



U·S· DEPARTMENT OF THE INTERIOR  
OFFICE OF SURFACE MINING  
RECLAMATION AND ENFORCEMENT  
**DIRECTIVES SYSTEM**

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Subject: Alternative Postmining Land Use Requirements for Real Property  
Improvements

Approval: *Jed J. Christensen* Title: Director

1. Purpose. This directive provides guidance on the Office of Surface Mining Reclamation and Enforcement's (OSMRE) regulations concerning approval for retention of real property improvements as part of an alternative postmining land use at sites disturbed by surface coal mining and reclamation operations.

2. Definitions. Real property improvements means a facility or structure used during a mining and reclamation operation that is allowed to remain as part of the postmining land use as approved by the regulatory authority in accordance with 30 CFR 715.13(d), 816.133(c), or 817.133(c).

3. Policy/Procedures.

a. Policy.

(1) Section 515(b)(2) of the Surface Mining Control and Reclamation Act (SMCRA) requires that land affected by surface coal mining operations be restored to a condition capable of supporting its premining land use, or as an alternative, a land use which is higher or better as defined in 30 CFR 701.5 than the premining land use.

(2) OSMRE's regulations implementing section 515(b)(2) in 30 CFR 715.13 of the initial regulatory program and 30 CFR 816.133 of the permanent regulatory program provide, among other things, that the regulatory authority may approve an alternative postmining land use if the proposed alternative land use meets the criteria for such approval under 30 CFR 715.13(d) (initial program) and 30 CFR 816.133(c) (permanent program).

(3) Key to application of the criteria in 30 CFR 715.13(d) and 30 CFR 816.133(c) is the reasonable likelihood for achievement of the postmining land use plan. This decision must be made by the regulatory authority on a case-by-case basis.

b. Procedures.

(1) Initial Program.

(a) Operators proposing retention of real property improvements as part of an alternative postmining land use must obtain approval of such proposal from the regulatory authority.

(b) The regulatory authority may approve retention of real property improvements as part of an alternative postmining land use if the regulatory authority determines that the proposal meets the criteria enunciated in 30 CFR 715.13(d).

(c) For preparation plants, this subsection applies to sites subject to jurisdiction under SMCRA but not required to apply for a permanent program permit. For certain preparation plants which do not or did not separate coal from its impurities, the effective dates of the May 11, 1987, Federal Register notice (52 FR 17724) apply.

(d) Under 30 CFR 715.13(d), included in the approval process is a requirement that the regulatory authority provide by public notice, not less than 45 days nor more than 60 days, for interested citizens and local, State and Federal agencies to review and comment on the proposed alternative postmining land use. Because of a 1980 District Court decision which struck down identical provisions in the permanent program regulations as inconsistent with SMCRA, the provisions of 30 CFR 715.13(d)(4) regarding specific letters of commitment and 30 CFR 715.13(d)(9)(i) regarding firm written commitments, may not be enforceable, and compliance should not be required.

## (2) Permanent Program.

(a) Operators proposing retention of real property improvements as part of an alternative postmining land use must obtain approval of such proposal from the regulatory authority prior to bond release. Any changes to the postmining land use should be approved during the permitting process or as a revision to the permit.

(b) The regulatory authority may approve real property improvements as part of an alternative postmining land use if the regulatory authority determines that the real property improvements meet the criteria enunciated in 30 CFR 816.133(c) and 30 CFR 817.133(c).

(c) Bonds posted for reclamation must be adequate to complete the approved reclamation plan, so that the land will be capable of supporting the approved postmining land use. To the extent that the approved reclamation plan allows retention of real property improvements as part of the postmining land use, the performance bond does not need to cover the cost of removing the improvements.

4. Reporting Requirement. As required by the applicable permitting regulations.

## 5. References.

- a. Public Law 95-87, Section 515(b)(2).
- b. 30 CFR 715.13(d), 30 CFR 785.21(b), 30 CFR 816.133.

6. Effect On Other Documents. None.
7. Effective Date. Upon issuance.
8. Contact. Chief, Division of Technical Services (202) 343-1480.