

## Surface Mining Reclamation and Enforcement, Interior

## § 933.700

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AUTHORITY: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*; and Pub. L. 100-34.

SOURCE: 48 FR 30302, June 30, 1983, unless otherwise noted.

### § 933.700 North Carolina Federal program.

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

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

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

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44

U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of North Carolina laws and regulations provide, where applicable, for more stringent environmental control and regulation of some aspects of surface coal mining operations than do the provisions of the Act and the regulations in this chapter. Therefore, pursuant to section 505(b) of the Act, they shall not be construed to be inconsistent with the Act unless in a particular instance the rules in this chapter are found by OSM to establish more stringent environmental controls.

(1) North Carolina General Statute (NCGS) 74-51, concerning conditions under which a mining permit may be granted, authorized the North Carolina Department of Natural Resources and Community Development to deny a permit for a mining operation which will have a significantly adverse effect on the purposes of a publicly owned park, forest, or recreation area and may condition permit approval on a requirement of visual screening, vegetative or otherwise, so as to screen the view of the operation from public highways, public parks, or residential areas where the Department finds such screening to be feasible and desirable, or determines that such screening measures are either not feasible or not desirable.

(2) North Carolina mining laws and regulations apply to mining operations affecting an area greater than one acre. To the extent that North Carolina mining law and regulations cited in paragraph (f) of this section apply to coal mining operations not regulated by the Surface Mining Control and Reclamation Act, they are not preempted by this Federal program for North Carolina.

(3) North Carolina Dam Safety Law of 1967, North Carolina General Statutes (NCGS) 143-215.23 through 143-215.37.

(4) Geophysical Exploration regulations, Title 15, North Carolina Administrative Code, Subchapter 5C, applies to any coal exploration involving the use of explosives.

(f) The following are North Carolina laws and regulations that generally interfere with the achievement of the

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purposes and requirements of the Act and are, in accordance with section 504(g) of the Act, preempted and superseded to the extent that they regulate coal exploration or surface coal mining and reclamation operations regulated by the Surface Mining Control and Reclamation Act. Other North Carolina laws may interfere with the achievement of the purposes of goals of the Act in an individual situation, and may be preempted and superseded as they affect a particular coal exploration or surface mining operation by publication of the notice to that effect in the FEDERAL REGISTER.

(1) North Carolina Mining Act of 1971, as amended, NCGS 74-46 through 74-68, except to the extent that the Mining Act is preserved as provided in paragraph (e) of this section.

(2) Title 15, North Carolina Administrative Code, Subchapters 5A, 5B, and 5F Mining and Mineral Resources, except to the extent that those regulations are preserved as provided in paragraph (e) of this section.

(g) The Secretary may grant a limited variance from the performance standards of §§933.815 through 933.828 of this part if the applicant for coal exploration approval or a surface mining permit submitted pursuant to §§933.772 through 933.785 demonstrates in the application that: (1) Such variance is necessary because of the unique nature of North Carolina's terrain, climate, biological, chemical, or other relevant physical conditions; and (2) the proposed alternative will achieve equal or greater environmental protection than does the performance requirement from which the variance is requested.

[48 FR 30302, June 30, 1983, as amended at 52 FR 13811, Apr. 24, 1987]

### §933.701 General.

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

### §933.702 Exemption for coal extraction incidental to the extraction of other minerals.

Part 702 of this chapter, *Exemption for Coal Extraction Incidental to the Extraction of Other Minerals*, shall apply to

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any person who conducts coal extraction incidental to the extraction of other minerals for purposes of commercial use or sale.

[54 FR 52123, Dec. 20, 1989]

### §933.707 Exemption for coal extraction incidental to government-financed highway or other construction.

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

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

Part 761 of this chapter, *Areas Designated Unsuitable for Coal Mining by Act of Congress*, with the exception of §§761.11(c) and 761.12(f)(1), shall apply to surface coal mining and reclamation operations, beginning one year after the effective date of this program. For the purposes of part 933, the following §§761.11(c) and 761.12(f)(1) shall replace the existing §§761.11(c) and 761.12(f)(1).

(c) On any lands which will adversely affect any publicly owned park, forest, recreation area, or any places included on, or eligible for listing on, the National Register of Historic Places, unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park, forest, recreation area, or places;

(f)(1) Where the proposed surface mining operation may adversely affect any public park, forest, recreation area, or any places included on, or eligible for listing on, the National Register of Historic Places, the regulatory authority shall transmit to the Federal, State, or local agencies with jurisdiction over, or a statutory or regulatory responsibility for, the park, forest, recreation area, or historic place a copy of the completed permit application containing the following:

(i) A request for that agency's approval or disapproval of the operators;

(ii) A notice to the appropriate agency that it must respond within 30 days from receipt of the request.

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

Part 762 of this chapter, *Criteria for Designation Areas Unsuitable for Surface Coal Mining Operations*, shall apply to