is reinforced by Section 505(a) of the Act, which states that only those

State laws and regulations which are inconsistent with the Act and its implementing regulations shall be superseded by the Federal program. Thus, State statutes and rules regulating the same activities as those covered by the Federal law and regulations and which interfere with achievement of the purposes of the Act must be identified and preempted by OSM. The Director has not identified any such Rhode Island statutes or rules, and consequently, none are preempted by this Federal program for Rhode Island (see § 939.700(f)).

Finally, a Federal program, according to Section 504(h) of the Act, must include a process for coordinating the review and issuance of surface mining permits with other Federal or State permits applicable to the proposed operation. The Federal statutes with which the surface mining permitting process must be coordinated are set out in 30 CFR 736.22(c). State statutes for which a permit is required must be identified in the process of promulgating a Federal program, and the Federal program must provide for coordination with the review and issuance procedures required by those statutes (see § 939.770(b)).

Federal programs are based on the Secretary's permanent program regulations: 30 CFR Subchapters A, F, G, J, K, L, and M. The permanent program regulations establish procedures and performance standards under the Act and form the benchmark for State programs. In order for a State to have a program approved by the Secretary, Section 503(a)(7) requires that the State's rules and regulations be consistent with the Secretary's regulations.

The parts of the permanent program regulations that must be included in a Federal program are listed at 30 CFR 736.22(b). They include general requirements and definitions (Parts 700 and 701), the exemption for coal extraction incident to government-financed highway or other construction (Part 707), the designation of lands unsuitable for surface mining (Parts 760, 761, 762, and 765), permits and permit applications (Subchapter G), reclamation bonding (Subchapter J), performance standards (Subchapter K), inspection and enforcement (Parts 842, 843 and 845), and blaster training and certification (Subchapter M). In addition, the provision in the permanent regulations on protection of employees (Subchapter P) and restrictions on financial interests (Part 706) are applicable to Federal employees who

perform functions or duties under the Act.

The rules for the permanent program are found in 30 CFR Parts 700-707 and 730-865. Part 705 was published October 20, 1977 (42 FR 56060). Parts 795 and 865 (originally Part 830) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published at 44 FR 15323-15463 (March 13, 1979). Subchapter M was published on December 12, 1980 (45 FR 82098). Corrections were published at 44 FR 15485 (March 14, 1979); 44 FR 53507-53509 (September 14, 1979); 44 FR 66195 (November 19, 1979); 45 FR 26001 (April 16, 1980); 45 FR 37818 (June 5, 1980); and 45 FR 47424 (July 15, 1980). Amendments to the rules have been published at 44 FR 60969 (October 22, 1979) as corrected at 44 FR 75143 (December 19, 1979); at 44 FR 77440-77447 (December 31, 1979); 45 FR 2628-2629 (January 11, 1980); 45 FR 25998-26001 (April 16, 1980); 45 FR 33926-33927 (May 20, 1980); 45 FR 39446-39447 (June 10, 1980); 45 FR 52306-52324 (August 6, 1980); 45 FR 52375 (August 7, 1980); 45 FR 58780-58786 (September 4, 1980); and 45 FR 76932 (November 20, 1980); 46 FR 37232 (July 17, 1981); 46 FR 41702 (August 17, 1981); 46 FR 47720 (September 29, 1981); 46 FR 53376 (October 28, 1981); 46 FR 52287 (October 26, 1981); 47 FR 32942 (July 30, 1982); 47 FR 33431 (August 2, 1982); 47 FR 35620 (August 16, 1982); 47 FR 38486 (August 31, 1982); 47 FR 44942 (October 12, 1982); 47 FR 47212 (October 22, 1982); 47 FR 51316 (November 12, 1982); 48 FR 1160 (January 10, 1983); 48 FR 2266 (January 18, 1983); 48 FR 9199 (March 4, 1983); 48 FR 9478 (March 4, 1983); 48 FR 9788 (March 8, 1983); 48 FR 14814 (April 5, 1983); 48 FR 19314 (April 28, 1983); 48 FR 20392 (May 5, 1983); 48 FR 21446 (May 12, 1983); 48 FR 22110 (May 16, 1983); 48 FR 22092 (May 16, 1983); 48 FR 23356 (May 24, 1983); 48 FR 24638 (June 1, 1983); 48 FR 29802 (June 28, 1983); and 48 FR 30312 (June 30, 1983).

Representatives of industry, two States and several environmental groups challenged the permanent regulatory program in the U.S. District Court for the District of Columbia. These suits were consolidated and heard in a single lawsuit entitled *In Re Permanent Surface Mining Regulation Litigation* (Civil Action No. 79-1144). In response to the arguments raised in the challenges, the Secretary voluntarily suspended several permanent program regulations. These suspensions were announced in the Federal Register on November 27, 1979 (44 FR 67942); December 31, 1979 (44 FR 77447-77455); January 30, 1980 (45 FR 6913); and August 4, 1980 (45 FR 51547-51550). In

two opinions the Court remanded certain other regulations which had been challenged in the lawsuit. These opinions were issued on February 26, 1980, and May 16, 1980. Many of the issues decided by the District Court have been appealed to the Court of Appeals for the District of Columbia Circuit. *In Re Permanent Surface Mining Regulation Litigation*, Nos. 80-1810, 80-1811, 80-1812, 80-1813 and 80-1823. The appeals were remanded to the District Court so that issues raised on appeal could be considered in the regulatory reform effort discussed *infra*.

Rhode Island Federal Program

On January 5, 1982, OSM proposed a Federal program that would regulate coal exploration and provide for a process of designating lands unsuitable for surface coal mining for the State of Rhode Island (47 FR 560). The coal exploration program which was proposed was uniform with respect to four States: Massachusetts, Rhode Island, Michigan, and Oregon. A program regulating just coal exploration was proposed because the Director was aware of the interest of some persons in conducting exploration. While Rhode Island law and regulations do provide for some limited regulation of surface coal mining and exploration, the Secretary is nevertheless required by the Act to regulate such activities in the absence of an approved State program.

On April 28, 1982, OSM published the final rule notice implementing a program in Rhode Island to regulate coal exploration and to provide for a process for designating lands unsuitable for mining (47 FR 18232 and 18282). The program became effective on May 28, 1982.

On December 22, 1982, OSM proposed to replace the exploration program for Rhode Island with a full program to regulate surface coal mining and reclamation operations, exploration operations, and the surface effects of underground mining operations. The proposed program additionally provided for a process for designating lands unsuitable (47 FR 57246). While superseding the exploration program, this later proposal and promulgation does not alter the date after which petitions may be submitted to designate lands unsuitable for coal mining in Rhode Island. That date remains May 28, 1983.

The December 22, 1982 notice announced a public hearing for February 23, 1983, and a public comment period closing February 28, 1983. The public hearing was subsequently postponed to and held on March 2, 1983 (48 FR 3638). Comments received at the hearing, and

others received during the comment period are described below under "Disposition of Public Comments."

The Rhode Island Federal program will be administered by the Pennsylvania Field Office of OSM, at the address shown above under ADDRESSES. OSM will administer the program until such time as Rhode Island submits a State regulatory program which is approved pursuant to 30 CFR Parts 731 and 732.

As mentioned above, when promulgating a Federal program for a State, the Secretary is required by Section 504(a) of the Act to take into consideration the nature of the terrain, climate, biological, chemical, and other relevant physical conditions of that State. OSM has reviewed Rhode Island laws and regulations to determine whether they suggest that special provisions may be necessary or appropriate based on special terrain or other physical conditions in the State.

Pursuant to Section 504(a), the Secretary becomes the regulatory authority when a Federal program is implemented for a State. OSM's permanent program regulations contain reference to "the regulatory authority" and "the State regulatory authority," both of which mean the Secretary when a Federal program for a State is involved. Section 701(22) of the Act.

The Office of Surface Mining is delegated all of the Secretary's authority for implementing, maintaining, and enforcing a Federal program. This proposed program for Rhode Island would not change these responsibilities.

Explanation of Cross-Referencing

In the May 16, 1980 general notice of intent to promulgate Federal programs of (45 FR 32228), OSM stated that each Federal program would be specific to the particular State and would implement the permanent program procedures and environmental protection provisions of the Act (45 FR 32229). However, except to make changes to preserve more stringent State environmental protection standards, to list State laws requiring permits for which coordination is required, and to make any specific changes identified which are needed to reflect conditions in a State, OSM believes that few changes are needed in the permanent program regulations for any particular State for which a Federal program must be promulgated.

During January 1981, the Secretary directed that the Department review all existing regulations in order to eliminate those which are burdensome, excessive, and unnecessary. A thorough review of

the permanent program regulations was initiated. The effort is now nearing completion and is resulting in extensive revisions. These changes are noted in the above listing of modifications in the permanent program rules.

In order to take advantage of the results which revision of the permanent program regulations is achieving, OSM has developed and promulgated this Federal program in the following manner. Rather than repeating the full text of the permanent regulations, there is instead a cross-reference to the permanent program regulations. For example, criteria for the designation of lands unsuitable for surface coal mining are provided by the statement that "Part 762 of this chapter * * * shall apply to surface coal mine operations." (See § 939.762). One effect of the proposed cross-referencing to the permanent program regulations is that as the permanent program regulations are revised, this Federal program will be similarly revised. Over time, all of the permanent program regulations will undergo review, and many will be revised. No separate rulemaking will be undertaken or necessary for revision of this program, however, unless OSM determines that special conditions are necessary for Rhode Island. See OSM's July 13, 1982, notice advising the public that all changes in the permanent program rules would also result in corresponding changes in Federal programs, absent special conditions (47 FR 30267).

The promulgation of this cross-referencing program does not modify the substance of OSM's permanent program rules. Where specific provisions are needed for Rhode Island's Federal program which are different from the permanent program regulations, a separate paragraph has been added to the appropriate section of this Federal program.

Several provisions of the permanent program regulations are already applicable to this Federal program and need not be cross-referenced here because they were fully promulgated for application to all regulatory programs. Those provisions are 30 CFR Chapter VII, Subchapter P—Protection of Employees; Part 706—Restrictions on Financial Interests of Federal Employees; and Part 769—Petition Process for Designation of Federal Lands Unsuitable for Surface Coal Mining. (30 CFR Part 764—Designating Lands Unsuitable for Surface Coal Mining, has been included in the Rhode Island program by a cross-reference under § 939.764, to provide a petition

process on non-Federal and non-Indian lands in that State.)

With regard to the bonding regulations (Subchapter J), only Part 800 is cross-referenced because OSM has revised Subchapter J to include just one part, Part 800.

Content and Organization of the Program

The content and organization of the Federal program for Rhode Island generally follow the permanent program regulations. But, as discussed above, instead of the full text appearing, each section of this program includes only reference to the pertinent permanent program regulation. Section 939.700(e) sets out more stringent State statutes. Section 939.700(f) identifies the Rhode Island statutes and rules which may in an individual situation interfere with the achievement of the purposes and requirements of the Act and which accordingly may be preempted and superseded. Where specific provisions are needed for Rhode Island which are different from the permanent program regulations, a separate paragraph has been added to the appropriate section.

Disposition of Comments

Three persons testified at the hearing on the proposed Federal program for Rhode Island held in Providence, Rhode Island, on March 2, 1983. One of them also submitted written comments. Comments received and OSM's disposition of each are as follows:

1. The representative of the State wanted to know what new information, if any, was received by OSM between July 5, 1982, and December 22, 1982, which made the Director believe that coal mining in Rhode Island was a reasonable possibility before June 1985. He argued that the existing coal exploration program would be adequate if there were no reason for believing that coal mining could be reasonably expected.

In making the decision to promulgate this program, the Director re-evaluated the information available to OSM. There are large, identifiable coal reserves within the State. Exploration of this deposit has been undertaken in an adjacent State. After careful reconsideration, the Director concluded that it was reasonable to expect that mining could occur before June 1985.

The reasonableness of this conclusion is supported by the comment made by the two representatives of the University of Rhode Island Energy Center that "[w]hile mining of the known deposits of coal in Rhode Island may not presently appear either economically feasible or

environmentally sound, future coal exploration and subsequent expansion of known reserves are possible that could feasibly allow for mining and exploration in an environmentally responsible manner. We, therefore, conclude that mining should not be excluded from the State, but should be conducted consistent with good mining practices."

Because it takes a considerable length of time to promulgate a Federal program for a State, it is in the best interest of all concerned to proceed with the program at this time. This will ensure that if and when an operator wants to conduct mining operations in Rhode Island, there will be no delays due to the absence of a regulatory program. It should be noted that the promulgation and administration of this program present no burden and no expense to the State.

2. The representative of the State testified during the public hearing that the State deemed it to be in its best interests to comment both on the existing Federal regulations and the proposed modifications thereto. Consequently, the State's written comments contained references to OSM's proposed changes to the Federal permanent program.

OSM recognizes the difficulty created by the simultaneous promulgation of this program and the revisions of the permanent program rules, and has carefully considered the State's comments concerning the proposed modifications where there was any indication of representation that conditions within the State would cause the regulation to have an abnormal impact, and thus to deserve special consideration. The appropriate forum for comments on each proposed modification, however, is the corresponding rulemaking, rather than this Federal program. OSM has therefore not accepted such comments unless the proposed modification would impact upon a condition or circumstances unique to Rhode Island. Section 201(g) of the Act provides the method by which a petitioner may seek review of any modifications to the permanent program regulations after the implementation of the Federal program for Rhode Island.

3. The State representative commented that Rhode Island is fully incorporated and governed by town or city governments at the local level. Each community has different performance standards regarding activities which can occur within their bounds. He stated that some community standards are worded in such a manner that a surface mining operation could never comply, others are not as strict, and others

prohibit quarrying and earth removal outright. The representative states the opinion that the Federal program would not preclude the local regulatory process.

Section 505(a) of the Act provides that no State law regulating surface coal mining operations shall be superseded unless it is inconsistent with the Federal Act and regulations. Under recognized principles of Federal law, any conflicting local regulations would also be preempted. However, local zoning laws do not ordinarily interfere with the regulation of surface coal mining activities, or the designation of areas as unsuitable for surface coal mining operations under Section 522 of the Act. For example, the local zoning of an area for a use which does not allow for surface coal mining would not necessarily interfere with the Federal program, and obtaining a land use variance in that instance is not inconsistent with Federal regulation. Consequently, the local laws and ordinances of Rhode Island towns and cities, which are land use provisions as opposed to regulation of mining, are not preempted by implementation of this Federal program.

4. Sections 779.25(1) and 780.25(a)(1)(i) both require that the material submitted pursuant to each be "prepared by, or under the direction of, and certified by a qualified registered professional engineer, or by a professional geologist with assistance from experts in related fields such as land surveying and landscape architecture." One commenter proposed that both sections be amended to provide that the materials be "prepared by, or under the direction of, and certified by a qualified registered professional engineer and by a qualified registered professional land surveyor, each registered or licensed to practice in this State, with assistance from experts in related fields such as geology and landscape architecture."

OSM disagrees. Section 507(b)(14), 515(b)(10)(B)(ii), 515 (b)(13) and (f), and 515(b)(22)(H), 515(c)(3)(B)(vii), 515(c)(4)(E) (incorporating 515(b)(22)(H) by reference), 515(e)(3)(B) and 515(e)(4) (incorporating 515(b)(22)(H) by reference), of the Act expressly require that certain maps, plans, and cross sections be developed by or under the direction of professional engineers and in some cases geologists. The regulations cited by the commenter follow the exact language in the Act. These provisions of the Act are clear and unambiguous, and OSM may neither waive their requirements nor grant variances from them. (*In Re*

Surface Mining Litigation, 452 F. Supp. 327, 338 (D.D.C. 1978)).

5. One commenter suggested that the minimum scale of the map submitted pursuant to § 776.12(a)(5) be changed from 1:24,000 to 1:500.

OSM has not accepted this comment. Application requirements are covered by Section 507 of the Act. Specifically, Section 507(b)(13) requires that the maps submitted with an application contain, among other things, all types of information set forth on topographical maps of the United States Geological Survey of a scale of 1:24,000 or 1:25,000 or larger. Thus, if the applicant desires to map at a scale as large as 1:500, OSM will accept those maps.

The most important consideration in regard to map scales, however, is the legibility and usefulness of the information depicted. In order to make decisions on permit applications, it is necessary to have mapped information of sufficient detail and accuracy as a basis for making relatively precise estimates of the areas needed for certain operations. Consequently, OSM has set a minimum scale of 1:6,000 for the maps of surface mining operation permit area. However, because of the nature of exploration and the fact that it is often impossible to specify the precise location of each drill hole before actually commencing drilling, the regulations require that the map and narrative description disclose the general location and number of drill holes within the area. OSM believes that a map of the scale of 1:24,000 will usually be sufficiently detailed to provide the required information, although the regulatory authority will require maps of a larger scale where a map of the minimum scale is not sufficient to accurately reflect the required information.

6. The State noted the proposed amendment to OSM's permanent program regulations which, if adopted, would require notice only if the exploration will substantially disturb the natural land surface. It requested that provisions be made within the Rhode Island Federal program to retain the requirement that all persons who intend to undertake coal exploration operations file a notice of such intent. In support of this request, the State offered evidence indicating that Rhode Island is unique among States with significant coal reserves in that these reserves are located in or adjacent to a marine environment. Because of the proximity to the marine environment, the coal deposits and adjacent rocks are in close hydraulic connection with Narragansett Bay. The probability of salt water

intrusion as a result of mining is, therefore, relatively high in many areas of the State.

OSM agrees, and has amended § 939.776 to incorporate this change. The director is unaware of any major coal deposits in or adjacent to a marine environment other than that in and around Narragansett Bay. Because of this unique situation, and the attendant possibility that coal exploration could pose effects and complications not posed in other States, OSM believes it is reasonable to require notice from all prospectors in Rhode Island. Such a provision will better enable OSM (as the regulatory authority) to determine whether the exploration will substantially disturb the surface, thus invoking the coal exploration regulations.

7. The State representative asked whether blasting which occurs as part of an exploration activity is outside of regulatory control.

The coal exploration standards of 30 CFR Part 815 apply if the exploration activity will substantially disturb the natural land surface or if more than 250 tons of coal will be removed. If the area is substantially disturbed or if more than 250 tons of coal are removed, the operator must comply with § 815.1, which states that the applicable performance standards of Parts 816 through 828 (containing many specific blasting requirements) apply to exploration.

8. The State cited the lack of bonding requirements for exploration activity. These comments were made in connection with the comments addressed above relative to blasting.

Section 512 of the Act does not require bonding for coal exploration activities. Moreover, the State has in effect a bond requirement for blasting operations. R.I. Gen. Laws Section 23-28, 28-32 (198). OSM does not believe that additional bonding is appropriate.

9. The State requested that § 939.761 be amended to include areas designated as National Estuarine Sanctuaries as established through the Coastal Zone Management Act of 1972, and administered as a component of National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

OSM disagrees. The areas enumerated in § 939.761 where mining is prohibited or limited are those classifications established by Congress in Section 522(e) of the Surface Mining Act. National Estuarine Sanctuaries are not included within any of the classes listed in Section 522(e). Therefore, OSM does not have the authority to expand

the list of areas by amending the implementing regulation without following the procedural requirements of Section 522(c) of the Act.

10. The State commented that the definition of "fish and wildlife habitat" in § 701.5 should be amended to include "marine and estuarine organisms." The State suggested that this addition is necessary for the purposes of clarity to ensure that the protection of natural resources provided by the Act will apply to the marine environment as well as the terrestrial environment of the State.

OSM disagrees. The phrase "fish and wildlife" is adequately clear and could not reasonably be understood as limited to fish or wildlife in the terrestrial environment.

11. The State commented in opposition to the proposed change to the permanent program's ground-water monitoring requirements of 30 CFR 780.21(j) and 784.14(j). The State argued that the required inclusion of a ground-water monitoring plan only where the probable hydrologic consequences determination indicated that onsite or offsite impacts may occur to a significant ground-water resource or where such a plan is required by the regulatory authority would not adequately protect the individual, or the operator in litigation with the individual, whose only water supply may be a rock well which yields less than 10 gpm. This opinion was expressed in connection with the comments referenced above concerning the potential for salt water intrusion.

OSM disagrees. The Director does not believe that there is sufficient evidence of extraordinary conditions in Rhode Island to warrant an exception for the State on this provision. OSM agrees with the State, however, that the regulations are sufficiently general to require consideration of the possibility of salt water intrusion as a part of the determination of the probable hydrologic consequences.

12. The State submitted a written comment concerning the proposed amendment of 30 CFR 761.11 which could limit the prohibition or limitation of mining to only publicly owned places included in the National Register of Historic Places. (June 10, 1982; 47 FR 25278.)

OSM has not accepted this comment, since it relates to the permanent program rules rather than to the Federal program for Rhode Island, and there is no indication that conditions in the State require special provisions. Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. 470), and its accompanying regulations

(36 CFR Part 800) require Federal agencies to take into account the effect of any of their direct or Federally assisted undertakings on properties listed, or eligible for listing, on the National Register, and to consult with the Advisory Council on Historic Preservation. Moreover, regulations of the Advisory Council on Historic Preservation (36 CFR 800.4(a)(2)) require the responsible agency to determine what action must be taken to comply with the NHPA. OSM will be subject to the requirements of Section 106 of the NHPA as the regulatory authority for the Rhode Island Program.

Additionally, Section 522(a)(3)(B) of the Act allows adversely impacted persons to petition for designations of unsuitability for potential mining areas where such operations could result in significant damage to important historic, cultural, scientific, and esthetic values.

13. The State urged OSM to include within § 701.5 a definition of "injury in fact" as it relates to the petition process for designating lands unsuitable. The State suggested that the test be applied over a broad spectrum.

OSM has not accepted this comment, since it relates to the permanent program rules rather than to the Federal program for Rhode Island, and there is no indication of conditions in the State which require special provisions.

14. The State asked for further consideration of the effect of the State's Fresh Water Wetlands Act and rules and regulations thereunder and the Coastal Resource Management Act and regulations thereunder as potentially providing stricter environmental standards and potentially interfering with the achievement of the purposes of the Act.

OSM believes that these provisions are not necessarily inconsistent with the Act. However, because of the wide latitude granted to the State concerning what it may require pursuant to these provisions, there is a possibility of interference with the achievement of the purposes of the Act. Since there is a potential, but no existing conflict, § 939.700(f) has been amended to allow OSM to supersede such provisions only on an individual basis after consultation with the State.

15. The State supported and incorporated into its comments by reference the editorial by Jay H. Lehr, "Soap Doesn't Wash Clean," which was published in the Winter 1983 issue of *Ground Water Monitoring Review*.

OSM has considered the comments contained therein, but is making no changes to the Federal program for Rhode Island as a result thereof. The State was correct in its comment that

the changes suggested by editorial could be accomplished only by Congressional amendment to SMCRA, rather than by OSM rulemaking authority.

Detailed Discussion

OSM reviewed Rhode Island's pertinent statutes in the process of developing this proposed Federal program and determined that there were statutes which, under certain circumstances, imposed stricter environmental controls than those provided by either the Act or the Federal regulations (see § 939.700(e)). These Rhode Island statutes may be summarized as follows:

(a) The Rhode Island Hazardous Waste Management Act of 1978, as amended, R.I. General Laws Section 23-19.1-1 to 23-19.1-22, makes it unlawful to treat or dispose of hazardous wastes anywhere within the State of Rhode Island without an approved permit issued by the Director of the Department of Environmental Management. This statute also prohibits the disposal of waste in any area overlying underground water sources designated by the U.S. Geological Survey and the Rhode Island Water Resources Board. R.I. General Laws Sections 23-19.1-10. Any person who violates the Act's provisions is deemed to be absolutely liable for the costs of cleanup and removal of the discharged wastes and for all damages and injuries, including environmental losses, which result directly or indirectly from the unauthorized discharge. R.I. General Laws Section 23-19.1-22. Intentional or grossly negligent violations of these statutes are criminal offenses punishable by a maximum fine of \$25,000 or a minimum prison term of five years, or both. R.I. General Laws Section 23-19.1-18(A).

(b) R.I. General Laws Sections 46-12-1 to 46-12-37 (statutes controlling the pollution of State waters) prohibit, *inter alia*, the entrance or discharge of sewage waste into any waters of the State without an order of approval from the Director of the Department of Environmental Management. This statute includes a provision imposing strict liability for negligent or intentional pollution of ground waters in the State. R.I. General Laws Section 46-12-37.

Section 939.700(f) states that no State laws have been identified as interfering with the Act's requirements and frustrating the accomplishment of its goals. If such State laws in an individual situation interfere with the achievement of the purposes and requirements of the Act, they may be superseded and preempted with respect to the

performance standards of §§ 939.815 through 939.828 as they affect a particular coal exploration or surface coal mining operation by publication of a notice to that effect in the Federal Register.

In order to coordinate the Federal program permitting process under the Act with the permitting requirements imposed by other Federal statutes and by Rhode Island, § 939.770 identifies the following pertinent permits, statutes, and rules.

(a) Air contaminant discharge permits and variances granted by the Department of Environmental Management pursuant to the Rhode Island Clean Air Act, R.I. General Laws Sections 23-23-1 to 23-23-23.

(b) Chapter 20 of the Rhode Island Act on Waters and Navigation, R.I. General Laws Sections 46-20-1 to 46-20-5, permit an owner of any lands in the State to file a petition with the town council of the town in which the lands are situated for permission to drain his lands.

(c) The Act for Inspection of Dams and Reservoirs, R.I. General Laws Sections 46-19-1 to 46-19-8, prohibits construction or substantial alteration of any dam or reservoir without first filing with the Department of Environmental Management, the work plan proposal and specifications, and securing written approval of the Director.

(d) Permits to possess or use explosives and permits for quarry operations and repeated blasting issued by the State Fire Marshal. No person shall conduct blasting operations without first posting a bond and obtaining a license from the State Fire Marshal. R.I. General Laws Sections 23-28.28-1 to 23-28.28-27.

(e) Permits from the appropriate local historic district commission are required prior to any construction, alteration, or demolition affecting any structures within a historic district. R.I. General Laws Sections 45-24.1-1 to 45-24.1-16.

(f) The Antiquities Act of Rhode Island, R.I. General Laws Sections 42-45.1-1 to 42-45.1-13, prohibits exploration or excavation activities on any site designated as a State archeological landmark without a permit from the State Historical Preservation Commission.

(g) Permits for dredging, filling, or otherwise altering coastal wetlands and all directly related contiguous areas are issued by the Coastal Resources Management Council. R.I. General Laws Sections 46-23-1 to 46-23-17.

(h) Permits and variances relative to disposal, transportation, and containment of hazardous wastes are issued by the Department of

Environmental Management pursuant to the Rhode Island Hazardous Waste Management Act of 1978. R.I. General Laws Sections 23-19.1-1 to 23-19.1-22.

(i) The Department of Environmental Management is responsible for issuing orders of approval authorizing discharge of sewage into waterways within the State and modification or operation of sewage disposal systems. R.I. General Laws Sections 46-12-1 to 46-12-37.

(j) The Wetlands Protection Act, R.I. General Laws Sections 2-1-21 to 2-1-24 authorizes the Department of Environmental Management to designate wetlands and issue permits for excavation, drainage, or any other alteration affecting wetlands within the State.

Copies of the above Rhode Island statutes and other Rhode Island statutes referred to herein are in the administrative record and are available for review at the place listed above under "ADDRESSES."

Part 939.764 specifies that the process for designating areas as unsuitable for surface coal mining operations shall begin on May 28, 1983. This is because the Federal coal exploration program for Rhode Island published April 28, 1982, was effective on May 28, 1982, thereby triggering the one-year waiting period specified by Section 504(g) of the Act (47 FR 18232 and 18282; April 28, 1982).

OMB Review

The recordkeeping and reporting requirements of the Federal program for Rhode Island are the same as those of the permanent program regulations which have been approved by the Office of Management and Budget under 44 U.S.C. 3507. Although this program contains information and recordkeeping requirements, OSM anticipates less than ten respondents.

Other Information

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.*).

The reasons underlying this determination are as follows:

This Federal program would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets; nor would it increase costs or prices for consumers, individual industries, Federal, State, or local

governmental agencies or geographic regions. We further certify that there will be no significant demographic effects, direct costs, indirect costs, nonquantifiable costs, competitive effects, enforcement costs, or aggregate effects on small entities.

The Office of Surface Mining Reclamation and Enforcement has determined that this rule is categorically excluded from compliance with the National Environmental Policy Act in accordance with 40 CFR 1507.3.

List of Subjects in 30 CFR Part 939

Coal mining, Intergovernmental relations, Surface mining, Underground mining, Reporting requirements.

Drafting Information

This program was drafted by Mark D. Caudill, Office of the Solicitor, and James M. Kress, Branch of Regulatory Programs, Office of Surface Mining.

(Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*))

Dated: August 12, 1983.

W. L. Dare,

Acting Deputy Assistant Secretary, Energy and Minerals.

The Federal Regulatory program for Rhode Island, 30 CFR Part 939, is revised to read as follows:

PART 939—RHODE ISLAND

- | | |
|---------|--|
| Sec. | |
| 939.700 | Rhode Island Federal program. |
| 939.701 | General. |
| 939.707 | Exemption for coal extraction incident to government-financed highway or other construction. |
| 939.761 | Areas designated unsuitable for surface coal mining by Act of Congress. |
| 939.762 | Criteria for designating areas as unsuitable for surface coal mining operations. |
| 939.764 | Process for designating areas unsuitable for surface coal mining operations. |
| 939.770 | General requirements for permits and exploration procedures. |
| 939.771 | General requirements for permits and permit applications. |
| 939.776 | General requirements for coal exploration. |
| 939.778 | Surface mining permit applications—minimum requirements for legal, financial, compliance, and related information. |
| 939.779 | Surface mining permit applications—minimum requirements for information on environmental resources. |
| 939.780 | Surface mining permit applications—minimum requirements for reclamation and operations plan. |
| 939.782 | Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information. |

Sec.

- 939.783 Underground mining permit applications—minimum requirements for information on environmental resources.
- 939.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
- 939.785 Requirements for permits for special categories of mining.
- 939.786 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.
- 939.787 Administrative and judicial review of decisions on permit applications.
- 939.788 Permit review, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.
- 939.795 Small operator assistance.
- 939.800 General requirements for bonding of surface coal mining and reclamation operations.
- 939.815 Performance standards—coal exploration.
- 939.816 Performance standards—surface mining activities.
- 939.817 Performance standards—underground mining activities.
- 939.819 Special performance standards—auger mining.
- 939.823 Special performance standards—operations on prime farmland.
- 939.824 Special performance standards—mountaintop removal.
- 939.826 Special performance standards—operations on steep slopes.
- 939.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
- 939.828 Special performance standards—in situ processing.
- 939.842 Federal inspections.
- 939.843 Federal enforcement.
- 939.845 Civil penalties.
- 939.850 Blaster training and certification.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977, 91 Stat. 445 *et seq.* (30 U.S.C. 1201 *et seq.*)

§ 939.700 Rhode Island Federal Program.

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

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

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

(d) The information collection requirements contained in this part do

not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

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

(1) R.I. General Laws Sections 23-19.1-1 to 23-19.1-22, regulating treatment, disposal, and transportation of hazardous wastes within the State of Rhode Island.

(2) R.I. General Laws Sections 46-12-1 to 46-12-37, controlling the pollution of any of the State's waterways.

(f) There are no Rhode Island laws that generally interfere with the achievement of the purposes and requirements of the Act and which must be superseded and preempted pursuant to Section 504(g). Some Rhode Island laws may in an individual situation interfere with the achievement of the purposes and requirements of the Act and may be preempted and superseded with respect to the performance standards of Sections 939.815-939.828 as they affect a particular coal exploration or surface mining operation by publication of a notice to that effect in the Federal Register.

§ 939.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter shall apply to surface coal mining and reclamation operations in Rhode Island.

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

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

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

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

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

Part 762 of this chapter, Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations, shall apply to surface coal mining and reclamation operations.

§ 939.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall become applicable in Rhode Island on May 28, 1983.

§ 939.770 General requirements for permits and exploration procedures.

(a) Part 770 of this chapter, General Requirements for Permit Systems Under State Programs, shall apply to coal exploration and surface coal mining and reclamation operations.

(b) No person shall conduct coal exploration which results in the removal of more than 250 tons of coal nor shall any person conduct surface coal mining operations without a permit issued by the Secretary pursuant to 30 CFR Part 770 and permits issued pursuant to State law, including: the Wetlands Protection Act (R.I. General Laws Section 2-1-22); Chapter 20 of the Waters and Navigation Act (petitions for ditches and drains) (R.I. General Laws Section 46-20-1 *et seq.*); the Coastal Resources Management Council Act of 1971 (R.I. General Laws Section 46-23-6); the Rhode Island Clean Air Act (R.I. General Laws Section 23-23-15); the Rhode Island Hazardous Waste Management Act of 1978 (R.I. General Laws Section 23-19.1-11 *et seq.*); the Rhode Island Act for Inspection of Dams and Reservoirs (R.I. General Laws Section 46-19-1 *et seq.*); and Chapter 23-28.28 of Rhode Island's Health and Safety Code (R.I. General Laws Section 23-28.28-1, *et seq.*, permits for blasting), and an order of approval authorizing discharge of sewage into waterways within the State and modification or operation of sewage disposal systems if applicable (R.I. General Laws Sections 46-12-1 to 46-12-37). The permit issued by the Secretary shall incorporate the requirements of the Rhode Island Historical Zoning Act of 1954, as amended (R.I. General Laws Section 45-24.1-1 *et seq.*) and the Rhode Island Antiquities Act of 1974 (R.I. General Laws Section 42-45.1-1 *et seq.*).

(c) The Secretary shall coordinate review and issuance of a coal exploration or surface coal mining permit with the review and issuance of other Federal and State permits listed in this Section and 30 CFR Part 770.

§ 939.771 General requirements for permits and permit applications.

(a) Part 771 of this chapter, General Requirements for Permits and Permit Applications, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

(b) A person who wishes to conduct new surface coal mining and reclamation operations or who wishes a revision of his permit shall file a complete application at least 12 months prior to the date upon which permit issuance or revision is desired, and shall pay to the Secretary a permit fee in accordance with § 736.25 of this chapter.

§ 939.776 General requirements for coal exploration.

(a) Part 776 of this chapter, General Requirements for Coal Exploration, shall apply to any person who conducts or seeks to conduct coal exploration operations.

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

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, any person who intends to conduct coal exploration shall, prior to conducting the exploration, file with the regulatory authority a written notice of intention to explore including:

(1) The name, address, and telephone number of the person seeking to explore;

(2) The name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration activities;

(3) A precise description and map, at a scale of 1:24,000 or larger, of the exploration area;

(4) A statement of the period of intended exploration;

(5) If the surface is owned by a person other than the person who intends to explore, a description of the basis upon which the person will explore claims the right to enter such area for the purpose of conducting exploration and reclamation; and

(6) A description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration activities.

§ 939.778 Surface mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 939.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 939.780 Surface mining permit applications—minimum requirements for reclamation and operations plan.

(a) Part 780 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

(b) The applicant for a permit shall demonstrate compliance with Rhode Island air quality control laws (R.I. General Laws Section 23-23-1 *et seq.*) by obtaining an order of approval from the Director of the Department of Environmental Management for any facility with the potential to emit one ton per year or more of any air contaminant pursuant to R.I. General Laws Section 23-23-15.

§ 939.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 782 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application for a permit to conduct underground coal mining operations.

§ 939.783 Underground mining permit applications—minimum requirements for information on environmental resources.

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

§ 939.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, shall apply to any person who makes application to conduct underground coal mining.

§ 939.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, Requirements for Permits for Special Categories of Mining, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 939.786 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.

Part 786 of this chapter, Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions, shall apply to the review of applications made by any person for surface coal mining and reclamation operations.

§ 939.787 Administrative and judicial review of decisions on permit applications

Decisions on permit applications shall be subject to administrative and judicial review in accordance with Part 787 of this chapter and Sections 520, 525 and 526 of the Act.

§ 939.788 Permit reviews, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.

Part 788 of this chapter, Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits, shall apply to review, revision, and renewal of permits for surface coal mine operations, and to transfer, sale, and assignment of rights granted under permits.

§ 939.795 Small operator assistance.

Part 795 of this chapter, Small Operator Assistance, shall apply to any person making application for assistance under the small operator assistance program.

§ 939.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs, shall apply to all surface coal mining and reclamation operations.

§ 939.815 Performance standards—Coal exploration.

Part 815 of this chapter, Permanent Program Performance Standards—Coal Exploration, shall apply to any person conducting coal exploration operations.

§ 939.816 Performance standards—surface mining activities.

Part 816 of this chapter, Permanent Program Performance Standards—Surface Mining Activities, shall apply to any person who conducts surface coal mining and reclamation operations.

§ 939.817 Performance standards—underground mining activities.

Part 817 of this chapter, Permanent Program Performance Standards—Underground Mining Activities, shall apply to any person who conducts underground coal mining operations.

§ 939.819 Special performance standards—auger mining.

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

§ 939.823 Special performance standards—operations on prime farmland.

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

§ 939.824 Special performance standards—mountaintop removal.

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

§ 939.826 Special performance standards—operations on steep slopes.

Part 826 of this chapter, Special Permanent Program Performance Standards—Operations on Steep Slopes, shall apply to any person who conducts surface coal mining and reclamation operations on steep slopes.

§ 939.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

§ 939.828 Special performance standards—in situ processing.

Part 828 of this chapter, Special Permanent Program Performance Standards—In Situ Processing, shall

apply to any person who conducts in situ processing activities.

§ 939.842 Federal inspections.

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

(b) The Secretary will furnish copies of inspection reports and reports of any enforcement action taken to the Rhode Island Department of Environmental Management upon request.

§ 939.843 Federal enforcement.

(a) Part 843 of this chapter, Federal Enforcement, shall apply when enforcement action is required for violations on coal exploration or surface coal mining and reclamation operations.

(b) The Office will furnish a copy of any order to show cause to the Rhode Island Department of Environmental Management upon request.

§ 939.845 Civil penalties.

Part 845 of this chapter, Civil Penalties, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

§ 939.850 Blaster training and certification.

Part 850 of this chapter, Programs for Blasters Training and Certification, shall apply to any person who conducts coal exploration or surface coal mining operations.

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federal register

Monday
September 12, 1983

Part IV

Department of the Interior

**Office of Surface Mining Reclamation and
Enforcement**

**Massachusetts; Surface Mining and
Reclamation Operations Under Federal
Program; Final Rules**

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 921****Massachusetts; Surface Mining and Reclamation Operations Under Federal Program****AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.**ACTION:** Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior promulgates a Federal program for regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in Massachusetts. This includes surface effects of underground coal mining. This program is necessary in order to regulate surface coal mining activities in the absence of a State program.

EFFECTIVE DATE: October 12, 1983.

ADDRESSES: The Federal program for Massachusetts will be administered and enforced by OSM's Pennsylvania Field Office, 100 Chestnut Street, Suite 300, Harrisburg, Pennsylvania 17101.

FOR FURTHER INFORMATION CONTACT: James M. Kress, Office of Surface Mining, Branch of Regulatory Programs, Room 222, 1951 Constitution Avenue, NW., Washington, D.C. 20240. Telephone: (202) 343-5866.

SUPPLEMENTARY INFORMATION:**Availability of Copies**

Copies of the Federal program for Massachusetts are available for inspection and may be obtained at the OSM office listed above in "ADDRESSES."

Background

Under Section 504(a) of the Surface Mining Control and Reclamation Act of 1977 (the Act), Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, the Secretary of the Interior (the Secretary) is required to promulgate a Federal program within 34 months after passage of the Act if a State fails to submit a program to assume responsibility for regulating surface mining activities, fails to resubmit a program within 60 days of disapproval, or fails at any time to implement, enforce or maintain an approved State program.

Massachusetts has identifiable coal reserves within its borders, but has failed to submit a program to the Secretary to obtain primary regulatory responsibility. The Secretary believes that it is reasonable to expect that coal

exploration or surface coal mining and reclamation operations could occur in Massachusetts before June 1985. Therefore, pursuant to 30 CFR 736.11, the Director must promulgate a Federal program.

This decision does not necessarily imply any expectation of imminent mining in Massachusetts. Instead, it recognizes that the Act prohibits coal exploration or surface coal mining in States which do not have either an approved State program or a fully promulgated Federal program. Accordingly, OSM believes it prudent to put the required regulatory framework into place so that any future coal exploration or mining may be conducted in Massachusetts legally, without unnecessary delay, and in an environmentally sound manner.

Once a decision is made that a Federal program is necessary for a State, the Secretary must make several determinations before promulgating a program. Section 504(a) of the Act requires that in implementing a Federal program the Secretary take into consideration the nature of the State's terrain, climate, biological, chemical, and other relevant physical conditions. This requirement is also found in the regulations, 30 CFR 736.22(a)(1). The Act (Section 505(b)) and the regulations (§ 736.23(b)) also provide that if a State has more stringent land use and environmental laws or regulations, they shall not be construed to be inconsistent with the Act or the Secretary's regulations. If the State's laws or regulations establish more stringent standards regulating surface mining control and reclamation procedures than those found in the Act or the Secretary's regulations, or if the State regulates or protects an aspect of the environment affected by surface mining operations which neither the Act nor the Secretary's regulations protect, then those State standards are specifically preserved. Thus, the Secretary believes that the requirements of Section 505(b) can best be met by identifying Massachusetts laws and regulations which impose more stringent environmental controls, and by listing them in § 921.700(e).

Also, in promulgating a program for a State, Section 504(g) of the Act specifies that any State statute or regulation which regulates surface mining and reclamation operations subject to the Act will be superseded and preempted by the Federal program to the extent that it interferes with the achievement of the purposes and requirements of the Act and the Federal program. This provision is reinforced by Section 505(a)

of the Act, which states that only those State laws and regulations which are inconsistent with the Act and its implementing regulations shall be superseded by the Federal program. Thus, State statutes and rules regulating the same activities as those covered by the Federal law and regulations and which interfere with achievement of the purposes of the Act must be identified and preempted by OSM. The Director has identified such Massachusetts statutes and rules at § 921.700(f).

Finally, a Federal program, according to Section 504(h) of the Act, must include a process for coordinating the review and issuance of surface mining permits with other Federal or State permits applicable to the proposed operation. The Federal statutes with which the surface mining permitting process must be coordinated are set out in 30 CFR 736.22(c). State statutes for which a permit is required must be identified in the process of promulgating a Federal program, and the Federal program must provide for coordination with the review and issuance procedures required by those statutes (See § 921.770(b)).

Federal programs are based on the Secretary's permanent program regulations: 30 CFR Subchapter A, F, G, J, K, L, and M. The permanent program regulations establish procedures and performance standards under the Act and form the benchmark for State programs. In order for a State to have a program approved by the Secretary, Section 503(a)(7) requires that the State's rules and regulations be consistent with the Secretary's regulations.

The parts of the permanent program regulations that must be included in a Federal program are listed at 30 CFR 736.22(b). They include general requirements and definitions (Parts 700 and 701), the exemption for coal extraction incident to government-financed highway or other construction (Part 707), the designation of lands unsuitable for surface mining (Parts 760, 761, 762, and 765), permits and permit applications (Subchapter G), reclamation bonding (Subchapter J), performance standards (Subchapter K), inspection and enforcement (Parts 842, 843 and 845), and blaster training and certification (Subchapter M). In addition, the provision in the permanent regulations on protection of employees (Subchapter P) and restrictions on financial interests (Part 706) are applicable to Federal employees who perform functions or duties under the Act.

The rules for the permanent program are found in 30 CFR Parts 700-707 and 730-865. Part 705 was published October 20, 1977 (42 FR 56060). Parts 795 and 865 (originally Part 830) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published at 44 FR 15323-15463 (March 13, 1979). Subchapter M was published on December 12, 1980 (45 FR 82098). Corrections were published at 44 FR 15484 (March 14, 1979); 44 FR 53507-53509 (September 14, 1979); 44 FR 66195 (November 19, 1979); 45 FR 26001 (April 6, 1980); 45 FR 37818 (June 5, 1980); and 45 FR 47424 (July 15, 1980). Amendments to the rules have been published at 44 FR 60969 (October 22, 1979) as corrected at 44 FR 75143 (December 19, 1979); at 45 FR 77440-77447 (December 31, 1979); 45 FR 2626-2629 (January 11, 1980); 45 FR 25998-26001 (April 16, 1980); 45 FR 33926-33927 (May 20, 1980); 45 FR 39446-39447 (June 10, 1980); 45 FR 52306-52324 (August 6, 1980); 45 FR 52375 (August 7, 1980); 45 FR 58780-58786 (September 4, 1980); and 45 FR 76932 (November 20, 1980); 46 FR 37232 (July 17, 1981); 46 FR 41702 (August 17, 1981); 46 FR 47720 (September 29, 1981); 46 FR 53376 (October 28, 1981); 46 FR 52287 (October 26, 1981); 47 FR 32942 (July 30, 1982); 47 FR 33431 (August 2, 1982); 47 FR 35620 (August 16, 1982); 47 FR 38486 (August 31, 1982); 47 FR 44942 (October 12, 1982); 47 FR 47212 (October 22, 1982); 47 FR 51316 (November 12, 1982); 48 FR 1160 (January 10, 1983); 48 FR 2266 (January 18, 1983); 48 FR 6912 (February 16, 1983); 48 FR 9199 (March 3, 1983); 48 FR 9486 (March 4, 1983); 48 FR 9478 (March 4, 1983); 48 FR 9788 (March 8, 1983); 48 FR 14814 (April 5, 1983); 48 FR 19314 (April 28, 1983); 48 FR 20392 (May 5, 1983); 48 FR 21446 (May 12, 1983); 48 FR 22110 (May 16, 1983); 48 FR 22092 (May 16, 1983); 48 FR 23356 (May 24, 1983); 48 FR 24638 (June 1, 1983); 48 FR 29802 (June 28, 1983); 48 FR 30312 (June 30, 1983); 48 FR 32910 (July 19, 1983); and 48 FR 32932 (July 19, 1983).

Representatives of industry, two States and several environmental groups challenged the permanent regulatory program in the U.S. District Court for the District of Columbia. These suits were consolidated and heard in a single lawsuit entitled *In re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79-1144). In response to the arguments raised in the challenges, the Secretary voluntarily suspended several permanent program regulations. These suspensions were announced in the *Federal Register* on November 27, 1979 (44 FR 67942); December 31, 1979 (44 FR 77447-77455); January 30, 1980 (45 FR 6913); and

August 4, 1980; (45 FR 51547-51550). In two opinions the Court remanded certain other regulations which had been challenged in the lawsuit. These opinions were issued on February 26, 1980, and May 16, 1980, subsequent modifications of the rules are noted above and in the rule revisions pursuant to regulatory reform, and are discussed below.

Massachusetts Federal Program

On January 5, 1982, OSM proposed a Federal program that would regulate coal exploration and provide for a process of designating lands unsuitable for surface coal mining for the State of Massachusetts (47 FR 560). The coal exploration program which was proposed was uniform with respect to four States: Massachusetts, Michigan, Oregon, and Rhode Island. A program regulating just coal exploration was proposed because the Director was aware of the interest of some persons in conducting exploration. While Massachusetts law and regulations do provide for some limited regulation of coal exploration and surface coal mining, the Secretary is nevertheless required by the Act to regulate such activities in the absence of an approved State program.

On April 28, 1982, OSM published the final rule notice implementing a program in Massachusetts to regulate coal exploration and to provide for a process for designating lands unsuitable for mining (47 FR 18232). The program became effective on May 28, 1982.

On April 1, 1983, OSM proposed to replace the exploration program for Massachusetts with a full program to regulate surface coal mining and reclamation operations, exploration operations, and the surface effects of underground mining operations. While superseding the exploration program, this later proposal and promulgation does not alter the date after which petitions may be submitted to designate lands unsuitable for coal mining in Massachusetts. That date remains May 28, 1983.

The April 1, 1983, notice announced a public hearing for June 9, 1983, and a public comment period closing June 17, 1983.

The Massachusetts Federal program will be administered by the Pennsylvania Field Office of OSM, at the address shown above under "ADDRESSES." OSM will administer the program until such time as Massachusetts submits a State regulatory program which is approved pursuant to 30 CFR Parts 731 and 732.

Pursuant to Section 504(a), the Secretary becomes the regulatory

authority when a Federal program is implemented for a State. OSM's permanent program regulations contain references to "the regulatory authority" and "the State regulatory authority," both of which mean the Secretary when a Federal program for a State is involved. Section 701(22) of the Act.

The Office of Surface Mining is delegated all of the Secretary's authority for implementing, maintaining, and enforcing a Federal program. This Federal program for Massachusetts does not change these responsibilities.

Explanation of Cross-Referencing

In the general notice of intent to promulgate Federal programs of May 16, 1980 (45 FR 32228), OSM stated that each Federal program would be specific to the particular State and would implement the permanent program procedures and environmental protection provisions of the Act (45 FR 32229). However, except to make changes to preserve more stringent State environmental protection standards, to list State laws requiring permits for which coordination is required, and to make any specific changes identified which are needed to reflect conditions in a State, OSM believes that few changes are needed in the permanent program regulations for any particular State for which a Federal program must be promulgated.

During January 1981, the Secretary directed that the Department review all existing regulations in order to eliminate those which are burdensome, excessive, and unnecessary. A thorough review of the permanent program regulations was initiated. The effort is now nearing completion and is resulting in extensive revisions. These changes are noted in the above listing of modifications in the permanent program rule.

To take advantage of the results which revision of the permanent program regulations is achieving, OSM has developed and promulgated this Federal program in the following manner. Rather than repeating the full text of the permanent regulations, there is instead a cross-reference to the permanent program regulations. For example, criteria for the designation of lands unsuitable for surface coal mining are provided by the statement that "Part 762 of this chapter . . . shall apply to surface coal mine operations." See Section 921.762. Persons wishing to obtain copies of the precise contents of a cross-referencing Federal program should contact the OSM office indicated above under "ADDRESSES." Each OSM Field Office also has complete and current copies of the permanent program

rules cross-referenced in the Federal program for each State within its jurisdiction.

As each permanent program regulation is revised, this Federal program will be similarly revised. This cross-referencing effect on Federal programs through changes in the permanent program regulations will occur any time a permanent program rule is revised, not just during the regulatory reform effort. No separate rulemaking will be undertaken or necessary for revision of this program, however, unless OSM determines that special conditions are necessary for Massachusetts. See OSM's July 13, 1982, notice advising the public that all changes in the permanent program rules would also result in corresponding changes in Federal programs, absent special conditions (47 FR 30287).

One effect of regulatory reform is a change in the numbering of OSM's permanent program rules. Once regulatory reform is completed, OSM will then revise each cross-referencing Federal program to bring the program into line with the counterpart permanent program rule.

The promulgation of this cross-referencing program does not modify the substance of OSM's permanent program rules. Where specific provisions are needed for Massachusetts's Federal program which are different from the permanent program regulations, a separate paragraph has been added to the appropriate section of this Federal program.

Several provisions of the permanent program regulations are already applicable to this Federal program and need not be cross-referenced here because they were fully promulgated for application to all regulatory programs. Those provisions are 30 CFR Chapter VII, Subchapter P—Protection of Employees; Part 706—Restrictions on Financial Interests of Federal Employees; and Part 769—Petition Process for Designation of Federal Lands Unsuitable for Surface Coal Mining. (30 CFR Part 764—Designating Lands Unsuitable for Surface Coal Mining—has been included in the Massachusetts program by a cross-reference under § 921.764, to provide a petition process on non-Federal and non-Indian lands in that State.)

With regard to the bonding regulations (Subchapter J), only Part 800 is cross-referenced because OSM has revised subchapter J to include just one part, Part 800 (48 FR 32932, July 19, 1983).

Content and Organization of the Program

The content and organization of the Federal program for Massachusetts generally follows the permanent program regulations. But, as discussed above, instead of the full text appearing, each section of this program includes only reference to the pertinent permanent program regulation. Section 921.700(e) states that no Massachusetts statutes have been identified as being more stringent than the corresponding provisions of the Act or the Secretary's regulations. Section 921.700(f) set out the Massachusetts statutes and rules preempted by the Federal program published here today. Where specific provisions are needed for Massachusetts which are different from the permanent program regulations, a separate paragraph has been added to the appropriate section.

Disposition of Comments

OSM proposed a Federal program for Massachusetts on April 1, 1983. The preamble to the proposed program invited public comment and announced a public hearing in Boston for June 9, 1983. The public comment period closed on June 17, 1983. No one testified at the public hearing, but OSM did receive one written comment, which is discussed below.

The commenter suggested that OSM consider the Massachusetts statute establishing the Massachusetts Register of Historic Places (Chapter 152, Acts of 1982) and the related final regulations (950 CMR 71) effective March 31, 1983.

OSM agrees and has included the cited act and regulations in § 921.770(b).

Detailed Discussion

Since Section 504(a) of the Act obligates the Secretary to take into account the nature of the terrain and the climate, in addition to biological, chemical, and other relevant physical conditions in each State, OSM reviewed pertinent Massachusetts statutes in the process of developing this Federal program. OSM has determined that there are no Massachusetts statutes which set more stringent land use and environmental controls for surface mining, as stated in § 921.700(e).

OSM examined the Massachusetts statutes listed in § 921.700(f) and concluded that they would interfere with achievement of the goals and purposes of the Act. In accordance with Section 504(g) of the Act and 30 CFR 736.23, this Federal program preempts and supersedes the following Massachusetts statutes:

(a) The Coal Mining Regulatory and Reclamation Act of 1977, as amended, Mass. Gen. Laws, Ch. 21B, Sections 1-15, governs all coal mining operations conducted in the State of Massachusetts. This statute is preempted to the extent that it empowers the Commissioner of the Department of Environmental Quality Engineering to license all coal mining and coal exploration, oversee all reclamation procedures, and protect the citizens and the environment of Massachusetts against potential public health hazards or significant damage occurring from operation of coal mines within the State which affect more than two acres of land and which are not exempt from regulation under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Under this Federal program, OSM is the permitting authority for surface coal mining and coal exploration and has full responsibility for the protection of public health and the environment, as well as for ensuring the reclamation of surface-mined coal lands, for operations subject to regulation under SMCRA.

(b) Mass. Gen. Laws, Ch. 21, Sections 54-56, authorize the Division of Mineral Resources in the Department of Environmental Quality Engineering to license exploration for, and regulate extraction of, mineral resources in coastal waters or on subsurface lands. These statutes are preempted only to the extent the State of Massachusetts interprets them as authority for the Division of Mineral Resources to issue permits for prospecting for and extracting coal underground. OSM becomes the exclusive permitting authority for all coal mining and coal exploration operations subject to regulation under SMCRA, including the surface effects of underground mining and exploration for coal, as of the effective date of this Federal program for Massachusetts. Since this Federal program does not regulate mineral leases, the Massachusetts Division of Mineral Resources retains its authority to lease exclusive rights to extract any minerals, including coal, found on State lands.

The Massachusetts statutes summarized above constitute the body of Massachusetts law on exploration and surface mining of minerals and reclamation of mined land. Administration and enforcement of these statutes are the responsibilities of the Department of Environmental Management. These statutes are inconsistent with the Federal Act or the permanent program regulations and interfere with attainment of the goals

and purposes of the Act. Accordingly, OSM is preempting these statutes to the extent that Massachusetts interprets them as authority to regulate coal exploration or surface coal mining and reclamation operations in Massachusetts, except insofar as they govern operations affecting two acres of land or less or which are not otherwise subject to regulation under the provisions of the Surface Mining Control and Reclamation Act of 1977.

To coordinate the Federal program permitting process with the permitting requirements of Massachusetts and those imposed by other Federal statutes, § 921.770(b) identifies the various permits, statutes, and rules which may, expressly or by implication, impact on coal exploration or surface coal mining and reclamation of lands. The pertinent permits, statutes, and rules are:

(a) Mass. Ann. Laws, Ch. 21, Sections 8-17B, authorize the Water Resources Commission to designate waterways within Massachusetts as scenic or historic rivers and streams which may not be dredged, diverted, or altered without a prior order of approval from the Commission. Mass. Ann. Laws, Ch. 21, Section 17B. Violations of the Commission's orders prohibiting or restricting dredging or otherwise altering Massachusetts' waterways and streams are punishable by a fine or imprisonment, or both. *Id.* Mass. Ann. Laws, Ch. 21, Section 16, renders it illegal for any person to engage in the business of digging or drilling wells within the State unless he has first obtained a certificate of registration from the Commission.

(b) Mass. Ann. Laws, Ch. 9, Sections 26-27D, prohibit exploration or excavation operations from being conducted on any site designated as a historical or archeological landmark by the State Historical Commission and on land owned or controlled by the State, its agencies, or political subdivisions without first securing a field investigation permit from the State Archeologist. It is unlawful to conduct exploration or excavation operations on private property reserved for agricultural, conservation, or recreational uses except when approved by the property owner and authorized under a field inspection permit obtained from the State Archeologist. Mass. Ann. Laws, Ch. 9, Section 27D.

(c) Mass. Ann. Laws, Ch. 184, Sections 31-32, grant owners of private property within the State the right to impose prohibitions against, *inter alia*, mineral exploration or mining activities which may affect the surface and to impose restrictions limiting the surface land to uses for conservation, recreational, or

agricultural purposes to preserve those lands or improvements in their historic or natural conditions.

(d) Mass. Ann. Laws, Ch. 132, Sections 40-46, make it unlawful for any person to cut or cause timber to be removed from Massachusetts' forest lands unless cutting and, where appropriate, reseeded are done in accordance with an approved operational plan developed and promulgated by the Division of Parks and Forest. Persons are required to give the Division prior written notice of their intention to remove any timber. Failure to give the requisite notice or failure to follow the approved plan of operations is punishable by a maximum fine of \$25.00 for each acre of land on which the unauthorized cutting occurs.

(e) The Wetlands Protection Act, Mass. Ann. Laws, Ch. 131, Sections 40-48, makes it unlawful to alter or dredge wetlands or floodplains which are determined to be areas of significance for flood control, water supply, or pollution control, without first obtaining and complying with an order of conditions for the proposed alteration. The State Conservation Commission is responsible for adopting, repealing, or modifying orders governing coastal wetlands. Mass. Ann. Laws, Ch. 131, Section 40. Orders governing inland wetlands are issued by the Board of Environmental Management. Mass. Ann. Laws, Ch. 131, Section 40A.

Section 42 prohibits the discharge of any waste or other material in violation of Section 40 or any provision of the Massachusetts Clean Water Act which may injure or kill fish or fish spawn within the State's inland waters. Nor shall a person alter or manipulate the flows or water levels in any of the State's inland waters to the extent that such manipulation injures or kills fish or fish spawn. This statute renders the use of explosives for engineering and public purposes exempt from the general prohibition only if an approved blasting permit has been granted by Federal, State, or municipal government authorities. Any person who violates either of Section 42's prohibitions is deemed liable in tort to the State's Division of Fisheries and Wildlife for damages in the amount of double the current commercial value of the fish killed. Section 48 makes it unlawful for a person to drain any pond, reservoir, or body of water within the State, unless he gives the Division of Fisheries and Wildlife written notice of his intention at least 10 days before commencing the drainage project. Exceptions to this prohibition are provided for emergencies and for drainage of any body of water used for insect control, irrigation, or public water supply.

(f) Mass. Ann. Laws, Ch. 21A, Section 14, prohibits the disposal of dredged materials within the marine boundaries of the State unless disposal is done pursuant to, and in accordance with, the terms and conditions of an approved permit issued by the Department of Environmental Quality Engineering. Disposal of dredged material within the State must comply with the Division's rules and regulations at 310 Code of Massachusetts Regulations (CMR) 9.01 *et seq.*

(g) The Massachusetts Hazardous Waste Management Act, Mass. Ann. Laws, Ch. 21C.

(1) Sections 1-14 make it unlawful for any person to collect, transport, treat, or dispose of hazardous waste in the absence of a valid license from the Department of Environmental Quality Engineering.

(2) Section 37 allows disposal of hazardous waste in a landfill only after treatment in accordance with the Department's regulations, and then only if the Department determines that the waste cannot be recycled or disposed of by some other means authorized by the Department's regulations.

(h) The Massachusetts Clean Water Act, Mass. Ann. Laws, Ch. 21, Sections 26-53, prohibits any person from discharging any pollutants into any of the State's waterways, except in conformity with a valid permit issued by the Division of Water Pollution Control. Permittees are also required to operate, install, or maintain a treatment facility or discharge outlet for pollutants. Mass. Ann. Laws, Ch. 21, Section 43.

(i) A person owning quarries, mines, or mineral deposits, which cannot be reached or used in the ordinary manner without crossing adjacent lands belonging to another person or occupied as a highway, must petition the commission for the county in which the land lies for approval to construct roads, drains, or ditches across the adjacent lands or roads. Mass. Ann. Laws, Ch. 252, Sections 15-18.

(j) Drilling or removal of sand or any minerals is prohibited in any area designated an ocean sanctuary by the Department of Environmental Management. Mass. Ann. Laws, Ch. 132A, Sections 13-18.

(k) Mass. Ann. Laws, Ch. 148, Sections 9-19, authorize the State Fire Prevention Board to promulgate rules and regulations governing the use, transportation, and storage of explosives. Section 13 prohibits the use or storage of explosives in the absence of a license from the local licensing authority. Holders of licenses are also required to obtain certificates of

registration from the Fire Commissioner of the city or county in which the explosives are to be used. Mass. Ann. Law, Ch. 148, Section 13. An applicant for a blasting permit must post an approved surety bond in favor of the licensing authority to cover the risk of damages that may ensue from his blasting activities. Mass. Ann. Laws, Ch. 148, Section 19.

(1) Mass. Ann. Law, Ch. 152, establishes the Massachusetts Register of Historic Places which is comprehensive in its requirements for environmental review.

Copies of the above Massachusetts statutes and other Massachusetts statutes referred to herein are in the administrative record and are available for review at the place listed above under "ADDRESSES."

Paragraph (g) of Section 921.700 authorizes the Secretary to grant a limited variance from the performance standards of the permanent program rules based on a showing by a permit applicant or permittee that the variance is necessary due to the unique nature of Massachusetts' terrain, climate, biological, chemical, or other relevant physical conditions. This provision gives effect to Section 504(a), which directs the Secretary to take these physical characteristics into consideration in promulgating a Federal program for a State. The permit applicant has the burden of requesting the variance and of demonstrating that such a variance is necessary based on special environmental conditions found in Massachusetts. To ensure that any proposed variance would not lessen the protection provided by the provision from which a variance is sought, OSM has added a clause to Paragraph (g) requiring the applicant to show that his proposed alternative is no less effective than the environmental protection requirements of the regulations in this program and that the proposed variance be consistent with the Act.

In promulgating Federal programs for a State, the Secretary reviews State laws to determine whether any must be superseded because they would interfere with achievement of the purposes of a Federal program, and whether any establish more stringent standards for environmental protection and must be preserved. The presumption is that State laws are a reflection of the particular environmental conditions in the State. There may be conditions present, however, which are not specifically covered by State law, but which must be accommodated pursuant to the requirement in Section 504(a). Paragraph (g) enables the Secretary to do so.

Section 921.700(g) does not authorize a general variance. Congress did not provide for a general variance from standards set in the Act. Congress was concerned that States not be allowed to grant variances from Federally-set minimum standards. The variance provided under Section 921.700(g) is intended for unique or special environmental conditions found in Massachusetts which are not adequately provided for in OSM's permanent program regulations.

Accordingly, the applicant would have to demonstrate that special environmental conditions in Massachusetts necessitated the limited variance sought.

Section 921.764 specifies that the process for designating areas in Massachusetts as unsuitable for surface coal mining operations shall begin on May 28, 1983. This is because the Federal coal exploration program for Massachusetts published April 28, 1982, was effective on May 28, 1982, thereby triggering the one-year waiting period specified by Section 504(g) of the Act (47 FR 18232; April 28, 1982).

Section 921.818 has been deleted from this final rule notice because OSM has removed the special category of mining for concurrent surface and underground operations (30 CFR Part 818) from its permanent program regulations (48 FR 24638; June 1, 1983). Other changes in the concurrent operation rules have been incorporated into this program through the cross-reference to 30 CFR Part 785 at § 921.785.

OMB Review

The recordkeeping and reporting requirements of the Federal program for Massachusetts are the same as those of the permanent program regulations which have been approved by the Office of Management and Budget under 44 U.S.C. 3507. Although this program contains information and recordkeeping requirements, OSM anticipates less than ten respondents.

Other Information

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.*).

The reason underlying this determination are as follows:

This Federal program would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based

enterprises to compete with foreign-based enterprises in domestic for foreign markets; nor would it increase costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions. We further certify that there will be no significant demographic effects, direct costs, indirect costs, nonquantifiable costs, competitive effects, enforcement costs, or aggregate effects on small entities.

The Office of Surface Mining and Reclamation and Enforcement has determined that this rule is categorically excluded from compliance with the National Environmental Policy Act in accordance with 40 CFR 1507.3.

List of Subjects in 30 CFR Part 921

Coal mining, Intergovernmental relations, Surface mining, Underground mining, Reporting and recordkeeping requirements.

Drafting Information

These regulations were drafted by Patricia McHugh, Office of the Solicitor, and James M. Kress, Branch of Regulatory Programs, Office of Surface Mining.

Dated: August 12, 1983.

W. L. Dare,

Acting Deputy Assistant Secretary, Energy and Minerals.

Part 921 of 30 CFR Chapter VII is revised to read as follows:

PART 921—MASSACHUSETTS

Sec.

- 921.700 Massachusetts Federal Program.
- 921.701 General.
- 921.707 Exemption for coal extraction incident to government-financed highway or other construction.
- 921.761 Areas designated unsuitable for surface coal mining by Act of Congress.
- 921.762 Criteria for designating areas as unsuitable for surface coal mining operations.
- 921.764 Process for designating areas unsuitable for surface coal mining operations.
- 921.770 General requirements for permits and exploration procedures.
- 921.771 General requirements for permits and permit applications.
- 921.776 General requirements for coal exploration.
- 921.778 Surface mining permit applications—minimum requirements for legal, financial, compliance, and related information.
- 921.779 Surface mining permit applications—minimum requirements for information on environmental resources.
- 921.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

Sec.

- 921.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.
- 921.783 Underground mining permit applications—minimum requirements for information on environmental resources.
- 921.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
- 921.785 Requirements for permits for special categories of mining.
- 921.786 Reviews, public participation, and approval or disapproval of permit applications and permit terms and conditions.
- 921.787 Administrative and judicial review of decisions on permit applications.
- 921.788 Permit reviews, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.
- 921.795 Small operator assistance.
- 921.800 General requirements for bonding of surface coal mining and reclamation operations.
- 921.815 Performance standards—coal exploration.
- 921.816 Performance standards—surface mining activities.
- 921.817 Performance standards—underground mining activities.
- 921.819 Special performance standards—auger mining.
- 921.823 Special performance standards—operations on prime farmland.
- 921.824 Special performance standards—mountaintop removal.
- 921.826 Special performance standards—operations on steep slopes.
- 921.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
- 921.828 Special performance standards—in situ processing.
- 921.842 Federal inspections.
- 921.843 Federal enforcement.
- 921.845 Civil penalties.
- 921.850 Blaster training and certification.

Authority: Pub. L. 95-87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, 91 Stat. 445.

§ 921.700 Massachusetts Federal Program.

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

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

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

operations on Federal lands in Massachusetts.

(d) The information collection requirements contained in §§ 921.764, 921.770, 921.771, 921.795, and 921.800 do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than 10 respondents annually.

(e) There are no Massachusetts laws which provide more stringent environmental control and regulation of surface coal mining operations than do the provisions of the Surface Mining and Reclamation Act and the regulations in 30 CFR Chapter VII.

(f) The following are Massachusetts laws that interfere with the achievement of the purposes and requirements of the Act and are, in accordance with Section 504(g) of the Act, preempted and superseded insofar as they apply to surface coal mining operations regulated under the Act:

(1) The Coal Mining Regulatory and Reclamation Act of 1977, as amended, Mass. Ann. Laws Ch. 21B, Sections 1-15.

(2) Statutes governing licenses for minerals exploration, Mass. Ann. Laws Ch. 21, Section 54-56.

(g) The Secretary may grant a limited variance from the performance standards of §§ 921.815 through 921.828 of this part if the applicant for coal exploration approval or a surface mining permit submitted pursuant to §§ 921.770 through 921.788 of this part can demonstrate in the application that:

(1) A variance is necessary because of the nature of Massachusetts' terrain, climate, biological, chemical or other relevant physical conditions; and

(2) The proposed variance is no less effective than the environmental protection requirements of the regulations in this program and is consistent with the Act.

§ 921.701 General.

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

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

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

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

Part 761 of this chapter, Areas Designated by Act of Congress, shall

apply to surface coal mining and reclamation operations.

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

Part 762 of this chapter, Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations, shall apply to surface coal mine operations.

§ 921.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities, are applicable in Massachusetts beginning on May 28 1983.

§ 921.770 General requirements for permits and exploration procedures.

(a) Part 770 of this chapter, General Requirements for Permit Systems Under State Programs, shall apply to surface coal mining and exploration operations.

(b) No person shall conduct coal exploration which results in the removal of more than 250 tons of coal nor shall any person conduct surface coal mining operations without a permit issued by the Secretary pursuant to 30 CFR Part 770 and applicable permits issued pursuant to the laws of the State of Massachusetts, including: the Historic and Scenic Rivers Act, Mass. Ann. Laws Ch. 21, Sections 8-17B; Massachusetts Register of Historic Places, Mass. Ann. Laws Ch. 152 and the regulations (950 CMR 71); historical preservation statutes, Mass. Ann. Laws Ch. 9, Sections 26-27(D); real property statutes, Mass. Ann. Laws Ch. 184, Sections 31-32; statutes governing State forests and parks, Mass. Ann. Laws Ch. 132, Sections 40-46; the Wetlands Protection Act Ch. 131, Sections 40-46; statutes and rules governing dredging permits, Mass. Ann. Laws Ch. 21A; Section 14, 310 CMR 9.01 *et seq.*; the Massachusetts Hazardous Waste Management Act Ch. 21C, Sections 1-14; the Massachusetts Clean Water Act Ch. 21, Sections 26-53; statutes governing the construction of roads, drains, or ditches, Mass. Ann. Laws Ch. 252 Sections 15-18; statutes governing drilling or removal of sand or any minerals, Mass. Ann. Laws Ch. 132A, Sections 13-18; and statutes governing use, storage, and handling of explosives, Mass. Ann. Laws Ch. 148, Sections 9-19.

(c) The Secretary shall coordinate review and issuance of a coal

exploration or surface coal mining and reclamation permit with the review and issuance of other Federal and State permits listed in this Subpart and Part 770 of this chapter.

§ 921.771 General requirements for permits and permit applications.

(a) Part 771 of this chapter, General Requirements for Permits and Permit Applications, shall apply to any person who makes application for a permit to conduct surface coal mine operations.

(b) A person who wishes to conduct new surface coal mining and reclamation operations or who wishes a revision of his permit shall file a complete application at least 12 months prior to the date upon which permit issuance or revision is desired, and shall pay to the Secretary a permit fee in accordance with § 736.25 of this chapter.

§ 921.776 General requirements for coal exploration.

(a) Part 776 of this chapter, General Requirements for Coal Exploration, shall apply to any person who conducts or seeks to conduct coal exploration operations.

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

§ 921.778 Surface mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 921.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 921.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

Part 780 of this chapter, Surface Mining Permit Applications—Minimum

Requirements for Reclamation and Operation Plan, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 921.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 782 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application for a permit to conduct underground coal mining and reclamation operations.

§ 921.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who submits an application to conduct underground coal mining and reclamation operations.

§ 921.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

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

§ 921.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, Requirements for Permits for Special Categories of Mining, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 921.786 Review, Public participation, and approval or disapproval of permit applications and permit terms and conditions.

Part 786 of this chapter, Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions, shall apply to the review of applications made by any person for surface coal mining and reclamation operations.

§ 921.787 Administrative and judicial review of decisions on permit applications.

Decisions on permit applications shall be subject to administrative and judicial review in accordance with Part 787 of this chapter and Sections 520, 525, and 526 of the Act.

§ 921.788 Permit reviews, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.

Part 788 of this chapter, Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits, shall apply to review, revision, and renewal of permits for surface coal mine operations, and to transfer, sale, and assignment of rights granted under permits.

§ 921.795 Small operator assistance.

Part 795 of this chapter, Small Operator Assistance, shall apply to any person making application for assistance under the small operator assistance program.

§ 921.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs, shall apply to all surface coal mining and reclamation operations.

§ 921.815 Performance standards—coal exploration.

Part 815 of this chapter, Permanent Program Performance Standards—Coal Exploration, shall apply to any person conducting coal exploration operations.

§ 921.816 Performance standards—surface mining activities.

Part 816 of this chapter, Permanent Program Performance Standards—Surface Mining Activities, shall apply to any person who conducts surface coal mining and reclamation operations.

§ 921.817 Performance standards—underground mining activities.

Part 817 of this chapter, Permanent Program Performance Standards—Underground Mining Activities, shall apply to any person who conducts underground coal mining operations.

§ 921.819 Special performance standards—auger mining.

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

§ 921.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, Special Permanent Program Performance Standards—Operations on Prime Farmland, shall apply to any person who conducts surface coal mining and

reclamation operations on prime farmlands.

§ 921.824 Special performance standards—mountaintop removal.

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

§ 921.826 Special performance standards—operations on steep slopes.

Part 826 of this chapter, special Permanent Program Performance Standards—Operations on Steep Slopes, shall apply to any person who conducts surface coal mining and reclamation operations on steep slopes.

§ 921.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, special Permanent Program Performance Standards—Coal Processing Plants and

Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine, shall apply to any person who conducts surface coal mining and reclamation operations which includes the operation of coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

§ 921.828 Special performance standards—in situ processing.

Part 828 of this chapter, special Permanent Program Performance Standards—In Situ Processing, shall apply to any person who conducts in situ processing activities.

§ 921.842 Federal inspections.

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

(b) The Secretary will furnish copies of inspection reports and reports of any enforcement actions taken to the Massachusetts Department of Environmental Management upon request.

§ 921.843 Federal enforcement.

(a) Part 843 of this chapter, Federal Enforcement, shall apply when enforcement action is required for violations on exploration and surface coal mining and reclamation operations.

(b) The Office will furnish a copy of any enforcement document to the Massachusetts Department of Environmental Management upon request.

§ 921.845 Civil penalties.

Part 845 of this chapter, Civil Penalties, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

§ 947.850 Blaster training and certification.

Part 850 of this chapter, Programs for Blaster Training and Certification, shall apply to any person who conducts coal exploration or surface coal mining operations.

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