FEDERAL REGISTER: 48 FR 40622 (September 8, 1983)

DEPARTMENT OF THE INTERIOR
AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Parts 700, 701, 772, 776, and 815
Surface Coal Mining and Reclamation Operations Permanent Regulatory Program;
General Requirements and Performance Standards for Coal Exploration

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is amending its rules that relate to coal exploration activities outside of the permit area that are not subject to the requirements of 30 CFR Part 211. The amendments include a requirement that notices of intention to explore need to be filed only when an exploration operation proposing to remove 250 tons of coal or less may substantially disturb the natural land surface, rather than by all persons who propose to conduct coal exploration. In addition, the definition of the term "substantially disturb" is amended.

EFFECTIVE DATE: October 11, 1983.

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SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Comments and Rules Adopted
III. Procedural Matters

I. BACKGROUND

The Surface Mining Control and Reclamation Act of 1977 (the Act), *30 U.S.C. 1201* et seq., requires that each State and Federal program ensure that coal exploration operations that substantially disturb the natural land surface are conducted in accordance with exploration rules issued by the regulatory authority. Section 512 of the Act, entitled "Coal Exploration Permits," sets forth the notice, reclamation, and other requirements for conducting coal exploration operations. Section 512(a) of the Act specifies that, at a minimum, the exploration rules must include (1) a requirement that before beginning exploration operations, a person planning such operations must file with the regulatory authority a notice of intention to explore that includes a description of the area of exploration and the period of exploration, and (2) provisions for reclamation of all lands to be disturbed by the exploration, including excavations, roads, drill holes, and the removal of facilities and equipment, in accordance with the performance standards set forth in Section 515 of the Act. Although the Act requires that a notice of intention to explore be filed with the regulatory authority, the Act does not require that the exploration be approved by the regulatory authority unless more than 250 tons of coal are to be removed, in which case specific written approval is required under Section 512(d).

On March 13, 1979, the Office of Surface Mining (OSM) issued general requirements for coal exploration, 30 CFR Part 776, and performance standards for coal exploration, 30 CFR Part 815. *44 FR 15351 and 15394,* respectively.

On May 18, 1982, OSM published in the Federal Register proposed rules to revise the coal exploration notice and permit requirements, to redesignate them as 30 CFR Part 772 (originally Part 776), and to revise the coal exploration performance standards in 30 CFR Part 815. Also proposed for revision were the definitions of the terms "coal exploration" and "substantially disturb," in 30 CFR 701.5 (See *47 FR 21442.)*

A public comment period commenced with publication of the proposed rules. The comment period closed on August 25, 1982.

The comment period was reopened on September 7, 1982, and closed again on September 10, 1982. Two speakers presented testimony at a public hearing in Denver, Colo., on June 16, 1982; no one requested to testify at

hearings that had been scheduled for Washington, D.C., and Pittsburgh, Pa. Industry and associations, environmental groups, universities, State and Federal agencies, and interested individuals commented. All comments received on the May 18, 1982, proposed rules were considered in this final rulemaking and are on file in the Administrative Record.

To assist the reader in understanding the changes in the final rule the following derivation table shows the relationship of the final rules to the previous rules and the proposed rules.

DERIVATION TABLE -- COAL EXPLORATION, PARTS 772 AND 815

Final rule	Previous rule	Proposed rule
772.1	776.1 and 776.2	772.1.
772.10		772.10.
772.11(a)	776.11(a) and (c)	772.11 (a).
772.11(b)(1)	776.11(b)(1)	772.11 (b)(1).
772.11(b)(2)	776.11(b)(2)	772.11 (b)(2).
772.11(b)(3)	776.11(b)(3)	772.11 (b)(3).
772.11(b)(4)	776.11(b)(4)	772.11 (b)(4).
772.11(b)(5)	776.11(b)(6)	772.11 (b)(5).
772.12(a)	776.12 Intro	772.12(a).
772.12(b)	776.12(a)	772.12(b).
772.12(b)(1)	776.12(a)(1)	772.12(b)(1).
772.12(b)(2)	776.12(a)(2)	772.12(b)(2).
772.12(b)(3)	776.12(a)(3)(i)	772.12(b)(3).
772.12(b)(4)	776.12(a)(3)(ii)	772.12(b)(4).
772.12(b)(5)	776.12(a)(3)(iii)	772.12(b)(5).
772.12(b)(6)	776.12(a)(3)(iv)	772.12(b)(6).
772.12(b)(7)		772.12(b)(7).
772.12(b)(8)	776.12(a)(3)(i)	772.12(b)(8).
772.12(b)(9)	776.12(a)(3)(i)	
772.12(b)(10)	776.12(a)(3)(v)	772.12(b)(9).
772.12(b)(11)	776.12(a)(4)	772.12(b)(10).
772.12(b)(12)	776.12(a)(5)	772.12(b)(11).
772.12(b)(13)	776.12(a)(6)	772.12(b)(12).
772.12(c)	776.12(b)	772.12(c).
772.12(c)(1)	776.12(b)(1)	772.12(c)(1).
772.12(c)(2)	776.12(b)(2)	772.12(c)(2).
772.12(c)(3)	776.12(b)(3)	772.12(c)(3).
772.12(d)(1)	776.13(a)	772.12(d)(1).
772.12(d)(2)	776.13(b)	772.12(d)(2).
772.12(d)(2)(i)	776.13(b)(1)	772.12(d)(2)(i).
772.12(d)(2)(ii)	776.13(b)(2)	772.12(d)(2)(ii).
772.12(d)(2)(iii)	776.13(b)(3)	772.12(d)(2)(iii).
772.12(d)(3)	776.13(c)	772.12(d)(3).
772.12(e)(1)	776.14(a)	772.12(e)(1).
772.12(e)(2)	776.14(b)	772.12(e)(2).
772.13(a)	776.15(a)	772.13(a).
772.13(b)	776.15(b)	772.13(b).

772.14	815.17	772.14.
772.15(a)	776.17(a)	772.15(a).
772.15(b)	776.17(b)(1) and (b)(2)	772.15(b).
772.15(c)	776.17(b)(3)	772.15(c).
815.1	815.1	815.1.
815.13	815.13	815.13.
815.15(a)	815.15(a)	815.15(a).
815.15(b)	815.15(c)(2-4)	815.15(b).
815.15(c)	815.15(d)	815.15(c).
815.15(d)	815.15(e)	815.15(d).
815.15(e)	815.15(f)	815.15(e).
815.15(e)(1)	815.15(f)(1)	815.15(e)(1).
815.15(e)(2)	815.15(f)(2)	815.15(e)(2).
815.15(f)	815.15(g)	815.15(f)(1) and (f)(2).
815.15(g)	815.15(h)	815.15(g).
815.15(h)	815.15(i)	815.15(h).
815.15(h)(1)	815.15(i)(1)	815.15(h)(1).
815.15(h)(2)	815.15(i)(2)	815.15(h)(2).
815.15(h)(3)	815.15(i)(3)	815.15(h)(3).
815.15(i)	815.15(j)	815.15(i)
815.15(j)	815.15(k)	815.15(j).

II. DISCUSSION OF COMMENTS AND RULES ADOPTED

SECTION 700.11 - APPLICABILITY.

On February 16, 1983 *(48 FR 6915-6916)*, OSM revised 30 CFR 700.11 to clarify the extent to which the Act governs coal exploration on Federal lands. It extended the requirements of 30 CFR Chapter VII to coal exploration on Federal lands except for Federal lands that are subject to the requirements of 30 CFR Part 211. Where 30 CFR Part 211 applies, the Bureau of Land Management has the primary responsibility for coal exploration. In the February 16 rule, OSM inadvertently amended Section 700.11(g), a paragraph that had been redesignated as Section 700.11(a)(6) on August 2, 1982 *(47 FR 33432)* as part of the revision to OSM's "2-acre" rule. This final rule corrects that error and properly amends Section 700.11(a)(6) rather than attempting to amend Section 700.11(g) which no longer exists. The substance of the rule is unchanged from the February rule.

SECTION 701.5 - DEFINITIONS.

This section of the preamble contains a discussion of the definitions of the two terms -- "coal exploration" and "substantially disturb" -- that are fundamental to understanding the requirements for conducting coal exploration.

"COAL EXPLORATION"

The term "coal exploration" is defined in Section 701.5 as the field gathering of (a) surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; and (b) the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations.

On May 18, 1982, OSM proposed a revised definition that it thought would be more easily understood, while retaining the same basic features of the previous definition *(47 FR 21446)*. After consideration of the comments received, OSM found the existing definition to be more descriptive of the procedures commonly associated with coal exploration, especially in that it better expresses the role of environmental-data gathering during coal exploration. Consequently, the existing definition will not be revised.

The definition is based generally on the definition of "exploration" under the Interior Department's rules for coal exploration on Federal lands (30 CFR Part 211), as was explained in the preamble to the 1978 proposed permanent program rules (September 18, 1978, *43 FR 41669)*. The definition was slightly revised from the proposal in those final permanent program rules for the reasons given in the preamble to those rules (March 13, 1979, *44 FR 14927)*.

"Coal exploration" consists of data-gathering activities with two objectives: To locate and evaluate coal deposits in an area, and to establish the environmental conditions in an area before beginning mining operations. As was explained in the preamble to the 1979 permanent program rules, the existing definition was written to cover pre-permit environmental-data gathering as an activity separate from locating and evaluating coal deposits in an area, although the two types of exploration may be conducted at the same time. However, the proposed definition did not appear to some commenters to make that distinction.

Seven commenters expressed their opinions regarding various aspects of the proposed definition, and all discussed the collection of environmental data, as was requested in the preamble to the proposed definition. One of the commenters felt that the collection of environmental data did not come within the meaning of coal exploration, and that collecting the data would be an unnecessary burden. Another remarked that the gathering of data on related environmental conditions was not contemplated by Congress and therefore recommended deletion of that phrase, as did another commenter who stated that no other environmental data were needed beyond those related to data collection on coal, associated strata, and hydrologic conditions. The former commenter cited the rules of the Bureau of Land Management (30 CFR Part 211) in which the definition of the term "exploration" does not include a requirement for additional environmental data-gathering. A fifth commenter believed that reference to hydrologic conditions should also be deleted from the definition.

These commenters apparently misunderstood the purpose and effect of the coal exploration rules. These rules do not require operators to engage in exploration. Rather, they set environmental protection standards if and when exploration is conducted for whatever reason. Data collection requirements for permit applications are provided in Parts 779, 780, 782, 783, 784, and 785 of the permanent program regulations. These requirements extend to data on coal, associated strata, hydrologic conditions and other environmental conditions. Many of these activities could, based on the scope of the exploration and site-specific conditions, result in a substantial disturbance to the environment. The inclusion of such activities in the definition ensures that the environmental protection requirements of Section 512 of the Act will be met and that such data gathering activities will be subject to the notice, approval, and reclamation standards set by these rules.

A commenter who advocated retention of environmental data-gathering within the definition pointed out that that activity may cause substantial disturbance, such as the destruction of the hydraulics of alluvial valley floors by excessive soil compaction by vehicles and the contamination of water by drilling fluids. OSM agrees that the procedures used in collecting environmental data could substantially disturb the land surface under some circumstances.

The existing definition, which has been retained, will ensure that such disturbances are in accordance with the requirements applicable to coal exploration.

A commenter recommended that "related" be substituted for "field" in the phrase "field activities." The term "field" is more appropriate. Several comments were received when the permanent program definition was originally proposed that recommended insertion of the word "field" so that activities carried out away from the exploration site, such as laboratory studies, would not be included (March 13, 1979, *44 FR 14972)*. These comments were accepted and OSM continues to believe that Congress intended that the rules apply to field activities that could disturb the environment and not laboratory studies or other "related" activities.

Another commenter maintained that unless the definition of coal exploration was limited to data-gathering activities that substantially disturb the land, all exploration operations would require approval by the regulatory authority. This is not correct. Only exploration that is proposed to take place on lands designated as unsuitable for mining or that remove more than 250 tons of coal will require regulatory authority approval (30 CFR 772.12(a)). Other persons conducting exploration activities that substantially disturb the surface are only required to submit a notice to the regulatory authority and comply with the performance standards in Part 815.

One commenter thought that the proposed definition would weaken the environmental protection sought by Section 512 of the Act. The commenter claimed that trenching is generally more environmentally destructive than drilling and that the phrase "to determine the quality and quantity of overburden and coal of an area" made the previous definition more inclusive, yet neither concept was included in the proposed definition. Additionally, the commenter felt that the proposed definition for "coal exploration" would apply to scientific research not related to locating and describing coal deposits, which had been excluded by the previous definition. Further, it was unclear to the commenter as to whether the phrase "related environmental conditions" referred to the exploration process or to pre-permit data gathering.

OSM has decided to retain the existing definition of coal exploration. It defines coal exploration to include the field gathering of data on the overburden and coal in an area as well as collection of environmental data. OSM agrees that this definition does not extend to scientific research and applies only to prepermit data gathering.

One commenter suggested that the word "utilized" be used in place of "necessary," so that all methods of exploration that might actually be used, whether or not they are in fact necessary, would be included. While OSM agrees with the objective indicated by the commenter, no change is deemed necessary in the existing definition. Whatever techniques are used by a particular exploration operation would be considered "necessary" to that operation and would be covered.

"SUBSTANTIALLY DISTURB"

The term "substantially disturb" was defined in previous Section 701.5 as including, for purposes of coal exploration, such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, construction of roads and other access routes, and the placement of structures, excavated earth, or other debris on the surface of the land that have a significant impact on land, air, or water resources.

OSM proposed to revise the definition (May 18, 1982, *47 FR 21446)* so that it would be more closely aligned with the definition of the term "disturbed area" than was the previous definition. Specific reference to blasting, drilling, mechanical excavation, and placement of structures was proposed to be removed, and the more general categories likely to have a significant impact individually, such as the removal of vegetation, topsoil, or overburden; the construction of roads; and the placement of excavated earth or waste material on the land surface used in their place. This was not intended to indicate that blasting, drilling, or mechanical treatment could not result in a substantial disturbance, but rather was a desire to rely on the more generic terms. Additionally, a new activity -- the removal of more than 250 tons of coal -- was added in the proposed rule as causing a "substantial disturbance" because of the significant impact that results from such activity.

The final definition is essentially the same as the proposed definition, except that blasting has been restored as an exploration activity that is presumed to have a significant impact. Also, the phrase "removal of more than 250 tons of coal" has been set out from the rest of the activities to clarify that the removal of such an amount of coal will be considered in all cases a substantial disturbance.

The final rule is generally in agreement with the rules that govern coal exploration on Federal lands (30 CFR 211.10). Those rules distinguish between "casual use" of the land which does not cause significant surface disturbance during exploration and "other than casual use" (the use of heavy equipment or explosives and vehicular movement off established roads and trails are given as example of the latter).

The final definition is as specific as is practical, given the variability of the environmental and technical factors involved. The definition describes only minimum requirements. Individual regulatory authorities will have the flexibility to establish more specific standards that consider the particular conditions within the State.

One of the major concerns of commenters was whether or not drilling should be included as one of the activities mentioned specifically in the definition of "substantially disturb." Four commenters concurred with removal of that activity from the definition and three protested its removal. As was expressed in the preamble to the proposed definition, drilling may, but need not in every case, result in a substantial disturbance to the natural land surface. Therefore, while it is not included specifically as a listed activity, the definition as revised is broad enough to encompass drilling when it does result in such a disturbance. Usually, such a substantial disturbance would occur when drilling is combined with other activities (e.g., drilling alongside existing roads versus construction of roads to a drilling site, or the removal of vegetation and topsoil for the drill pad, in addition to the drilling itself). Whether such activities result in a substantial disturbance will be determined by the regulatory authorities either on a case-by-case basis or through guidelines supplementing the State program.

Another major concern of commenters was how to determine at what point the activities identified in the definition are considered to significantly impact land or water resources. For example, one commenter was concerned that drill cuttings or cores that are temporarily placed on the land surface before being replaced in the hole or removed from the site would be considered as earth or waste material placed on the land surface. The commenter also questioned whether the phrase "construction of roads," referred to removal of vegetation and topsoil, use of a bulldozer, or upgrading of existing roads.

Other commenters were concerned that the removal of small amounts of vegetation, the taking of samples (e.g., soil sampling), or driving across a field, or spreading drill cuttings on the ground near a drill hole would be construed as substantially disturbing the land. Other commenters recommended that the language of the rule be revised to either apply only to, or to exclude, such items as "large areas," "limited vegetation removal," "temporary placement," "extensive removal," and "lasting degradation." Two commenters maintained that the term "significant impact" should be defined because they said it is ambiguous and vague, but they offered no suggestion as to wording.

As previously indicated, the final rule is not intended to extend to casual use and other minor activities that would not be expected to result in substantial disturbances to the land surface. On the other hand, it is not possible to exclude broad categories of activities from the definition. Thus, placing drill cuttings on the surface or driving across a field could be classified as a substantial disturbance based on site-specific circumstances. A complete listing of every possible situation that may be encountered is not possible in a rule of nationwide application. Rather, the final rule provides basic standards to be applied by State regulatory authorities.

The concept of a substantial disturbance, which in turn depends upon the interpretation of what constitutes a significant impact on land or water resources, is necessarily expressed in general terms, just as it was in the Act. Section 515 of the Act provides sufficient additional guidance to establish the reclamation requirements and goals of the Act. OSM expects the requirements for coal exploration to be applied in a manner consistent with this intent. The phrase "to significantly impact land or water resources" will be interpreted and applied in the same way as the phrase "to impact significantly upon land, air or water resources" in the previous rule, except that air resources are not included.

A commenter who questioned the legitimacy of establishing that the removal of more than 250 tons of coal would substantially disturb the land claimed that the figure has no significance in terms of land disturbance. OSM agrees that removal of a lesser amount of coal may also substantially disturb the land. However, the removal of that large a quantity of coal will always substantially disturb the land. The commenter also maintained that because special rules under Section 772.12 apply to the removal of more than 250 tons of coal, the provision is not needed in the definition. OSM disagrees. The definition of substantial disturbance is consistent with Section 512(d) of the Act and Section 772.12. In those sections the Act and regulations impose more stringent approval requirements for exploration operations that remove more than 250 tons. Thus, Congress was concerned that such exploration not occur without special approval to ensure reclamation and protection of the environment. The definition of

substantially disturb supports this approval by ensuring that such large amounts of coal are not removed without reclamation occurring.

One commenter proposed that the definition of "substantially disturb" not apply to exploration operations of less than 2 acres, claiming this would then correspond with Section 529(a) of the Act. Since Section 529 of the Act refers to anthracite coal mining, it is assumed the commenter means Section 528 of the Act which provides that the Act shall not apply to the "extraction of coal for commercial purposes where the mining affects two acres or less." Because Section 528(2) of the Act applies only to the extraction of coal for "commercial purposes," the 2-acre exemption does not apply to coal exploration operations.

Two commenters remarked that reference to air resources in the previous definition was unnecessary, as the effect of coal exploration on air quality would be negligible. On the other hand, two commenters maintained that air should not have been deleted as one of the resources that can be subject to substantial disturbance by coal exploration. Their reasoning was that vehicular traffic and other sources generate fugitive dust.

Previous Sections 816.95 and 817.95, entitled "Air Resources Protection," of the permanent program, promulgated under Sections 515(b)(4) and 516(b)(10) of the Act and regulating air pollution, were remanded by the court in In re: Permanent Surface Mining Regulation Litigation, CA 79-1144, at 28 (D.D.C., May 16, 1980), on the grounds that the Act's legislative history "indicates that the Secretary's authority to regulate [air] pollution is limited to activities related to erosion." As a result, OSM revised Section 816.95 and Section 817.95 and on January 10, 1983, published final rules that relate only to erosion control and air pollution attendant to erosion *(48 FR 1160)*. Fugitive-dust emissions are subject to the National Ambient Air Quality Standards established by the U.S. Environmental Protection Agency under the Clean Air Act, as amended *(42 U.S.C. 7401* et seq.), and each State is responsible for complying with those standards. Thus, inclusion of air quality in the definition of substantially disturb is inappropriate. The final rule thus does not include reference to air resources.

NEW PART 772 -- REQUIREMENTS FOR COAL EXPLORATION

Part 776 is redesignated as Part 772 because the requirements for initiating coal exploration logically should precede those for initiating coal mining, which, as revised, start with Part 773.

SECTION 772.1 - SCOPE AND PURPOSE.

In the final rule the scope and purpose of Part 772 are set forth in Section 772.1. As proposed, final Section 772.1 does not contain a specific section entitled "Responsibilities" (previous Section 776.3) because the substantive requirements of the rules delineate with adequate specificity the respective obligations of the regulatory authorities and the persons conducting coal exploration activities. Similarly, there is no need for a separate section containing the objectives of the part, as was done in previous Section 776.2.

In general, final Part 772 applies to all coal exploration operations outside the permit area, which are not subject to 30 CFR 211. No comments were received on this section. The final rule is revised, however, for clarity and to be consistent with OSM's final Federal lands rules issued on February 16, 1983, by excluding exploration operations regulated under 30 CFR Part 211. Under these rules, coal exploration activities on Federal lands not subject to 30 CFR Part 211 would be regulated. This would include such activities on lands with federally-owned surface and privately-owned minerals.

SECTION 772.10 - INFORMATION COLLECTION.

The mandatory information collection requirements of Part 772 will be used by the regulatory authority to establish a baseline on which to assess the impact of a proposed coal exploration operation. Collection of the information is necessary in order to meet the requirements of Section 512(a) of the Act and has been approved by the Office of Management and Budget. No comments were received on this section.

SECTION 772.11 - NOTICE REQUIREMENTS FOR EXPLORATION REMOVING 250 TONS OF COAL OR LESS.

Final Section 722.11(a) requires that any person who is proposing to conduct coal exploration that would remove up to 250 tons or less of coal and which may substantially disturb the land surface, must file a written notice of intention with the regulatory authority before beginning the operation. Previous Section 776.11 had required that a notice of intention be filed whether or not a substantial disturbance would occur. Final Section 722.11(b) lists the type of information required to be in the notice of intent.

SECTION 722.11(a)

The broad notice requirement of previous Section 776.11(a) was held to be consistent with the Act in In re: Permanent Surface Mining Regulation Litigation, Civil Action No. 79-1144, at 33 (D.D.C. February 26, 1980), but it is not mandated by the Act. On the basis of comments received initially on the preproposed draft rules circulated by OSM prior to the issuance of the proposal and, more recently, on the proposed rules, as well as reexamination of the statutory language, OSM has determined that a notice of intent to conduct coal exploration is not necessary if there will not be a substantial disturbance of the natural land surface. States can continue to require notices of all coal exploration activities if the State determines that such notice is necessary to protect the environment or aid in enforcement. The State can also set standards, consistent with the definition in Section 701.5, as to activities that it considers to substantially disturb the natural land surface according to local conditions. Anyone planning coal exploration should determine from the regulatory authority what activities have been established as substantially disturbing the land surface in the area of exploration. The final rule will ease the paperwork burden associated with the previous filing requirement, but will continue to provide protection for environment.

Proposed Section 722.11(a) was supported by seven commenters and was opposed by two State agencies and two environmental groups. Three proponents of the change advocated replacing "may" with "will" in the phrase "may substantially disturb," on the grounds that it would be more precise. As a further indication of the difficulty in establishing precisely what activities substantially disturb, one of the commenters who favored "will" remarked in justification that "virtually any exploration activity has the potential to substantially disturb the land," and another stated that "anything may substantially disturb."

No change in the proposal has been made based upon these suggestions. Filing a notice of intent for any exploration operations that may cause substantial disturbance as opposed to those that will certainly have that effect is not an excessive burden. OSM disagrees with the commenter who suggested that anything "may" substantially disturb. Such a reading of the language of the final rule would be excessive. OSM interprets the use of the term "may" in this context to refer to those operations that have a reasonable likelihood of resulting in such a disturbance.

Several commenters expressed concern that unless all persons planning exploration are required to file a notice of intention with the regulatory authority, the land could be substantially disturbed without the knowledge of the regulatory authority and therefore without reclamation or penalty. OSM recognizes the possibility that notices of intent will not be filed. However, this is an enforcement problem. The failure to submit the required notice could occur under the previous rule as easily as under the new rule. In any event, any such failure to file the notice will not waive reclamation requirements upon disturbance of the environment. The penalties for noncompliance with these rules are the same as those for surface coal mining operations and should deter non-compliance.

SECTION 772.11(b)

The required contents of a notice of intention to conduct exploration activities are set forth in final Section 772.11(b)(1-5). Final Section 722.11 (b)(1) and (b)(2), adopted as proposed, require the notice to include the names, addresses and telephone numbers of the person seeking to explore and the person's representative who will be responsible for conducting the exploration.

A commenter objected to the requirement in proposed Section 722.11(b)(1) that the person seeking to explore be identified and suggested that a consultant or attorney should be able to submit the notice without disclosing the company name or the nature of the activity. OSM rejects this comment. The name of the person or company responsible for the exploration activity must be known in the event of a violation, and the nature of the activity must be stated so that it can be determined that no more than 250 tons of coal will be removed. A determination of confidentiality can be requested under Section 772.15, if desired, but it is unlikely that the name of the company will be kept from public disclosure.

Final Section 772.11(b)(3) requires the notice to include a narrative or a map describing the exploration area. In accordance with the May 16, 1980, district court decision, the new final rules neither require the submission of a map of the exploration area nor a description of the legal basis of the right to enter for exploration when 250 tons of coal or less are proposed for removal. These requirements were located Paragraphs (b)(3) and (b)(5), respectively, of previous Section 776.11. Both requirements were held to be beyond the authority of the Act in In re: Permanent Surface Mining Regulation Litigation, Civil Action No. 79-1144, at 54 (D.D.C. May 16, 1980) at 54.

A commenter noted that under the district court ruling a map may be submitted only as an adjunct to the narrative description.

OSM disagrees. Section 512(a)(1) of the Act requires a description of the exploration area, but does not dictate that the description be a narrative or a map. The court was concerned that OSM was attempting to "convert" the requirement for a description into a requirement for a map. This rule does not do that. A narrative without a map may satisfy the requirement for a description. On the other hand, a map that is sufficiently detailed to describe the exploration area could also suffice without the narrative. Thus, the final rule allows a map to be used as an alternative to a narrative describing the area, but does not require a map.

Final Section 772.11(b)(4) requires a statement of the period of intended exploration be included in the notice. No comments were received on this provision and it is adopted as proposed.

Final Section 772.11(b)(5) requires the notice of intent to include a description of the method of exploration, including what practices will be followed to protect the environment and to reclaim the area in accordance with the performance standards of 30 CFR Part 815. A requirement to describe the "method of exploration" is added to Paragraph (b)(5) to assist the regulatory authority in determining the potential impacts likely to result from the proposed exploration. Another phrase was also added to clarify that the method and practices used must be in accordance with 30 CFR Part 815.

SECTION 772.12 - PERMIT REQUIREMENTS FOR EXPLORATION REMOVING MORE THAN 250 TONS OF COAL.

Requirements for conducting coal exploration that will remove more than 250 tons of coal were included in previous Sections 776.12, 776.13, and 776.14. Those sections are combined into new final Section 772.12, which contains the same basic requirement that any person who plans to conduct such exploration must have the approval of the regulatory authority, in writing, before starting exploration activities. Final Section 772.12 also lists the type of information required in an exploration permit application and sets the procedures for public notice of the application, for opportunity to comment, for decisions on exploration applications proposing to remove more than 250 tons of coal, and for decision notifications and review proceedings.

SECTION 772.12(a)

Final Section 772.12(a) requires any person intending to conduct coal exploration operations outside a permit area during which more than 250 tons of coal will be removed or which will take place on lands designated as unsuitable for surface mining under Subchapter F, to obtain, prior to mining, a written approval from the regulatory authority in an exploration permit.

An editorial change in the phrasing was made from the proposal to clarify that the written approval must come from the regulatory authority.

A commenter, who objected to the word "permit" in proposed Section 772.12(a) instead of "written approval" on the basis of the legislative history, also stated that the term "permit" would invite needless litigation. OSM notes that section 512 of the Act is entitled "Coal Exploration Permits," and section 512(d) of the Act refers specifically to "an exploration permit." The required permit is a form of written approval to conduct an exploration operation that will remove more than 250 tons of coal and is in keeping with the terminology mentioned above.

One commenter noted that any exploration operation within an area designated as unsuitable for mining must have written approval regardless of whether or not it will remove over 250 tons of coal. OSM agrees and language has been added to final Section 772.12(a) which requires that any person planning coal exploration on lands designated as unsuitable for surface mining obtain an exploration permit from the regulatory authority regardless of whether or not it may substantially disturb the land surface or whether 250 tons of coal are removed. This change is consistent with Section 762.14, which requires that such exploration operations receive regulatory authority approval.

SECTION 772.12(b)

The information that must be supplied in an application for an exploration permit under final Section 772.12(b)(1-13) is similar to that proposed and retains some provisions from previous Section 776.12(a).

One commenter recommended that the concept of an exploration and reclamation plan of previous Section 776.12(a)(3) be retained. The commenter felt this would be in keeping with the structure for a surface mining operation permit and more adequately anticipate and protect the environment.

OSM agrees that certain aspects of previous Section 776.12(a)(3) should be included as requirements for a coal exploration permit application in the final rule. OSM disagrees, however, that there is any significance to the label "exploration and reclamation plan" and therefore has not retained this as a "concept" in the final rule.

Previous Section 776.12(a)(3)(i) identified specific items that were to be described and cross referenced to the map required by previous Section 776.12(a)(5). New Paragraphs (b)(3), (b)(8), and (b)(9) of final Section 772.12 contain three of those items; other items that appeared in the previous paragraph were repetitious of items normally shown on a map. The final rule is simplified by removing from the narrative description those items that will be adequately described by their inclusion on the map required by final Section 772.12(b)(12). Also, information pertaining to important habitats of fish and wildlife is no longer required. The February 26, 1980, district court decision, cited previously, held that such information cannot be required in surface coal mining permit applications. OSM has determined that such information is not necessary and should not be required for an exploration permit application.

Previous Section 776.12(a)(3) (ii), (iii), (iv), and (v) correspond to Section 773.12(b) (4), (5), (6) and (10) respectively of the final rule. Each of these requirements is discussed in more detail below.

SECTION 772.12 (b)(1) and (b)(2)

Final Section 772.12 (b)(1) and (b)(2), which requires the name, address and telephone number of the applicant and that of the representative responsible for conducting the exploration activities, is adopted as proposed. No comments were received on these provisions.

SECTION 772.12(b)(3)

Final Section 772.12(b)(3) requires an exploration application to include a narrative or map describing the proposed exploration area. The final rule has been revised to allow the description to include either narrative or map descriptions. This change parallels final Section 772.11(b)(3) discussed above.

SECTION 772.12(b)(4)

Final Section 772.12(b)(4), adopted as proposed, contains information previously required under Section 776.12(a)(3)(ii). It requires a narrative description of the method and equipment to be used to conduct the exploration and reclamation.

One commenter suggested that proposed Section 772.12(b)(4) require that the narrative description be specific as to the type of methods and equipment to be used, as was required in previous Section 776.12(a)(3)(ii). Such specificity is not necessary in a rule of nationwide applicability. The required narrative description of the methods and equipment will, of necessity, identify the procedures and types of equipment to be used. The regulatory authority may require more specific descriptions if necessary to ensure that exploration will be conducted in accordance with the Act and the regulatory program.

SECTION 772.12(b)(5)

Final Section 772.12(b)(5), adopted as proposed, requires an estimated timetable for conducting and completing each phase of the exploration and reclamation. No comments were received on this provision. It follows previous Section 776.12(a)(3)(iii).

SECTION 772.12(b)(6)

Final Section 772.12(b)(6), adopted as proposed, requires an estimate of the amount of coal to be removed and a description of the methods used to determine those amounts. No comments were received on this provision. It follows previous Section 776.12(a)(3)(iv).

SECTION 772.12(b)(7)

Final Section 772.12 (b)(7), adopted as proposed, requires that the reason for extracting more than 250 tons of coal be stated in the exploration application. Two commenters supported the requirement, and another commenter questioned the statutory right to require it. Section 512(d) of the Act requires specific written approval of the regulatory authority to remove more than 250 tons. It is important in the regulatory process to know exactly why it is necessary to remove more than 250 tons of coal, in order to prevent mining under the guise of exploration. This is particularly pertinent because of the abbreviated permit approval requirements and the lack of a requirement for a performance bond associated with exploration operations.

SECTION 772.12(b)(8)

Final Section 772.12(b)(8) requires that applications for approval contain a description of cultural and historical resources known to be eligible for listing on the National Register of Historic Places (NRHP), as well as a description of those already listed on the register. Proposed Section 772.12(b)(8) did not contain the former requirement.

Proposed Section 772.12(b)(8) received several comments, all of which were opposed to the proposed rule, and two of which claimed that the rule would be in violation of the National Historic Preservation Act. OSM does not agree that the proposal was in violation of the National Historic Preservation Act. However, the final rule restores the requirement of previous Section 776.12(a)(3)(i) that resources eligible for listing on the NRHP, as well as those already listed, must be described under final Section 772.12(b)(8). The provision is slightly modified to require description of only those resources known to be eligible for listing on the Register and is in accordance with the National Historic Preservation Act. Since notices of eligibility are published in the Federal Register, this requirement should not impose an undue burden, yet help ensure that the person conducting exploration is aware of such sites.

SECTION 772.12(b)(9)

Final Section 772.12(b)(9) requires that a description of any endangered or threatened species identified within the proposed area of exploration be included in the exploration application.

This provision was not proposed, but is included in the final rule from previous Section 776.12(a)(3)(i).

Two commenters protested the removal of the requirements of previous Section 772.12 (a)(3)(i) and (a)(5), respectively, to describe and show on a map the critical habitats of endangered or threatened species. OSM agrees that such habitats should be identified so that the finding, required by final Section 772.12(d)(2)(ii), relating to threatened and endangered species can be made. The district court in February 1980 held that the study and information on habitats of all fish and wildlife was not authorized by the permitting sections for surface coal mining operations. However, the court did not have before it the issue of how the Secretary could implement his responsibilities under the Endangered Species Act of 1973, *16 U.S.C. 1531* et seq. (ESA), with respect to coal exploration. Under the Act and the ESA, OSM has decided to continue to require a description of any identified endangered or threatened species listed under the ESA to be included in the exploration application.

SECTION 772.12(b)(10)

Final Section 772.12(b)(10), proposed as Section 772.12(b)(9), is adopted as proposed. It requires a description of the measures to be used to comply with the applicable requirement of Part 815 of this chapter. No comments were received on this provision. It follows previous Section 776.12(a)(3)(v).

SECTION 772.12(b)(11)

Final Section 772.12(b)(11), proposed as Section 772.12(b)(10), is adopted as proposed. It requires the exploration permit application to include the name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored. No comments were received on this provision. It follows previous Section 776.12(a)(4).

SECTION 772.12(b)(12)

Final Section 772.12(b)(12), proposed as Section 772.12(b)(11), contains the requirements for a map of the exploration area previously contained in Section 776.12(a)(5). Though not proposed, a previous requirement is included in this final provision and it requires that critical habitats of endangered or threatened species be shown on the map. Two commenters objected to the proposed deletion from the map requirements of habitats of endangered or threatened species. Under its authority under the Act and the Endangered Species Act, OSM has decided to include in final Section 772.12(b)(12) a requirement that the map of the exploration area show critical habitats of endangered or threatened species as that term is defined under the Endangered Species Act. The final rule also requires the map to show roads, occupied dwellings, bodies of water, pipelines, proposed locations of trenches, access routes, structures, excavations, drill holes and other important locations. Previous provisions requiring the map to show historic and cultural features are deleted because they duplicate provisions of Paragraph (b)(8) which requires a description of such features. The final rule includes, however, a requirement from previous Section 776.12(a)(3)(i) to show topographic and drainage features. These features are important in relation to potential impacts and reclamation and are normally included on all maps. Another revision for final Section 772.12(b)(12) requires that the map show all "areas of the land to be disturbed." In the proposed and previous rules only those areas to be "substantially disturbed" had to be shown on the map. This revision is to ensure that all areas disturbed by coal exploration activities, that is, areas where vegetation, topsoil, or overburden are removed, are reclaimed in accordance with Part 815.

SECTION 772.12(b)(13)

Final Section 772.12(b)(13), proposed as Section 772.12(b)(12), requires that, if the surface is owned by someone other than the applicant, the application include the basis upon which the applicant claims the right to enter the land

for exploration and reclamation operation. No comments were received on this provision. It follows previous Section 772.12(a)(6).

SECTION 772.12(c)

Final Section 772.12(c)(1-3) is adopted as proposed except for a few minor editorial changes. It provides procedures for public notice and opportunity to comment on exploration applications. Final Section 772.12(c)(1) revises the proposal by requiring that the applicant place public notice of the filing of an administratively complete application in a newspaper of general circulation in the county, rather than the "vicinity," in which exploration will take place. This change is discussed later in this preamble.

A commenter claimed that there is no statutory basis for public notice and comment on exploration plans, and recommended deletion of Section 772.12(c)(1-3). (12G) The similar issue of public availability of notices of intent was discussed in the preamble to the previous rules. Such notice and availability are authorized under Sections 102, 201(c), 501(b), 512 and 517(f) of the Act, to provide for an adequate level of public participation in the permanent regulatory program.

Under Section 517(f) of the Act, a general rule of public availability is established for information obtained by the regulatory authority in administration of programs under Title V of the Act, including Section 512(a). As such, documents obtained under Section 512(a) of the Act are ordinarily to be made available to the public for inspection and copying under Section 517(f) of the Act. In addition, OSM is required to ensure under Section 102(i) of the Act that adequate provisions are made for public participation in the enforcement of regulatory programs. To foster the purposes of the Act, as supplied by Section 102(8), OSM has decided that public availability of exploration applications received by the regulatory authority is to be required as an aid to public participation in enforcement of the permanent regulatory programs. (See *44 FR 15019)*

A commenter who concurred with publication of the notice recommended that the requirement for providing public notice should follow the permit requirements for mining by being more specific as to the timing of the notice and the comment period. OSM disagrees. Final Section 772.12(c) ensures adequate opportunity for public review and input into the decision to approve or deny an application for an exploration permit. Because coal exploration generally does not have as adverse an impact on the environment as surface mining, more flexibility can be provided to the regulatory authority to establish the more specific requirements for timing of the notice and comment period.

One commenter proposed that the area of public notice be the county, not the vicinity, of the proposed exploration area. OSM agrees that the term "county" is more definitive an area than "vicinity." While either term would likely result in adequate public notice, OSM has accepted the comment and replaced the term "vicinity" with the term "county" in final Section 772.12(c)(1).

Final Section 772.12(c)(2), adopted as proposed with minor editorial revisions, requires the public notice to include the name and address of the applicant, filing date, address of the regulatory authority, closing date of the comment period and a description of the proposed exploration area. No comments were received on this provision.

Final Section 772.12(c)(3), adopted as proposed with minor editorial revisions, provides that any person having an interest which is or may be adversely affected may file written comments on the application within a reasonable time limit.

A commenter suggested that, for consistency, proposed Section 772.12(c)(3) be changed to the same language as that of Section 764.13(a), which states that any person having an interest which is or may be adversely affected has the right to petition the regulatory authority, with regard to lands unsuitable for mining. OSM agrees that the suggested language is appropriate because it is similar to that used in the rules on public comments on surface coal mining permits and the final rule is editorially revised to reflect similar language.

A commenter questioned the reference to Section 772.11(c) in the preamble discussion of proposed Section 772.12(c), which, because of a typographical error in the section number, stated that a notice of exploration had to be

published for exploration removing 250 tons or less. The commenter correctly surmised that the reference should have been to Section 772.12(c).

SECTION 772.12(d)

Proposed Section 772.12(d), which is similar to previous Section 776.13, remains essentially unchanged in the final rule and continues to set forth the necessary findings and terms for approval of an exploration application where more than 250 tons of coal are to be removed, including compliance with the performance standards of Part 815.

Final Section 772.12(d)(1) requires the regulatory authority to act upon an administratively complete application for a coal exploration permit within a reasonable period of time. However, any approval of an exploration permit may only be based upon a complete and accurate application. This final rule differs from the previous and proposed rules which required the regulatory authority to "act upon a complete application * * *." The modifiers "administratively complete" and "complete and accurate" (in final Section 772.12 (d)(1) and (d)(2)) are used in referring to applications for coal exploration permits replacing the phrase "complete application" used in the previous and proposed rules. For a complete explanation of these terms see the preamble to the proposed permitting rules *(47 FR 27694*, June 25, 1982). The phrase "application for coal exploration permit" was added to final Section 772.12(d)(1) to clarify what type of application the rule covered. No comments were received on the proposed rule.

Final Section 772.12(d)(2) provides that the regulatory authority shall approve a complete and accurate application in accordance with Part 772 if it finds, in writing, that the applicant has demonstrated that three specific conditions listed in Section 772.12(d)(2)(i-iii) will be met.

Under the final rule the applicant must demonstrate that the exploration and reclamation described in the application will -- (i) be conducted according to 30 CFR Parts 772 and 815 and any other applicable provisions of the regulatory program; (ii) not jeopardize the continued existence of an endangered or threatened species or destroy or adversely modify the critical habitat of those species; and (iii) not adversely affect any cultural or historical resources listed on the National Register of Historic Places, unless the proposed exploration has been approved by both the regulatory authority and the agency with jurisdiction over such matters.

Final Section 772.12(d)(2) (i) and (ii) are adopted as proposed. The phrase "districts, sites, buildings, structures, or objects" from the previous and proposed rules is replaced by the more inclusive term "historical resources" without changing the intended meaning of final Section 772.12(d)(2)(iii).

A commenter recommended that in Section 772.12(d)(2)(iii) on the adverse effects on cultural resources, the final word "matters" be retained from the previous rules rather than the word "resources," because it is broader in scope. OSM agrees and the final word of the provision continues to be "matters."

Final Section 772.12(d)(3), adopted as proposed, requires that terms of approval of the application issued by the regulatory authority contain conditions necessary to ensure exploration and reclamation will be done in compliance with 30 CFR Parts 772 and 815 and the regulatory program.

A commenter advocated including a reference to "the Act" in Section 772.12 (d)(2)(i), (d)(2)(iii), and (d)(3), as well as the reference to the rules promulgated thereunder. General references to the Act that were in the previous rules are unnecessary. It is implicit in all of the rules that they derive their authority from, and fully implement the provisions of, the Act.

SECTION 772.12(e)

Final Section 772.12(e), similar to previous Section 776.14, pertains to the notice of decision on an application and right of review. It is adopted as proposed with a few editorial changes. The previous rule had required that the regulatory authority notify the applicant and appropriate local government officials, in writing, of its decision. As proposed, final Section 772.12(e)(1) requires that commenters on the application also be notified in writing of the decision on the application, in keeping with the objective of ensuring public participation. The previous rule had also

required that the regulatory authority provide public notice of the decision in a newspaper of general circulation in the vicinity of the exploration area. Although it is important to require a newspaper notice of the filing of an application so that it can be commented on before a decision is made, final Section 772.12(e)(1) requires only that a public notice be posted at a public office in the vicinity of the proposed exploration operation once a decision has been made. Because OSM has added all those who commented on the application to the lists of those receiving written notification of the decision (Section 722.12(e)(1)), the placing of the notice of decision in a public office is sufficient to notify other interested persons.

One commenter concurred with proposed Section 772.12(e)(1) provided that the written decision of the regulatory authority is to be mailed to the persons who provided comments on the application pursuant to Section 772.12(c). Although such notification may often best be accomplished through the mails, the regulatory authority should have the flexibility to use other methods of actual notification, such as hand delivery for example. The final rule states only that the regulatory authority must notify such persons, in writing, of its decision.

Another commenter recommended that notification of a decision should be published rather than posted, because changes resulting from the decision might be of interest to persons who had not commented previously. This recommendation was rejected. Persons who are interested in proposed exploration in an area, even though they submitted no comments, would be aware that the decision will be posted. Requiring that the decision be published would be an unnecessary burden.

A third commenter opposed proposed Section 772.21 (e)(1) and (e)(2) on the grounds that there should be no public participation in coal exploration decisions. The comment is rejected, for the reasons stated under the preamble discussion of Section 772.12(c). One of the primary objectives of the Act is to include the public in the decision-making process. This also applies to coal exploration.

Final Section 772.12(e)(2) provides that any person having an interest which is or may be adversely affected by the decision of the regulatory authority pursuant to Paragraph (e)(1) shall have the opportunity for administrative and judicial review as set forth in 30 CFR Part 775. The language of proposed Section 772.12(e)(2) is changed to be consistent with the changes in final Section 772.12(c)(3) discussed above. This change is not intended to have any effect on the rights of persons to obtain administrative or judicial review. The proposed incorrect reference to Paragraph (d)(1) is changed to Paragraph (e)(1) which follows previous Section 776.14(b). The references in the proposed and previous rules to 30 CFR Part 787 is changed to Part 775 to reflect the redesignation of revised Part 787. No comments were received on the proposed provision.

SECTION 772.13 - COAL EXPLORATION COMPLIANCE DUTIES.

Final Section 772.13 is similar to previous Section 776.15. Final Section 772.13(a) requires any person who conducts coal exploration activities that substantially disturb the natural land surface to comply with the performance standards of 30 CFR Parts 772 and 815, the regulatory program and any exploration permit term or condition imposed by the regulatory authority. Such operations are also subject to the inspection and enforcement provisions of Subchapter L and the regulatory program.

Final Section 772.13(a) is the same as the proposed rule except for removal of the phrase "or that remove more than 250 tons of coal" and a few editorial changes. The quoted phrase does not appear in the final rule because it is now an integral part of the definition of the term "substantially disturb" and is therefore redundant. That phrase, and similar phrases used in the proposed rules that referred to more than 250 tons of coal in conjunction with the term "substantially disturbed," are not used in any of the final rules, except in the definition itself.

Final Section 772.13(b), adopted as proposed, states that any person conducting coal exploration in violation of the regulations listed in Paragraph (a) is subject to the provisions of Section 518 of the Act, Subchapter L of this chapter and the applicable inspection and enforcement provisions of the regulatory program.

The phrase "or any exploration permit term or condition imposed by the regulatory authority" was added to clarify that if the terms or conditions are violated the operator is subject to the provisions of Section 518 of the Act,

Subchapter L and inspection and enforcement provisions of the regulatory program.

One comment on this section was received regarding the omission of the phrase "the Act." OSM's response is the same as that given to the same commenter in the preamble discussion of Section 772.12(d)(3).

SECTION 772.14 - REQUIREMENTS FOR COMMERCIAL SALE.

Previous Section 815.17, setting forth the requirements for commercial sale of coal extracted during exploration operations, is retitled and moved to Part 772 as Section 772.14. The substance of the previous section was unchanged in the proposed rule except to clarify that a "surface coal mining and reclamation operations" permit will be needed for the commercial sale of coal extracted during exploration operations and that no such permit is needed if, prior to exploration, the regulatory authority determines the sale is to test coal properties for development of a mining operation for which a permit is to be submitted at a later time. In final Section 772.14 the phrase "must obtain" is changed to "shall obtain" for legal clarity and the reference to Part 771 is changed to Parts 773-785 to reflect the new organization of the permitting rules.

Three other commenters suggested changes in the wording of the phrase "is to be submitted at a later time." They felt the requirement to submit a permit application should be optional, based on results of the testing and whether or not it would be worthwhile to submit a permit application, rather than mandatory, based on the fact of commercial sales. Although it is possible that unsatisfactory test results of some marginal coal deposits, or changing economic conditions, might cause abandonment of plans for mining coal in an area, the large majority of exploration operations that remove more than 250 tons of coal will follow up with a full mining operation. The operator must show an intent to mine the area at a later date. It is not intended to require that a permit application be submitted at a later date if the testing shows that the mine would be uneconomical.

A commenter claimed that there is no statutory basis for the first sentence of the proposed section and that some coal removed during exploration may be disposed of by placing it in a stockpile. The commenter said that eventual use of the coal has no environmental significance, and that what is important is how much coal is removed and the extent of the damage to the environment. Section 506(a) of the Act states that a permit is required to engage in surface coal mining operations. Surface coal mining operations, by definition in Section 701(28) of the Act, are activities whose products "enter commerce." Final Section 772.14 recognizes a difference between exploration operations and mining operations and is in accordance with Sections 512 and 701 of the Act. The comment is therefore not accepted.

One commenter was confused as to why coal would be sold if it was to be used for testing purposes. Users, the commenter asserted, generally do not pay for "test burns." The commenter said if the sample load is so large it is paid for, then a permit should be required anyway. The commenter feared the provision would be abused by operators who negotiate purchase agreements with buyers of coal providing in those agreements for testing of the coal in order to fit within the exception.

OSM agrees that it is common for larger operators to provide test loads to users rather than to charge for such tests. However, this is not necessarily always the case and thus the language of final Section 772.14 allows a regulatory authority to distinguish between those situations where coal is sold in interstate commerce as part of a surface coal mining and reclamation operation, and those situations where, although the coal is sold, the objective is testing of the coal as part of coal exploration. OSM agrees that care should be taken so that this provision is not abused.

SECTION 772.15 - PUBLIC AVAILABILITY OF INFORMATION.

Final Section 772.15, adopted as proposed, follows previous Section 776.17. Under this final rule, all information submitted to the regulatory authority is to be made available to the public, unless it is confidential. Trade secrets and other confidential information are to be kept confidential only if requested by the applicant. The final rule differs from the previous rule by making some editorial changes and allowing information requested to be held confidential to be

kept confidential if it meets criteria for confidentiality until after opportunity to be heard is afforded persons both seeking and opposing disclosure.

One commenter concurred with the rule, provided that confidentiality applies only to trade secrets or privileged commercial or financial information. The commenter was concerned that justification of confidentiality might be broadened by the wording of the rule. That was not OSM's intent in simplifying the structure of this section.

A commenter wanted it made clear that Paragraph (a) of this section would also apply to written notices of intent to explore where 250 tons or less would be removed.

Final Section 772.15 applies to any information submitted to the regulatory authority under Part 772. That requirement, which was in previous Section 776.11(d), is not repeated in final Section 772.11 because it would be duplicative.

A commenter was concerned that the rule would imply that all information will eventually be released after the hearing. The commenter misunderstood the intent of the rule, which states that information will not be made available until persons seeking and opposing the disclosure of the information have had an opportunity to be heard. The rule does not state that the information will be made available after the hearing. If it is determined after the hearing that the information should be treated as confidential, the information cannot be made public until such time as the applicant authorizes its disclosure.

PART 815 -- PERMANENT PROGRAM PERFORMANCE STANDARDS -- COAL EXPLORATION

SECTION 815.1 - SCOPE AND PURPOSE.

Final Section 815.1 states that this part sets forth the performance standards required if the land is to be substantially disturbed by coal exploration. The final rule also clarifies that the regulatory authority may require coal exploration operations to comply with applicable standards of Parts 816-828, as well as the requirements of Part 815.

Previous Sections 815.2 and 815.11, which has set the objectives, and general responsibilities of the part, are removed in the final rules, for the same reasons that previous Sections 776.2 and 776.3 were not included in final Section 772.1. In addition, the language in final Section 815.1 describing the scope and purpose of Part 815 is shortened without changing the legal effect.

One commenter expressed concern that removal of the proviso in previous Section 815.1 that the regulatory authority may impose additional performance standards "threatens to transform 'floor' standards into a 'ceiling' beyond which State programs cannot go." OSM disagrees. The deleted portion mentioned by the commenter is unnecessary. Under Section 505 of the Act, a regulatory authority may always prescribe additional requirements. However, OSM agrees that there may be some benefit to referencing Parts 816-828 in Section 815.1 to ensure the requirements of Section 512(a)(2) of the Act to reclaim all disturbed lands in accordance with the standards of Section 515 of the Act are met in all cases. Thus, the final rule specifies that regulatory authorities may impose further reclamation standards if it is determined that these minimum standards are inadequate to ensure proper reclamation under particular local conditions.

SECTION 815.13 - REQUIRED DOCUMENTS.

Previous Section 815.13 required that while persons are conducting coal exploration that would substantially disturb the land surface and would remove more than 250 tons of coal, the written approval of the regulatory authority must be available for review by authorized representatives of the regulatory authority. Final Section 815.13 requires the person conducting the exploration to have either the notice of intention to explore or the coal exploration permit available for review by the representative of the regulatory authority upon request. Both the previous and proposed rule had included the phrase "including exploration which removes more than 250 tons of coal," to describe an additional situation when the documents would be required. This phrase is unnecessary with the change to the rule replacing "written approvals" with the specific documents. The notice of intention should be available for those

exploration operations removing less than 250 tons of coal and substantially disturbing the land, as well as the exploration permit for those removing more than 250 tons of coal.

Final Section 815.13 has been rephrased to clarify that only copies of the official documents must be available, not the originals. In the case of notices of intent, it must be a copy of the actual notice that was filed.

One commenter stated that it is unnecessary for an exploration crew to have a copy of the notice already in the possession of the regulatory authority and that this section should be deleted in its entirety. Reclamation according to the exploration performance standards is mandatory if an operation substantially disturbs the land surface. Under Sections 840.11(c) and 772.13(b), exploration operations are subject to inspection and monitoring for compliance. A filed notice, or an exploration permit, is a document that an inspector must have in order to properly evaluate the site. The onsite copies of notices or permits are necessary so that exploration crews will be aware of their responsibilities and so that inspectors will have the correct information on the exploration activities at the site for reference.

SECTION 815.15 - PERFORMANCE STANDARDS.

The performance standards for exploration that substantially disturbs the land surface are specified in final Section 815.15. The introductory paragraph of this section in the proposed rules was repetitious of final Section 815.1 and is removed in the final rules.

SECTION 815.15(a)

Final Section 815.15(a), as proposed, set forth the protection for fish, wildlife, and other related environmental values by specifying habitats that cannot be disturbed during exploration. This was done for clarity, eliminating the need for reference to the provisions of the permit application, as in previous Section 815.15(a). The final rule describes two types of habitats. Critical habitats of threatened or endangered species identified under the Endangered Species Act must not be disturbed by the coal exploration operations. Under the Endangered Species Act such critical habitats may not be destroyed or adversely modified except as provided in that statute. The proposed phrase "protected by State or Federal law" is not included in the final rule as it is replaced by the Endangered Species Act which specifies those Federal laws involved and the regulatory authority may specify any State law that is applicable. In addition, habitats of unique or unusually high value for fish and wildlife and related environmental values must not be disturbed by the exploration. No comments were received on this section.

Previous Section 815.15(b), which required operators to "measure important environmental characteristics of the exploration area during the operations," is removed as proposed because of its vagueness. A request to collect and measure such information could be imposed by the regulatory authority in specific instances if deemed necessary to ensure compliance with any of the performance standards which require protection of important environmental characteristics during coal exploration.

The lack of specificity of previous Section 815.15(b) was remarked on by a commenter who was in agreement with OSM's proposed removal. The commenter further remarked that the rule would have been unnecessarily burdensome because much of the land upon which exploration is conducted is not mined.

Commenters who objected to this revision maintained that this action, coupled with the proposed changes in Section 815.1, would absolve the operator from seeking environmental information. One commenter said it is essential to mitigation of environmental harm that the operator catalog and monitor the environmental values of the exploration area. Another said it would seem difficult for the operator to determine if environmental damage is minimized without making some assessment of the environment. OSM agrees that there may be circumstances where operational monitoring or data collection is appropriate with a coal exploration operation to ensure that the requirements of the performance standards will be met. However, coal exploration generally does not have as large scale or as adverse an impact on the environment as surface mining. Therefore, such an across the board requirement is unnecessary in a rule of nationwide applicability. Under the final rule, the regulatory authority is provided discretion to impose any monitoring requirements that may be necessary.

SECTION 815.15(b)

Final Section 815.15(b), adopted as proposed, sets performance standards for roads used in coal exploration. The final rule also includes reference to OSM's revised roads rules which were published on May 16, 1983 *(48 FR 22110)*.

One commenter thought that it was improper to refer in proposed rules to the specifics of other rules that are not yet final. OSM disagrees that the reference to the proposed roads rules was improper. In the interest of clarity and providing the public with the best notice of contemplated changes to rules, referring to other proposed rules was appropriate when changes were being proposed concurrently.

Another commenter supported the addition of an ancillary-road category to encompass roads used only for a brief period, as is frequently the case in coal exploration. A third commenter maintained that it would be inefficient and environmentally unsound to require roads to be removed and the land otherwise restored to its original condition if the area was to be redisturbed by future mining operations. OSM rejects this comment because many factors can delay the start of mining operations for months, years, or indefinitely, during which time environmental damage could occur.

The final regulatory language is simplified from the proposed rule and requires that all roads, including ancillary roads, meet the general performance standards for all roads in Section 816.150 and requires that primary roads meet additional standards in Section 816.151. The phrase "or other transportation facilities" is added to final Section 815.15(b) as is the reference to Sections 816.180 and 816.181 to cover any "other transportation facilities" used in the exploration operation besides roads. See proposed rule in *47 FR 16599,* April 16, 1982 and the final Sections 816.180 and 816.181 in *48 FR 20401,* May 5, 1983.

SECTION 815.15(c)

Final Section 815.15(c), adopted as proposed, repeats previous Section 815.15(d) in requiring prompt restoration of the approximate original contour after artificial topographical features created by exploration are no longer needed for the exploration.

One commenter maintained that it would be inefficient and environmentally unsound to require the reclamation performance standards of Section 815.15(c-g) be met if the area is to be redisturbed by future mining operations. OSM disagrees. Mining operations can be unexpectedly delayed for months, years, or indefinitely, during which time damage to the environment could occur.

SECTION 815.15(d)

Final Section 815.15(d), adopted as proposed with slight editorial revisions, follows previous Section 815.15(e) in requiring topsoil removal, storage, and redistribution to assure successful revegetation or as required by the regulatory authority.

A commenter pointed out that the term "disturbed area" is defined in Section 701.5 only in terms of surface coal mining operations and that those disturbed areas require bonding. The commenter was correct, and consequently the phrase "disturbed areas" will be replaced wherever it occurs in these coal exploration rules by the phrase "areas disturbed by coal exploration activities." The intent, however, is unchanged and the terms still refer to areas where vegetation, topsoil or overburden are removed.

The requirement that topsoil be separately removed is added to final Section 815.15(d) to be consistent with Section 515(b)(5) of the Act and to ensure that the integrity and qualities of the topsoil are maintained.

SECTION 815.15(e)

Final Section 815.15(e), adopted as proposed with only an editorial change, requires all areas disturbed by coal exploration activities to be revegetated so as to encourage prompt revegetation and recovery of a diverse, effective

and permanent cover. Additional performance standards are listed in Paragraphs (e)(1) and (e)(2). The separate references in previous Section 815.15(f)(1) to preexploration and postexploration use of intensive-agriculture land are removed, as proposed, to reflect that exploration activities are not expected to change land uses.

In addition, in final Paragraphs (e) and (e)(1) the phrases "disturbed areas" and "disturbed lands" are replaced by the phrase "areas disturbed by coal exploration activities" for the reasons given in the preamble discussion of Section 815.15(d).

A commenter maintained that proposed Section 815.15(e) should specify that the person conducting the exploration is responsible for revegetating areas disturbed, so that legal responsibility would be specified. OSM rejects the comment. Persons conducting exploration are responsible for observing all of the rules, and to add that wording to this paragraph is unnecessary.

Final Section 815.15(e)(1), adopted as proposed with the editorial change discussed, requires that all areas disturbed by coal exploration activities be seeded and planted to the same seasonal variety native to the area disturbed. If the land use of the area is intensive agriculture, the planting of crops normally grown will meet the provision of this paragraph. One commenter claimed that the rule is vague and subject to abuse because the planting of crops where the land use had not been agriculture might be used to avoid responsibility for proper revegetation. The intent and language of final Section 815.15(e)(1) is clear and not subject to abuse. If the land use had not been agriculture prior to exploration, then the condition that the "land use of the exploration area is intensive agriculture" would not be met and planting crops would not be allowed. There is no need to change the language.

Two commenters recommended that for exploration in forested areas an exception be granted to Section 815.15(e)(1), which requires that areas disturbed by exploration activities must be revegetated with a plant variety that is native to the area of exploration. Their reasoning was that reforestation would be prohibitively expensive and that grasses and other low cover are often a better alternative. OSM disagrees. Section 815.15(e)(1) does not specifically require reforestation. A variety of plant species may meet the requirements of Paragraphs (e)(1) and (e)(2), including grasses and legumes. This will be determined by the regulatory authority.

Final Section 815.15(e)(2) is adopted as proposed with one editorial change to clarify that the surface is to be stabilized "from" erosion rather than "in regards to" erosion.

SECTION 815.15(f)

Final Section 815.15(f) allows diversion of streams, as well as the diversion of overland flow, in contrast to previous Section 815.15(g), which prohibited diversion of ephemeral, intermittent, or perennial streams with the exception of small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities. Such diversions shall be made in accordance with the performance standards for such diversions in Section 816.43. The design criteria for perennial and intermittent stream diversions specified in previous Section 815.15(g) are not specified in the final rule, so as to allow flexibility in meeting the exploration performance standards. Proposed Paragraphs (f)(1) and (f)(2) are combined in the final rules and the appropriate reference change has been made to reflect the new organization of the hydrology rules.

A commenter was concerned that this proposed provision did not reference all of Sections 816.43 and 816.44 and Sections 817.43 and 817.44. Previous Section 816.44 is to be combined in Section 816.43, and consequently proposed Sections 815.15 (f)(1) and (f)(2) may be combined and reference new final Section 816.43 in its entirety. There is no need to refer to the performance standards for underground mines in Part 817 because exploration is conducted on the surface. There are no distinct differences between the surface effects of exploring prior to underground mining and prior to surface mining sufficient to require different performance standards. Reference to one set of standards is less confusing and accomplishes the required reclamation.

Another commenter stated that OSM's proposed rule would allow more flexibility in meeting the performance standards. OSM agrees and adopts the rule essentially as it was proposed with the appropriate reference changes.

SECTION 815.15(g)

Final Section 815.15(g), adopted as proposed, requires the casing and sealing of exploration holes, boreholes, wells or other exposed underground openings created during exploration in accordance with Sections 816.13-816.15. No specific comments were received on this provision. It is unchanged from previous Section 815.15(h).

SECTION 815.15(h)

Final Section 815.15(h), adopted as proposed with some editorial changes, requires prompt removal of facilities and equipment no longer needed for exploration, but allows them to remain if the regulatory authority determines they are needed for the purposes listed in Paragraph (h)(1-3). The final rule is relatively unchanged from previous Section 815.15(i) except for deletion of the superfluous word "quality" in the phrase "environmental quality data" from Paragraph (h)(1). The phrase "under an approved permit" in proposed Section 815.15(h)(3) and previous Section 815.15(i)(3) is not included in the final rule because it is redundant. The phrase "on- and offsite" is corrected to read "onsite and offsite." These editorial changes do not affect the meaning of the provisions. No comments were received on this provision.

SECTION 815.15(i)

Final Section 815.15(i), adopted as proposed, requires that exploration be conducted in a manner that minimizes disturbance of the prevailing hydrologic balance by complying with the hydrologic balance performance standards of Sections 816.41-816.49, including the use of sediment-control measures. It also provides that the regulatory authority may specify additional measures which must be adopted by the person engaged in coal exploration. Both requirements were in previous Section 815.15(j). No comments were received on this provision.

SECTION 815.15(j)

Final Section 815.15(j), adopted as proposed with some editorial changes, requires that acid- and toxic-forming materials be handled and disposed of in accordance with hydrologic-balance protection and backfilling and grading standards. The allowance in previous Section 815.15(k) for regulatory authority specification of additional measures is also included in final Section 815.15(j). The appropriate change in references was done to reflect the new organization of the hydrology and backfilling and grading rules. No comments were received on this provision.

REFERENCE MATERIALS.

The reference materials used to develop these final rules are the same as those listed in the previous rules *(44 FR 15017-15021 and 1526-15136).*

CROSS-REFERENCING

This final rule references certain of OSM's regulatory revisions that have not yet been finalized. An approximate picture of those final rules that have not been finalized is set forth in Volume III of the FEIS. To the extent the rules referenced in this final rule are not adopted, or are adopted with different section numbers, a conforming amendment will be issued.

III. PROCEDURAL MATTERS

National Environmental Policy Act

OSM has analyzed the impacts of these final rules in the "Final Environmental Impact Statement OSM EIS-1: Supplement" (FEIS) according to Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) [*42 U.S.C. 4332*(2)(c)]. This FEIS is available in OSM's Administrative Record in Room 5315, 1100 L Street, N.W., Washington, D.C., or by mail request to Mark Boster, Chief, Branch of Environmental Analysis, Room 134, Interior South Building, U.S. Department of the Interior, Washington, D.C. 20240. This preamble serves as the record of

decision under NEPA. Although there have been a number of editorial changes and clarifications, in general, these final rules were analyzed as the preferred alternative A in the FEIS.

The following substantive changes are noted between these final rules and the FEIS preferred alternative.

1. The scope of Part 772 has been broadened to encompass those Federal lands for which BLM does not regulate exploration. This is more environmentally protective than the preferred alternative.

2. Exploration on lands designated as unsuitable for mining requires approval of the regulatory authority under Section 772.12 rather than just the filing of a notice of intent under Section 772.11. This change has no environmental effect because such approval was already required under existing Section 762.14.

3. Under Section 772.11 and Section 772.12, a map may be submitted instead of a narrative description. This will have no environmental effect because the map has to be sufficiently detailed to replace the narrative.

4. The map required under Section 772.12(b)(10) must show location of critical habitats of listed endangered or threatened species. This is more protective than the FEIS preferred alternative.

5. Final Section 815.1 expressly provides regulatory authorities with discretion to impose additional performance standards. This is not expected to have any environmental effect.

6. Final Section 815.15(a) does not allow disturbance of habitats of unique or unusually high value for fish, wildlife or other related environmental values. This is more environmentally protective than the FEIS preferred alternative and consistent with FEIS alternatives B and C.

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior (DOI) has determined, according to the criteria of Executive Order 12291, February 17, 1981, that this document is not a major rule and does not require a regulatory impact analysis. These rules have also been examined pursuant to the Regulatory Flexibility Act, *5 U.S.C., 601* et seq., and OSM has certified that these rules do not have significant economic impact on a substantial number of small entities. The rules are expected to ease the regulatory burden on small coal operators proposing to remove 250 tons of coal or less in their exploration activities by requiring regulatory programs to require notices of intent only when their exploration activities may substantially disturb the natural land surface. Previously, all persons who conducted exploration activities were required to file a notice of intent to explore. The rules also reduce the types of information that will have to accompany each permit application.

Federal Paperwork Reduction Act

The information collection requirements in Part 772 have been approved by the Office of Management and Budget (OMB) under *44 U.S.C. 3507* and assigned clearance number 1029-0033. This approval is codified under Section 772.10. The information required by Part 772 is being collected to meet the requirements of Section 512(a) of the Act, which provides that coal exploration operations which substantially disturb the natural land surface be conducted in accordance with exploration rules. This information will be used to give the regulatory authority a sufficient baseline upon which to assess the impact of the proposed exploration operation during the permanent regulatory program. The obligation to respond is mandatory.

There are no information collection requirements in Part 815. This rulemaking does not add any information collection requirements to Parts 700 or 701.

LIST OF SUBJECTS

30 CFR Part 700
Administrative practice and procedure, Coal mining, Surface mining, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 701
Coal mining, Law enforcement, Surface mining, Underground mining.

30 CFR Part 772
Coal mining, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 776
Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 815
Coal mining, Surface mining

Accordingly, 30 CFR Parts 700, 701, 772, 776, and 815 are amended as set forth herein.

Dated: September 6, 1983.
William P. Pendley, Deputy Assistant Secretary, Energy and Minerals.

PART 700 -- GENERAL

1. Section 700.11 is amended by revising paragraph (a)(6) and by removing paragraph (g) as follows:

SECTION 700.11 - APPLICABILITY.

(a) * * *
(6) Coal exploration on lands subject to the requirement of Part 211 of this title.

* * * * *

PART 701 -- PERMANENT REGULATORY PROGRAM

2. Section 701.5 is amended by revising the definition of the term "substantially disturb" to read as follows:

SECTION 701.5 - DEFINITION.

* * * * *
SUBSTANTIALLY DISTURB means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

* * * * *

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

3. Part 772 is added to read as follows:

PART 772 -- REQUIREMENTS FOR COAL EXPLORATION

Section

772.1	Scope and purpose.
772.10	Information collection.
772.11	Notice requirements for exploration removing 250 tons of coal or less.
772.12	Permit requirements for exploration removing more than 250 tons of coal.
772.13	Coal exploration compliance duties.
772.14	Requirements for commercial sale.
772.15	Public availability of information.

Authority: Pub. L. 95-87, *30 U.S.C. 1201* et seq.

SECTION 772.1 - SCOPE AND PURPOSE.

This part establishes the requirements and procedures applicable to coal exploration operations on all lands except for Federal lands subject to the requirements of 30 CFR Part 211.

SECTION 772.10 - INFORMATION COLLECTION.

The information collection requirements contained in Part 772 have been approved by the Office of Management and Budget under *44 U.S.C. 3507* and assigned clearance number 1029 -- 0033. The information is to be collected to meet the requirements of section 512(a) of the Act, which requires that coal exploration operations that substantially disturb the natural land surface be conducted in accordance with exploration rules. This information will be used to give the regulatory authority a sufficient baseline upon which to assess the impact of the proposed exploration operation during the permanent regulatory program. The obligation to respond is mandatory.

SECTION 772.11 - NOTICE REQUIREMENTS FOR EXPLORATION REMOVING 250 TONS OF COAL OR LESS.

(a) Any person who intends to conduct coal exploration operations outside a permit area during which 250 tons or less of coal will be removed and which may substantially disturb the natural land surface, shall, before conducting the exploration, file with the regulatory authority a written notice of intention to explore.

(b) The notice shall include --

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

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

(3) A narrative or map describing the exploration area;

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

(5) A description of the method of exploration to be used and the practices that will be followed to protect the environment and to reclaim the area from adverse impacts of the exploration activities in accordance with the applicable requirements of Part 815 of this chapter.

SECTION 772.12 - PERMIT REQUIREMENTS FOR EXPLORATION REMOVING MORE THAN 250 TONS OF COAL.

(a) Exploration permit. Any person who intends to conduct coal exploration outside a permit area during which more than 250 tons of coal will be removed or which will take place on lands designated as unsuitable for surface mining under Subchapter F of this chapter shall, before conducting the exploration, submit an application and obtain written approval from the regulatory authority in an exploration permit.

(b) Application information. Each application for an exploration permit shall contain, at a minimum, the following information:

(1) The name, address, and telephone number of the applicant.

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

(3) A narrative or map describing the proposed exploration area.

(4) A narrative description of the methods and equipment to be used to conduct the exploration and reclamation.

(5) An estimated timetable for conducting and completing each phase of the exploration and reclamation.

(6) The estimated amount of coal to be removed and a description of the methods to be used to determine the amount.

(7) A statement of why extraction of more than 250 tons of coal is necessary for exploration.

(8) A description of --

(i) Cultural or historical resources listed on the National Register of Historic Places;

(ii) Cultural or historical resources known to be eligible for listing on the National Register of Historic Places; and

(iii) Known archeological resources located within the proposed exploration area.

(9) A description of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 *(16 U.S.C. 1531* et seq.) identified within the proposed exploration area.

(10) A description of the measures to be used to comply with the applicable requirements of Part 815 of this chapter.

(11) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored.

(12) A map or maps at a scale of 1:24,000, or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, topographic and drainage features, bodies of surface water, and pipelines; proposed locations of trenches, roads, and other access routes and structures to be constructed; the location of proposed land excavations; the location of exploration holes or other drill holes or underground openings; the location of excavated earth or waste-material disposal areas; and the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 *(16 U.S.C. 1531* et seq.).

(13) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

(c) Public notice and opportunity to comment. Public notice of the application and opportunity to comment shall be provided as follows:

(1) Within such time as the regulatory authority may designate, the applicant shall provide public notice of the filing of an administratively complete application with the regulatory authority in a newspaper of general circulation in the county of the proposed exploration area.

(2) The public notice shall state the name and address of the person seeking approval, the filing date of the application, the address of the regulatory authority where written comments on the application may be submitted, the closing date of the comment period, and a description of the area of exploration.

(3) Any person having an interest which is or may be adversely affected shall have the right to file written comments on the application within reasonable time limits.

(d) Decisions on applications for exploration removing more than 250 tons of coal.

(1) The regulatory authority shall act upon an administratively complete application for a coal exploration permit and any written comments within a reasonable period of time. The approval of a coal exploration permit may be based only on a complete and accurate application.

(2) The regulatory authority shall approve a complete and accurate application for a coal exploration permit filed in accordance with this part if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application will --

(i) Be conducted in accordance with this part, Part 815 of this chapter, and the applicable provisions of the regulatory program;

(ii) Not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 *(16 U.S.C. 1533)* or result in the destruction or adverse modification of critical habitat of those species; and

(iii) Not adversely affect any cultural or historical resources listed on the National Register of Historic Places, pursuant to the National Historic Preservation Act, as amended *(16 U.S.C. Section 470* et seq., 1976, Supp. V), unless the proposed exploration has been approved by both the regulatory authority and the agency with jurisdiction over such matters.

(3) Terms of approval issued by the regulatory authority shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with this part, Part 815 of this chapter, and the regulatory program.

(e) Notice and hearing.

(1) The regulatory authority shall notify the applicant, the appropriate local government officials, and other commenters on the application, in writing, of its decision on the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. Public notice of the decision on each application shall be posted by the regulatory authority at a public office in the vicinity of the proposed exploration operations.

(2) Any person having an interest which is or may be adversely affected by a decision of the regulatory authority pursuant to paragraph (e)(1) of this section shall have the opportunity for administrative and judicial review as set forth in Part 775 of this chapter.

SECTION 772.13 - COAL EXPLORATION COMPLIANCE DUTIES.

(a) All coal exploration and reclamation activities that substantially disturb the natural land surface shall be conducted in accordance with the coal exploration requirements of this part, Part 815 of this chapter, the regulatory program, and any exploration permit term or condition imposed by the regulatory authority.

(b) Any person who conducts any coal exploration in violation of the provisions of this part, Part 815 of this chapter, the regulatory program, or any exploration permit term or condition imposed by the regulatory authority shall be subject to the provisions of Section 518 of the Act, Subchapter L of this chapter, and the applicable inspection and enforcement provisions of the regulatory program.

SECTION 772.14 - REQUIREMENTS FOR COMMERCIAL SALE.

Any person who extracts coal for commercial sale during coal exploration operations shall obtain a surface coal mining and reclamation operations permit for those operations from the regulatory authority under Parts 773-785 of this chapter. No surface coal mining and reclamation operations permit is required if the regulatory authority makes a prior determination that the sale is to test for coal properties necessary for the development of surface coal mining and reclamation operations for which a permit application is to be submitted at a later time.

SECTION 772.15 - PUBLIC AVAILABILITY OF INFORMATION.

(a) Except as provided in paragraph (b) of this section, all information submitted to the regulatory authority under this part shall be made available for public inspection and copying at the local offices of the regulatory authority closest to the exploration area.

(b) The regulatory authority shall keep information confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration.

(c) Information requested to be held as confidential under paragraph (b) of this section shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

PART 776 -- GENERAL REQUIREMENTS FOR COAL EXPLORATION -- [REMOVED]

4. 30 CFR Chapter VII is amended by removing Part 776.

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

5. Part 815 is revised to read as follows:

PART 815 -- PERMANENT PROGRAM PERFORMANCE STANDARDS -- COAL EXPLORATION

Section

815.1	Scope and purpose.
815.13	Required documents.
815.15	Performance standards for coal exploration.

Authority: Pub. L. 95-87, *30 U.S.C. 1201* et seq.

SECTION 815.1 - SCOPE AND PURPOSE.

This part sets forth performance standards required for coal exploration which substantially disturbs the natural land surface. At the discretion of the regulatory authority, coal exploration operations may be further required to comply with the applicable standards of 30 CFR Parts 816-828.

SECTION 815.13 - REQUIRED DOCUMENTS.

Each person who conducts coal exploration which substantially disturbs the natural land surface shall, while in the exploration area, have available a copy of the filed notice of intention to explore or a copy of the exploration permit for review by the authorized representative of the regulatory authority upon request.

SECTION 815.15 - PERFORMANCE STANDARDS FOR COAL EXPLORATION.

(a) Habitats of unique or unusually high value for fish, wildlife, and other related environmental values and critical habitats of threatened or endangered species identified pursuant to the Endangered Species Act of 1973 *(16 U.S.C. 1531* et seq.) shall not be disturbed during coal exploration.

(b) All roads or other transportation facilities used for coal exploration shall comply with the applicable provisions of Sections 816.150, 816.151, 816.180 and 816.181 of this chapter.

(c) If excavations, artificially flat areas, or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

(d) Topsoil shall be separately removed, stored, and redistributed on areas disturbed by coal exploration activities as necessary to assure successful revegetation or as required by the regulatory authority.

(e) All areas disturbed by coal exploration activities shall be revegetated in a manner that encourages prompt revegetation and recovery of a diverse, effective, and permanent vegetative cover. Revegetation shall be accomplished in accordance with the following:

(1) All areas disturbed by coal exploration activities shall be seeded or planted to the same seasonal variety native to the areas disturbed. If the land use of the exploration area is intensive agriculture, planting of the crops normally grown will meet the requirements of this paragraph.

(2) The vegetative cover shall be capable of stabilizing the soil surface from erosion.

(f) Diversions of overland flows and ephemeral, perennial, or intermittent streams shall be made in accordance with Section 816.43 of this chapter.

(g) Each exploration hole, borehole, well, or other exposed underground opening created during exploration shall be reclaimed in accordance with Sections 816.13-816.15. of this chapter.

(h) All facilities and equipment shall be promptly removed from the exploration area when they are no longer needed for exploration, except for those facilities and equipment that the regulatory authority determines may remain to --

(1) Provide additional environmental data,

(2) Reduce or control the onsite and offsite effects of the exploration activities, or

(3) Facilitate future surface mining and reclamation operations by the person conducting the exploration.

(i) Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance in accordance with Sections 816.41-816.49 of this chapter. The regulatory authority may specify additional measures which shall be adopted by the person engaged in coal exploration.

(j) Acid- or toxic-forming materials shall be handled and disposed of in accordance with Sections 816.41(b), 816.41(f), and 816.102(e) of this chapter. The regulatory authority may specify additional measures which shall be adopted by the person engaged in coal exploration.

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