

## Surface Mining Reclamation and Enforcement, Interior

## § 942.772

(c) Persons engaged in underground mining activities which do not have and did not apply for a permanent program permit from the State of Tennessee prior to the effective date of this program, but which were allowed to operate under the Tennessee State program, may continue to operate beyond eight months after the effective date of this program if they: (1) Within two months of the effective date of this program apply to OSM for a permit; (2) comply with Subchapter B of this chapter until issuance or denial of a permit under this program; and (3) provide to the Office on a timely basis any requested additional information necessary to make a complete permit application.

(d) Persons operating facilities which leach, chemically process, or physically process coal which do not have a permanent program permit from the State of Tennessee prior to the effective date of this program, may continue to operate beyond eight months after the effective date of this program if they: (1) Within two months of the effective date of this program apply to OSM for a permit; (2) comply with Subchapter B of this chapter until issuance or denial of a permit under this program; and (3) provide to the Office on a timely basis any requested additional information necessary to make a complete permit application.

(e) Records required by § 700.14 of this chapter to be made available locally to the public shall be retained at OSM's Knoxville Field Office.

### § 942.702 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 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]

### § 942.707 Exemption for coal extraction incident to government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incident to Government-*

*Financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

### § 942.761 Areas designated unsuitable for surface coal mining by act of Congress.

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

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

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

(b) In addition to the lands defined as fragile lands in § 762.5 of this chapter, the Office in evaluating any petition to designate lands as unsuitable or to terminate such designation will consider lands included on the Tennessee Natural Areas Registry under Tennessee Code Annotated (TCA) section 11-14-112, Natural Areas designated by the Tennessee General Assembly under TCA 11-14-108, areas adjoining Tennessee Scenic Rivers designated under TCA 11-13-101, and Scenic Trails designated under TCA 11-11-101.

### § 942.764 Process for designating areas unsuitable for surface coal mining operations.

(a) Part 764 of this chapter, *State Process for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mining and reclamation operations.

(b) The Secretary shall notify the Tennessee Department of Health and Environment of any area designated unsuitable or for which such designation has been requested or terminated.

(c) Unsuitability designations made under the Tennessee State program shall remain valid unless and until terminated.

### § 942.772 Requirements for coal exploration.

(a) Part 772 of this chapter, *Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

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

[53 FR 52950, Dec. 29, 1988]

**§ 942.773 Requirements for permits and permit processing.**

(a) Part 773 of this chapter, *Requirements for Permits and Permit Processing*, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 942.773(b)(2)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and

reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(6) Adequacy of information to allow the Office to comply with the National Environmental Policy Act, 42 U.S.C. 4322, shall be considered in the determination of a complete application. The Office may require specific additional information from the applicant as any environmental review progresses when such specific information is needed. Failure to submit the additional information by the date(s) requested could result in disapproval of the application.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) *Review of Tennessee State program permits.* In lieu of the provisions of § 773.11(d)(2) of this chapter, the following shall apply:

(1) Beginning on the effective date of this program, the Office will review all permanent program permits issued by the State of Tennessee.

(2) If the Office determines that any State permit was granted contrary to the provisions of the Act, the Office will: (i) Notify the permittee in writing and state the reasons for its determination; (ii) provide the permittee a reasonable time within which to resubmit the permit application in whole or in part, as appropriate; (iii) provide the permittee a reasonable time within which to conform ongoing surface coal mining and reclamation operations to the requirements of this part; and (iv) provide the permittee with the opportunity for a non-adjudicatory hearing to contest the determination by the Office.

(3) If the permittee fails to resubmit the permit application or conform the