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10/30/74

## COAL POLICY

The Administration is well aware that coal, the Nation's most abundant energy resource, represents one of the leading ways of increasing the Nation's self-sufficiency. While a more explicit indication of Federal policy on the role of coal in meeting our energy requirements must await further development of Project Independence planning, there are a number of Administration policies which affect the extent to which the Nation relies on coal. In addition, the Administration expects to place maximum possible reliance upon free markets for decisions on choices among alternative fuels -- to the extent this is consistent with our overall need for reduced oil imports in the near term and for moving toward energy independence in the longer term.

Examples of existing policies include:

1. **The President has called upon his Energy Resources Council and the Federal Energy Administration to take the lead in developing a program for making greater use of coal in electrical generating plants -- new and existing plants -- as a part of an effort to reduce oil imports.**
2. Thirteen amendments to the Clean Air Act were proposed in March 1974 to provide greater flexibility in deadlines and requirements and to achieve a better balance between our environmental and energy objectives. Amendments particularly important to the use of coal included:
  - a. A requirement that the Administrator of EPA review State Air Quality Implementation Plans and identify requirements in those plans that are more stringent than necessary to meet national primary air quality standards. This "overkill" in State requirements if allowed to stand could mean that between 100 and 200 million tons of coal now being used could no longer be used. EPA would have to come up with a plan to eliminate this "clean fuels" deficit.
  - b. A provision explicitly authorizing the use of intermittent control strategies and tall stacks as a means for meeting ambient air quality standards.
  - c. A provision that would permit ordering major fuel burning sources such as power plants to switch from oil or natural gas to coal.



- d. Another provision would permit EPA to suspend emission limitations for sources ordered to switch to coal.
  - e. A provision that would permit EPA and the states to issue enforcement orders for individual pollution sources which would, in effect, extend the deadlines for meeting air quality requirements when the source is on a fixed schedule for achieving full compliance. This would help those sources that cannot get clean fuel or emission control equipment.
  - f. A provision giving legislative relief from court interpretations of the Clean Air Act which require EPA to take action to "prevent significant deterioration" of air quality in those areas that are cleaner than required to meet national standards set to protect public health and welfare. Decisions to set more restrictive standards -- which could limit growth and energy development -- would be left to State and local governments.
- 3. The President has called for legislation establishing environmental and reclamation standards for surface mining which strike a reasonable balance between environmental protection and the need to increase coal production.
  - 4. Federal funding for coal R&D in FY 1975 will be \$394 million compared to \$164 million in FY 1974 and \$85 million in FY 1973. In addition, funding for environmental control technology (e.g., stack gas cleaning) relating to coal will be \$57 million in FY 1975 compared to \$28 million in FY 1974, as well as \$28 million in FY 1973.
  - 5. The Administration has endorsed legislation which would make it easier to build coal slurry pipelines through granting of eminent domain powers.
  - 6. Coal leasing policy on public lands is being thoroughly reviewed, and an environmental impact statement on possible renewed Federal leasing is being completed, all leading toward decisions on leasing policies shortly after the first of the year.
  - 7. The Administration has recommended legislation to modernize the mineral leasing and mining laws which apply to coal development on Federal lands.



THE WHITE HOUSE  
WASHINGTON

[1975]

President is calling a meeting for Friday, March 21, from 1:30 to 9:30 p.m. in White House, to meet with private individuals to discuss development of major coal resources.

Sec. Morton is chairing the meeting and inviting the people. Also preparing agenda.

Zarb is to attend at request of P.

NETA: TX for THE INFO.  
CHAS.

COAL File

September 4, 1975

Dear Fred:

Thank you for sending me the proposed regulations.

With kind regards,

Sincerely,

Charles Leppert, Jr.  
Special Assistant  
for Legislative Affairs

Mr. Fred Karem  
Special Assistant to the Solicitor  
Department of the Interior  
Washington, D. C. 20240

CL:gcb



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DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SOLICITOR  
WASHINGTON, D. C. 20240

FROM: Special Assistant to the Solicitor

TO: Charlie Leppert

Thought you would me  
interested in the  
attached material.

Fred Karem

File



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

September 2, 1975

Mr. Max L. Friedersdorf  
Assistant to the President  
for Administrative Affairs  
Second Floor, West Wing  
The White House  
Washington, D.C. 20500

Dear Max:

Enclosed for your information are the final versions of our proposed departmental Federal coal leasing and operating regulations, as well as a relevant press release.

In developing this set of regulations, we have used as policy guidelines the two Presidential vetoes of surface mining legislation and other related Presidential pronouncements. Senators Fannin and Hansen and Congressmen Rhodes, Skubitz, and Steiger have signed off on the general content of the regulations. Appropriate officials of the Domestic Council and OMB have approved their publication, and the regulations have been circulated through other agencies for Quality of Life review.

These proposed regulations will appear in the Federal Register on September 4 or 4, with a 60 day comment period. They are being distributed this afternoon to all members of the House and Senate Interior Committees, and simultaneously a briefing on them will be provided in Denver to the Western Governors' Energy Policy Office. Please let me know if we can provide you with any other information on this subject.

Sincerely,

Kent Frizzell  
Acting Secretary of the Interior

Enclosures

cc: Charles Leppert



# DEPARTMENT of the INTERIOR

## news release

OFFICE OF THE SECRETARY

Essertier (202) 343-3171

For Release September 3, 1975

### PROPOSED REGULATIONS TO EXPAND ENVIRONMENTAL PROTECTION IN MINING OF FEDERAL COAL

Acting Secretary Kent Frizzell said today the Interior Department has proposed changes in Federal coal regulations to expand environmental protection in the leasing and mining of Federally-owned coal.

"Among the Nation's pressing needs is development of domestic energy resources, including Federal coal, in order to reduce the vulnerability that comes from dependence upon insecure foreign energy supplies, to protect jobs, and to enable Americans to maintain their standard of living at reasonable cost," Frizzell said.

"At the same time, we are going to assure that adequate measures are taken to avoid, minimize, or correct, damage to the environment--and these proposed regulations prescribe procedures toward this important goal," he added.

Frizzell said the proposals would apply to all phases of coal development, including pre-lease planning and environmental analysis, prospecting, exploration, production, and processing of coal, as well as reclamation and abandonment of mined lands.

The regulations would require approval of detailed exploration and mining plans prior to any development of Federal coal leases. Specific performance standards would require uniform and consistent attention to environmental controls during mining and reclamation operations.

Interior's Bureau of Land Management handles leasing of Federally-owned coal. Another Interior agency, the U.S. Geological Survey, regulates coal exploration, mining and reclamation operations.

The new proposals would expand the scope of Federal environmental responsibility, as well as clarify the responsibilities of mine operators. They would apply to operations on public and acquired coal lands of the United States, and to Indian lands administered by Interior.

The proposed regulations provide that a Governor may ask the Secretary of the Interior to review a state's laws, regulations, policies and procedures on coal development. Based upon his review, the Secretary could direct that a state's reclamation laws and regulations be applied to Federal coal development in that state, provided they offer environmental protection at least equal to Federal standards, and are consistent with the national interest in timely and orderly development of Federal coal resources.

(more)



The proposed regulations, Title 43, Code of Federal Regulations, Subpart 3041, and Title 30, Code of Federal Regulations, Part 211, are scheduled to appear in the Federal Register September 5. Interested parties are invited to submit comment on the proposed changes within 60 days to: The Department of the Interior, 18th and C St., N.W., Washington, D.C. 20240. Following the period of public comment, the regulations will be revised and published as final in the Federal Register.

A draft environmental impact statement has been prepared. Notice of its availability will be published in the Federal Register.

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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Washington, D. C.

Bureau of Land Management  
U. S. Geological Survey

43 CFR PART 3040

PART 3040--ENVIRONMENT AND SAFETY  
Subpart 3041--Surface Management--Federal Coal Resources

30 CFR PARTS 211 AND 216

COAL MINING OPERATING REGULATIONS

Notice of Proposed Rulemaking

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior under the Mineral Leasing Act of February 25, 1920, as amended and supplemented (30 U.S.C. 181-287), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359), (5 U.S.C. 301), the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), and various statutes relating to mining on Indian lands, is now proposed to revise 30 CFR Part 211, and 43 CFR 23, and to promulgate a new subpart 3041 of 43 CFR, as set forth below. It is also proposed that 30 CFR Part 216, applicable to coal mining operations under leases in the State of Alaska which were issued pursuant to the Alaska Coal Leasing Act of October 20, 1914 (38 Stat. 741), prior to its repeal by P.L. 86-252, September 9, 1959 (73 Stat. 490), be revoked and that operations under those leases also be governed by the regulations in 30 CFR Part 211 as set forth below.

On January 30, 1975, and on April 30, 1973, notices and texts of proposed revisions to the coal mining operating regulations of the U. S. Geological Survey were published in the Federal Register

(38 FR 10686; 40 FR 4428). Those regulations govern operations conducted under coal permits, leases, and licenses on public and acquired lands of the United States and Indian lands administered by the Department of the Interior. The previously proposed regulations would also govern the mining of coal in Alaska and, therefore, were proposed to revoke 30 CFR Part 216, which contains such regulations.

Prior to the publication of the 211 regulations proposed on January 30, 1975, the President had withheld signature from S. 425, the surface mining legislation passed by the 93rd Congress.

On February 6, 1975, new proposed Federal surface mining legislation was submitted by the Administration along with a detailed analysis of the unacceptable adverse effects which S. 425 would have had. Thereafter, the Congress passed H. R. 25, which failed to meet the objections which had lead to the President's disapproval of S. 425, and would have resulted in greater adverse impacts than that bill. The President vetoed H. R. 25 on May 20, 1975, and that veto was sustained by the House of Representatives on June 10, 1975.

As the President noted in his veto message, recent revisions of State laws regarding surface mining have improved the environmental controls imposed upon lands subject to their jurisdiction. This situation may be expected to continue, as States update, amend, and revise their controls.

A major portion of the Nation's coal resources lies in Federal ownership. Timely and orderly development of this domestic energy resource is a matter of high priority to the Nation as a whole and to the Federal Government, as the custodian of these resources on behalf of all of the people.

At the same time, it is imperative to insure that in developing such resources appropriate consideration is given to the serious environmental concerns associated with mining. Development must be balanced against these concerns, and allowed to take place only when and under such circumstances as will assure such balancing protection.

The proposed regulations 43 CFR 3041 were formerly covered by 43 CFR 23, and relate to the leasing, permitting, and licensing of coal and reclamation regulations by the BLM. The proposed regulations 30 CFR 211 again relate to coal exploration and mining operations, and reclamation of affected lands.

The purpose of the proposed set of regulations is to delete obsolete provisions, update existing regulations so as to impose reclamation and performance standards upon operations relating to Federal coal, and clarify the responsibility of lessees, permittees, and licensees for the protection of the surface, natural resources, environment, and existing improvements during all such operations.

Together, the proposed regulations govern pre and post-leasing operations conducted under coal permits, leases, and licenses on public and acquired lands of the United States, regardless of surface ownership. In addition, the new proposed 30 CFR 211 would govern operation on Indian lands administered by the Department of the Interior, and 30 CFR Part 216 is again accordingly proposed to be revoked.

Finally, conforming amendments to 43 CFR Part 23 to reflect the new proposed 43 CFR Part 3041 are also proposed.

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The proposed regulations provide specific language to clarify responsibilities of lessees, permittees, and licensees for all phases of coal mining operations on public and acquired lands of the United States and Indian lands administered by the Department of the Interior. The scope of the regulations addresses not only the "orderly and efficient development" phase of the operations, but also the total spectrum of events beginning with the pre-lease land-use planning and environmental analyses into prospecting, exploration, and testing activities and extending through the development, mining, production, and coal processing practices, as well as the abandonment and reclamation measures.

Under the proposed regulations, leases, permits, and licenses for coal would be issued, and plans of operation approved only where reclamation of the affected lands, pursuant to the standards set forth, is attainable and assured, and reclamation programs will be required to be undertaken as contemporaneously as practicable with mineral development.

The new regulations set forth environmental standards that will be used in conducting pre-lease, permitting, and licensing examinations, from which the terms and conditions of the lease, permit, or license will be developed.

Performance and reclamation standards that would automatically apply to all operations subject to these regulations are provided and set forth in identical terms in each proposed regulation so that performance and reclamation requirements will be consistent throughout the pre-leasing, exploration mining, reclamation, and abandonment

phases of coal operations.

The new regulations further require that exploration and/or mining plans, describing in detail the operations to be undertaken, be prepared and submitted in advance of that operation.

These two revisions are complimentary, and designed to create a coordinated mechanism for coal development. Under the proposed 43 CFR Part 3041, a decision mechanism is outlined whereby decisions as to whether coal leasing should occur, and what specific conditions might be applied to a lease, will be made after appropriate environmental review. Under the proposed 30 CFR Part 211, the Geological Survey will monitor coal operations, and enforce lease terms and conditions and general performance standards which are included in identical language in both regulations.

The Department of the Interior is currently completing an environmental review of its entire coal leasing program. This review will be published shortly, and will contain a formal mechanism defining with greater specificity the Department's coal leasing policy. With the proposed regulations, it will constitute a unified program to direct future development of our resources. Several elements of the proposed regulations should be specifically noted and public comment is specifically requested thereon.

First, the relationship between Federal and State jurisdiction to impose reclamation standards has arisen in the recent proposed legislation. On the one hand, it is clear that the States have a direct public policy interest in coal development within their geographical boundaries. In addition, the historical development of coal

resources has, in many areas, resulted in patterns of intermingled tracts of Federal and private ownership with respect to which coordinated regulatory mechanisms would be desirable.

On the other hand, it is also clear that Federal coal resources belong not to one or more of the several States, but to the Nation as a whole. The Federal interest in assuring the timely and orderly development of such resources must be implemented with that end in mind.

A mechanism is, therefore, proposed in these regulations which would satisfy both Federal and State interests. This mechanism would allow the Secretary of the Interior to direct that some or all of the existing State laws, regulations, practices, and procedures of a State relating to reclamation be applied by Federal officers within that State as a matter of Federal law. Such discretion may be exercised at the request of the Governor, if the Secretary, upon review of that State's regulations, determines that such application would:

- (a) Effectuate the purpose of the proposed regulations;
- (b) Afford protection of the environmental values which would be at least as stringent as would occur under otherwise applicable Federal standards; and
- (c) Would be consistent with the interest of the United States in the timely and orderly development of its coal resources.

Such an order would remain in effect until rescinded or amended, and would enable Federal and State concerns to be appropriately balanced.

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It has been and is the current practice of the Department to include in coal leases a provision requiring compliance in State and local laws. It is also the practice of the Mining Supervisors of the Geological Survey to follow this practice in the implementation of their responsibilities with respect to ongoing operations. The proposed mechanism would allow continuation of this existing practice, while reserving the power to insure that the National interest in resource development is accommodated.

It is hoped that this mechanism will have the effect of encouraging those States without comprehensive, reasonable regulatory mechanisms to enact such control, with the assurance that the development of Federal coal within their boundaries may take place on similar terms.

Second, the method of applying the proposed regulatory mechanism to existing operations, and the timing of such application, is not specifically addressed. The notice of proposed rulemaking for the proposed 211 regulations published on January 30, 1975, provided:

"Operators holding existing permits, leases, or licenses will be required to comply with the requirements of this part no later than 180 days following the date of republication of these regulations in the Federal Register with respect to lands from which overburden and the coal seam being mined have not been removed." Public comment is expressly requested upon the question of whether separate provision should be made within the proposed regulations to cover existing regulations, or whether separate effective dates for the regulations



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should be provided for new and existing operations, and in either event what time period for compliance is appropriate.

### Specific Provisions of the Regulations

#### Definitions

No attempt has been made comprehensively to define terms of general applicability which have accepted scientific definitions. In the event that additional terms are suggested for specific definition, they will be included in the final regulations.

The following specific provisions are common to both proposed regulations:

Approximate Original Contour. The definition has been changed from the earlier proposed 211 regulations so as to eliminate operative portions of the previous definition, which are more properly included in the main body of the regulations.

Logical Mining Unit. This term is defined for the first time in the proposed regulations and represents an approach to coordination of development planning between public and private lands.

Maximum Extent Practicable. Also defined for the first time, this concept is intended to express a qualification applicable to given performance standards or levels of control which would incorporate a cost benefit balancing of technological feasibility, economic cost, and tangible and intangible environmental benefits attributable to various levels of such standard or control. It is not intended to imply that economic considerations will automatically prevail in determining the level of controls which must be utilized. On the other

hand, it is intended that cost benefit balancing will reduce the possibility that disproportionately expensive technology might be required to be employed where only incremental, minimal environmental advantage would result therefrom.

Reclamation. This term has been restated so as to eliminate operative language setting forth degrees of reclamation, which is more properly set forth in the body of the regulations. The phrase "consistent with" is intended to express the concept that post-mining rehabilitation efforts should be addressed in the first instance with reference to the pre-mining condition, but that actual reclamation measures and post-mining conditions and uses are properly considered, approved, and executed pursuant to the operative provisions of the regulations and the approved plan of operations.

Significant Valley Floor Vegetation. The term is used as a qualifying note in determining certain areas of valley floors subject to hydrological protection in the body of the regulations.

## GENERAL OPERATION AND RECLAMATION REQUIREMENTS

(References are to the proposed 30 CFR Part 211 regulations)

Section 211.4(a) requires that all operations conform to the provisions of applicable laws and regulations, including effluent and emission limitations.

Section 211.4(c) imposes a general obligation to avoid to the maximum extent practicable specific elements of environmental concern. It is not intended that this general obligation substitute for the more precise requirements which may be imposed by these regulations or provisions of other applicable laws or regulations.

Section 211.4(d) has been simplified from the earlier proposed revisions of this part, and clarified to provide that water quality be monitored so as to establish such data as may be necessary to determine procedures or measures required to comply with the proposed regulations.

Section 211.5(b) has been expanded to insure actual public notice of proposed mining plans.

Section 211.10(a) now provides that a proposed mining plan shall, where possible, include all operations in an approved logical mining unit. It should be noted that it is not intended that resulting inclusion of portions of an operation involving non-federal coal in such a plan would expand federal jurisdiction beyond appropriate

limits, by either requiring a federal bond on such non-federal operations or by imposing the requirements of the operating or performance standards or enforcement mechanisms of the regulations to such operations.

Subsection 211.10(d) authorizes the mining supervisor to require reasonable revisions or supplements to approved plans where changed conditions or unforeseen circumstances exist, or approve changes at the request of an operator. Where any such revision would be major, the public notice provisions of Section 211.5(b) will apply. In the event of disagreement as to the propriety of any such change, an appeal from the mining supervisors decision will lie under Part 290 pursuant to Section 211.73.

## RECLAMATION AND PERFORMANCE STANDARDS

(References are to the proposed 30 CFR 211 texts, but identical language is included in the proposed 43 CFR 3041.)

Section 211.40(a)(2) requires the operator to reclaim affected lands pursuant to his approved plan and as contemporaneously as practicable with operations, to a condition at least fully capable of supporting previous practicable uses or equal or better uses that can reasonably be attained. It is intended that this provision would authorize the Department to require reclamation, where appropriate, to a use that was practicable prior to mining but not necessarily in effect. To require exact parity between post-mining and pre-mining land condition would impose an impossible burden. Requiring reclamation to a condition capable of supporting equal or better uses that can reasonably be achieved affords adequate assurance that post-mining land condition will be acceptable.

Section 211.40(a)(3) requires restoration to the approximate original contour to the maximum extent practicable. Variances from that requirement based upon equal or better post-mining land uses or unusual conditions may be granted only by the Director of the Geological Survey, with the concurrence of the Director of the Bureau of Land Management. Any such variance will, of course, be included in an approved plan of operations, and thus subject to appropriate public consideration.

Section 211.40(a)(8) sets forth the requirement that disturbances to prevailing hydrologic conditions be minimized, and in subparagraph (iv) specifically requires protection of the surface and ground water resources of valley floors which provide water sources that support significant vegetation or existing uses.

Subparagraph 211.40(a)(16) imposes the obligation to revegetate affected lands and authorizes the use of introduced species where quick cover is desirable.

Section 211.40(a)(17) sets forth the time limitations within which liability upon the operator's bond for revegetation will apply. A maximum period of liability of 10 years from the first planting date is provided. After substantial review of this question, it is felt that this period is appropriate. Failure of successful revegetation after 10 years of effort is felt to be determinative of the question of whether the additional efforts represented by expending the retained portion of the bond would be successful. On the other hand, in some circumstances it will be apparent from the conditions at the site of operations that successful revegetation is likely to occur within the 5 year minimum time period. Where this is the case, authority is provided to waive the automatic application of this minimum period at the time of lease issuance. It should be noted that operation of this waiver would not in any way diminish the burden upon the operator to establish that revegetation has in fact successfully been accomplished within that period.

## SPECIFIC PROVISIONS OF 43 CFR 3041

Section 3041.0-4 spells out the specific areas of responsibility of the BLM and the Geological Survey with respect to surface management and operations for coal development, consistent with internal Departmental orders.

Section 3041.0-6 sets forth the procedures whereby the environmental impact on both an area-wide and specific tract basis will be assessed prior to making a determination as to whether leasing, permitting, or licensing will be allowed. This procedure provides for obtaining the views and recommendations of the Geological Survey and other appropriate Federal agencies, for holding public hearings, where necessary, and for consultation with State and local governments and interested parties, including surface owners where applicable.

Section 3041.0-7(c) allows the authorized officer of the Federal surface management agency, in consultation with the Mining Supervisor, to establish additional and more stringent requirements than required by the performance standards set forth in Section 3041.0-7(b), to meet exceptional and special circumstances such as the degree of slope and soil conditions.

Section 3041.0-7(d) allows the authorized officer to propose to the Mining Supervisor that an approved exploration or mining plan be

revised or supplemented to adjust to changed conditions or to correct oversights. This is consistent with and complementary to the authority in 30 CFR 211.10(d) to require such changes.



Section 3041.0-8 permits an operator to use only so much of the surface of the lands as is deemed necessary, and has been designated in an approved plan. It is expressly provided that use of Federal lands for a power generation plant or commercial or industrial facility requires a special permit. This is not intended to imply that other facilities which might require permits under other laws would be relieved of any such obligations under the regulations proposed here. Facilities directly related to the mining, processing, and preparation of the coal resource would not require a separate permit.

Section 3041.1, the requirement for submission of a preliminary plan by an applicant for a coal lease, permit, or license, is an expansion of the requirements of 43 CFR Part 23. The purpose of the preliminary plan is to provide operational and environmental information which will assist the authorized officer in evaluating the proposed operation, and in the preparation of necessary impact statements and the terms and conditions to be included in a lease, permit, or license, if issued.

Section 3041.5 is different from Part 23 in that it requires a notice of availability of the application and its proposed terms, conditions, and special stipulations, for inspection and comment thereon. No action may be taken on any application until interested parties have had 30 days to comment. The application and proposed terms and conditions will remain available for inspection thereafter in the proper BLM office.

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Section 3041.7(b) is different from Part 23 in that it allows the authorized officer, in emergency situations where activities threaten immediate, serious, or irreparable damage to the environment, resources, health and safety of the employees and the public, to order the immediate cessation of such activities. Although exercise of this authority would normally be the responsibility of the USGS, it is felt that where such extraordinary circumstances exist any authorized representative of responsible agencies of the United States should be able to take the limited immediate action set forth, to prevent the adverse environmental effect described.

A detailed environmental impact statement on the proposed regulation has been prepared in compliance with Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The statement is being printed and will be available in approximately three weeks. A notice of availability will be published in the Federal Register.

In accordance with the Department's policy on public participation in rulemaking, interested parties may submit written comments, suggestions, or objections with respect to the proposed regulations to the Director, Bureau of Land Management, Department of the Interior, Washington, D. C. 20240 and the Director, U. S. Geological Survey, Reston, Virginia 22092, on or before 60 days from the date of publication of this notice.

After the expiration of such period for comment, and the expiration of the appropriate comment period upon the above mentioned environmental impact statement, the proposed regulations will be revised, if appropriate, and republished in the Federal Register in final form.

A new subpart 3041 is proposed to be added to 43 CFR, to read as follows:

Part 211 of Title 30 of the Code of Federal Regulations

is revised to read as follows:

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PART 216 - OPERATING REGULATIONS GOVERNING THE MINING  
OF COAL IN ALASKA

Part 216 of Chapter II of Title 30 of the Code of Federal Regulations is revoked.

Title 43, Part 23 - Surface Exploration, Mining and Reclamation of Lands.

Section 23.2(b) of Part 23 of Title 43 of the Code of Federal Regulations is amended by the deletion of the period and the addition at the end thereof of the following language:

"; nor minerals or operations subject to the provisions of 43 CFR Subpart 3041. "

Dated:

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Acting Secretary

[9/7/75]

Part 3040 ENVIRONMENT AND SAFETY

Subpart 3041 SURFACE MANAGEMENT - FEDERAL COAL RESOURCES

Sec.

3041.0-1 Purpose

3041.0-3 Authorities

3041.0-4 Responsibilities

4011.0-5 Definitions

3041.0-6 Coal leasing, permitting, and licensing  
planning procedures

3041.0-7 Performance standards

3041.0-8 Use of surface

3041.1 Applications

3041.1-1 Preliminary plan

3041.2 Technical examination/environmental analysis  
report

3041.3 Basis for denial of a lease, permit, or license  
based on past forfeiture

3041.4 Compliance or performance bond

3041.5 Public notice and inspection of records

3041.6 Reports

3041.7 Notice of noncompliance: Revocation

3041.8 Application of State Laws, Regulations, Practices,  
and Procedures as Federal Law by Federal Officers

#### § 3041.0-1 Purpose

(a) The purpose of these regulations is to establish rules to be followed in the management of the Federally-owned coal estate consistent with the policies, goals, and objectives established by the Acts cited in section 3041.0-3 of this Subpart, regardless of surface ownership or method of operation.

(b) It is the policy of the Department to encourage the development of Federally-owned coal, where such development is authorized, through a program that will provide for the protection, orderly development and conservation of Federal mineral and nonmineral resources in a manner that will minimize adverse effects to society and the environment resulting from coal development. It is also the policy of the Department to authorize leases, permits, and licenses for coal only where reclamation of the affected lands to the standards set forth herein is attainable and assured and a reclamation program will be undertaken as contemporaneously as practicable with mineral development. Departmental policy regarding privately owned surface where the mineral estate is Federally owned is that any mineral activity on the private surface should be conducted to result in protection of environmental values which is at least as stringent as would apply to Federally owned surface.

#### § 3041.0-3 Authorities

These regulations are issued pursuant to: The Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181-287), and the Mineral Leasing Act For Acquired Lands (30 U.S.C. 351-359). Additional regulations governing the issuance of Federal coal leases, permits, and licenses

are found in 43 CFR 3500 of this Chapter, including the specific requirement in Section 3501.2-6 that the consent of the Department of Agriculture or other administering agency be obtained with respect to leases, permits, and licenses covering acquired lands subject to the jurisdiction of such other Federal surface managing agency. Regulations governing lease



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or permit operations are found in 30 CFR 211. Regulations setting forth the general and basic policies for disposal and management of the public lands are found in 43 CFR 1725 of this Chapter.

§ 3041.0-4 Responsibilities

(a) The Bureau of Land Management (BLM) exercises at the Bureau level the Secretary's discretionary authority to determine whether or not leases, permits, and licenses are to be issued. The Bureau of Land Management is responsible for issuing mineral leases, permits, and licenses, and is the office of record in mineral leasing matters.

(b) The Geological Survey (GS) exercises the Secretary's delegated authority regarding operations conducted within the area of operation by permittees, lessees, and licensees and determines the action to be taken by them from the standpoint of the development, conservation, and management of mineral resources under the jurisdiction of the Department. The Geological Survey is responsible for all geologic, engineering, and economic value determinations for the Department's mineral leasing program. These determinations include: the mineral characteristics of lease and permit areas; parcelling; amounts of bonds; royalties; unit values; rentals; mineral resource evaluations; reserves; investments, diligent development, and minimum production requirements; and all other terms and conditions relating to mineral operations under leases and permits.

(c) The Bureau of Land Management or other Federal surface management agency, in cooperation with the Geological Survey, and, in the case of non-Federal surface, the surface owner, formulates the requirements to be incorporated in leases, permits, and licenses for the protection of the

surface and non-mineral resources and for reclamation, using the surface operating and reclamation performance standards contained in Section 3041.0-7 of these regulations and in 30 CFR Part 211.

(d) The Geological Survey, before approving exploration and mining plans, or the abandonment of operations, consults with the Bureau of Land Management or other Federal surface management agency on the adequacy of the surface use, environmental protection, and reclamation aspects of such plans and will not grant approval if inconsistent with the BLM's or other Federal surface management agency's recommendations without further discussions.

(e) As to the lands outside of the area of operations the authorized officer of the BLM or other Federal surface management agency is responsible for conducting compliance examinations and for assuring compliance by the lessee, permittee, or licensee, with the requirements of this Subpart, and the terms and conditions of a lease, permit, or license and for reporting infractions to the GS for discussion with, or orders to, the lessee, permittee, or licensee. As to the lands inside the area of operations the GS examines operations to ensure compliance with environmental protection and rehabilitation requirements. GS refers to BLM any instance of noncompliance with lease terms which may require cancellation action, and BLM may initiate such action. With respect to approval of access roads, pipelines, utility routes and other surface uses outside the operating areas, the Bureau of Land Management, or other Federal surface management agency, has the primary responsibility but obtains the recommendations of the Geological Survey before taking final action. Orders to operators for any remedial action are the responsibility of the Geological Survey.

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(f) Subject to the Supervisory authority of the Secretary, the regulations in this Subpart shall be administered by the Director, Bureau of Land Management through the authorized officer having jurisdiction over the lands subject to these regulations and authorized to perform the duties described. Prior to the issuance of any coal lease, permit, or license, the authorized officer will consult with and receive and consider recommendations from the Mining Supervisor, the Federal surface management agency when other than the BLM, or the surface owner, as to the terms and conditions required to achieve the purpose of these regulations.

#### § 3041.0-5 Definitions

As used in this Subpart, the following terms shall have the following meanings:

(a) "Acid and toxic producing deposits" means natural or reworked earth materials having chemical and physical characteristics that under mining or post-mining conditions of drainage, exposure, or other processes may produce effluents that contain chemical constituents, such as acids, bases, or metallic compounds, in sufficient concentrations to adversely affect the environment.

(b) "Affected lands" means any lands affected or to be affected by exploration, development, and mining operations, and by the construction of facilities necessary and related to such operations.

(c) "Approximate original contour" means the surface configuration achieved by backfilling and grading of the mined area so that it closely resembles the surface configuration of the land prior to mining (although not necessarily the original elevation) and blends into and complements the drainage pattern and topography of the surrounding terrain.

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(d) "Area of operations" means that area of the leased, permitted, or licensed lands which is required for exploration, development, producing and processing operations, including all related surface structures and facilities, which is delineated on a map or plat which is made a part of the approved plan.

(e) "Authorized officer" means that officer designated by any Federal surface managing agency to exercise its authority in matters relating to coal leases, licenses, and permits and these regulations.

(f) "Coal" means coal of all ranks, from lignite to anthracite.

(g) "Exploration plan" means a detailed plan submitted to the Mining Supervisor for approval before exploration operations commence, showing the location and type of exploration work to be conducted, environmental protection procedures, roads, and reclamation procedures to be followed upon completion of such operations.

(h) "Lease Lands, leased premises, or leased tract" means lands embraced within a Federal coal lease and subject to the regulations in this Subpart.

(i) "Lessee" means any person or persons, partnership, association corporation, or municipality to whom a coal lease is issued subject to the regulations in this Subpart, or an assignee of such lease under an approved assignment.

(j) "Licensee" means any individual, association of individuals, or municipality to whom a coal license is issued subject to the regulations in this Subpart.

(k) "Maximum extent practicable" means, with respect to a perfor-

mance standard or level of control, that degree of compliance which can be achieved with commercially available technology, taking into account the costs of such compliance and all tangible and intangible environmental and other benefits which would be derived

therefrom.

(l) "Method of Operation" means the method and manner by which any activities are performed by the operator, as described in the Preliminary plan.

(m) "Mine" means an underground or surface excavation, and the surface or underground support facilities that contribute directly or indirectly to coal mining, preparation, and handling.

(n) "Mining plan" means a detailed plan submitted to the Mining Supervisor for approval before mining operations commence showing the location, method and extent of mining and all related activities necessary and incident to such operations, including the steps to be taken to protect the environment during operations, reclamation, and abandonment.

(o) "Mining Supervisor" means the Area Mining Supervisor, Conservation Division, Geological Survey, or District Mining Supervisor, or other subordinate acting under his direction.

(p) "Operator" means a lessee, permittee, or licensee, or one conducting operations on lands under the authority of the lessee, permittee, or licensee.

(q) "Overburden" means all the earth and other materials which lie above a natural deposit of minerals.

(r) "Permanent impoundment" means an artificially built, dammed or excavated place for retention of water or sediment that is intended to remain after abandonment of the operation.

(s) "Permit lands" means lands embraced within a coal prospecting

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permit and subject to the regulations in this Subpart.

(t) "Permittee" means any person or persons, partnership, association, corporation, or municipality to whom a coal prospecting permit subject to the regulations in this Subpart is issued, or an assignee of such permit under an approved assignment.

(u) "Preliminary plan" means a plan submitted by an applicant to the authorized officer, with an application for a lease, permit, or license, which describes the applicant's proposal in the detail necessary to assist the authorized officer in conducting a pre-lease, permit, or license technical evaluation and environmental analyses, as described in 3041.1-1.

(v) "Reclamation" means the process of returning affected lands to a stable condition and form consistent with their pre-mining productivity and use.

(w) "Secretary" means the Secretary of the Interior.

(x) "Significant valley floor vegetation" means farm crops, including hay, that are integral parts of agricultural or ranching operations, and forests or meadows with significant recreational, watershed, or wildlife habitat value.

(y) "Topsoil" means natural earth materials at or adjacent to the land surface with physical and chemical characteristics necessary to support vegetation.

(z) "Valley floors" means the channelways, floodplains, and adjacent

low terraces of perennial, intermittent, or ephemeral streams that are flooded during periods of high flow and that are underlain by unconsolidated stream-laid deposits. Excluded are higher terraces and slopes underlain by colluvial and other surficial deposits normally occurring along valley margins.

§ 3041.0-6 Coal leasing, permitting, and licensing planning procedures.

(a) When an area is initially considered for coal development the authorized officer shall make an environmental impact assessment of the potential effect of such development upon the resources of the area and its environment.

(b) Prior to the selection of tracts for coal leases, permits, or licenses the authorized officer of the BLM or, if other than the BLM, the authorized officer of the agency charged with administration of the surface, shall evaluate the potential effects of all phases of such coal development on the environment, including fish and other aquatic resources, wildlife habitats and populations, aesthetics, recreation, cultural, and other resources in the affected area. This evaluation shall take into account alternative uses of the land and its other natural resources, the need for the proposed coal development, and the socioeconomic considerations relevant to multiple-use management principles. To aid him in this evaluation and selection of coal lease, permit, or license tracts the authorized officer shall request and consider the views and recommendations of the Geological Survey and other appropriate Federal agencies, may hold public hearings after appropriate notice, and shall, as appropriate, consult with applicants,



State and applicable local agencies, organizations, industries, and, where only the mineral estate is in Federal ownership, surface owners.

(c) If the Director determines that a decision made pursuant to paragraphs (a) or (b) of this section would be a major Federal action significantly affecting the quality of the human environment, and that an environmental impact statement as required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq) has not been prepared with respect thereto, such a statement will be prepared.

(d) If National Register or eligible National Register cultural resources might be affected by the issuance of coal leases, permits, or licenses, none will be authorized until compliance with Section 106 of the Historic Preservation Act and Section 2(b) of E.O. 11593 has been accomplished.

(e) If a decision is made to offer tracts for coal leases, permits, or licenses, the authorized officer may, following the procedures in Section 3041.2-1 of this Chapter, develop and include in such offer such special terms and conditions as may be required by specific local conditions to protect the environment, to permit use of the land for other purposes, to allow new postmining land uses, and to protect other resources.

#### § 3041.0-7 Performance standards.

(a) Any operator who accepts a coal lease, permit, or license shall comply with and be bound by the following general terms and any additional specific terms, conditions, and stipulations attached to and made a part thereof.

(b) The following general performance standards shall be applicable

to all coal exploration, development, mining, drilling, preparation, processing and reclamation operations on the surface of the land subject to these regulations:

(1) The operator shall conduct surface coal mining operations so as to maximize the extraction of the coal resource so that future disturbance through the resumption of mining will be minimized.

(2) The operator shall reclaim the land affected, as contemporaneously as practicable with operations, to a condition at least fully capable of supporting all actual or practicable uses which it was capable of supporting prior to any exploration or mining, or equal or better uses that can reasonably be attained.

(3) The operator shall replace overburden and waste materials in the mined area by backfilling (compacting where advisable, to insure stability or to prevent leaching of toxic materials), grading or other means so as, to the maximum extent practicable, to restore the approximate original contour and to eliminate high walls and spoil piles. Where the thickness of the coal deposits relative to the volume of overburden is large or where the overburden and other spoil waste materials are either insufficient or more than sufficient to restore the approximate original contour, the operator shall backfill, grade, and compact, using all available overburden or spoil material to obtain the lowest practicable grade, but not more than the angle of repose, in order to provide adequate drainage and to cover all acid-forming or other toxic materials. Excess overburden or other spoil material, after restoring the approximate

original contour, shall be, graded, compacted (where advisable), stabilized, and shaped in a way to protect against slides, erosion, subsidence and water pollution in accordance with the requirements of this Subpart. Restoration to approximate original contour may not be required if the Director of the Geological Survey, with the concurrence of the Director of the Bureau of Land Management or the appropriate officer of the Federal surface management agency, determines: i) that an equal or better proposed postmining land use is practicable and attainable and that a modification of this requirement is the best method of achieving the postmining use, or ii) that unusual conditions, such as steeply dipping coal beds or multiple seam mining, exist which make backfilling pursuant to this paragraph impractical.

(4) The operator shall stabilize and protect all surface areas, including spoil piles, affected by the coal mining and reclamation operation, to effectively control slides, erosion, subsidence and attendant air and water pollution.

(5) The operator shall remove the topsoil separately, replace it on the backfill area or, if not utilized immediately, segregate it in a separate pile from other spoil. When the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, establish and maintain a cover by quick-growing plants or other means thereafter so that the topsoil is preserved from wind and water erosion and is in a condition for sustaining vegetation when used during reclamation. If topsoil is of insufficient quantity or of poor quality for sustaining vegetation, and if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove,

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segregate, and preserve in a like manner such other strata which are best able to support vegetation.

(6) Where permanent impoundments of water on mining sites are to be created, the operator shall insure that:

(i) The impoundment is adequate for its intended purposes.

(ii) The impoundment will be designed and built in accordance with sound engineering standards and practices and applicable Federal and State laws and regulations.

(iii) The quality of impounded water will be suitable for its intended use and discharges from the impoundment will not unreasonably degrade the water quality in the receiving stream.

(iv) Final grading will provide adequate safety and access for proposed water users.

(v) Such water impoundments will not adversely affect the water resources utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(7) The operator shall cover or plug all auger mine holes with noncombustible material in order to minimize or prevent harmful drainage.

(8) The operator shall minimize disturbances to the prevailing quality and quantity of water in surface and ground water systems, and of the prevailing erosion and deposition conditions at the mine site and in adjacent offsite areas, both during and after coal mining operations and during reclamation by:

(i) Controlling acid or other toxic mine drainage and

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the adverse consequences thereof by such measures as, but not limited to, restricting the flow of water through acid or other toxic-producing materials; treating drainage to reduce acid or other toxic content which adversely affects downstream water upon being released to water courses; and casing, sealing, or otherwise treating drill holes, shafts and wells to keep acid or other toxic drainage from entering ground and surface waters.

(ii) Conducting surface mining operations so as to prevent, to the maximum extent practicable,

(A) contributions of suspended solids to streamflow or runoff outside the mining site above natural levels under seasonal flow conditions as measured for a period and at sites determined by the Mining Supervisor, in consultation with the authorized officer of the Federal surface management agency, and

(B) deepening or enlargement of stream channels where operations require the discharge of water from mines.

(iii) removing or modifying siltation structures after disturbed areas are revegetated and stabilized, unless otherwise directed by the Mining Supervisor after consultation with the authorized officer of the surface management agency.

(iv) protecting to the maximum extent practicable throughout the mining and reclamation process, the quality and quantity of both upstream and downstream surface and ground water resources of those valley floors which provide water sources that support significant valley

floor vegetation, or supply water for other purposes by such measures as, but not limited to, relocating and maintaining the gradient of streams.

(9) The operator shall, with respect to disposal of mine wastes, coal processing wastes and other wastes in areas other than the mine workings or other excavations, place all waste piles in areas designated in the approved mining plan and stabilize them through construction in compacted layers, including, if necessary the use of incombustible and impervious materials; shape the waste piles to be compatible with natural surroundings and terrain, cover with topsoil, or other suitable material in accordance with Subparagraph 3041.0-7(b)(4) and revegetate in accordance with Subparagraph 3041.0-7(b)(16) of this Section.

(10) The operator shall refrain from surface coal mining within 200 feet of active and abandoned underground mines except as authorized in an approved mining plan.

(11) The operator shall incorporate sound engineering standards and practices for the design, construction, and use of impoundments for the disposal of coal mine wastes, coal processing wastes, or other liquid or solid wastes to insure that structures and impoundments will have necessary stability with an adequate margin of safety. No mine or processing waste shall be used in the construction of water impoundments, water retention facilities, dams, or settling ponds unless authorized in an approved mining plan.

(12) The operator shall:

(i) Treat or dispose of all rubbish and noxious substances in a manner designed to prevent air and water pollution and fire hazards.

(ii) Dispose of all solid waste resulting from the mining and preparation of coal in a manner designed to prevent to the maximum extent practicable air and water pollution and spontaneous ignition.

(13) The operator shall use explosives only in accordance with existing Federal and State laws and the conditions specified by the Mining Supervisor, who may require the operator to:

(i) Provide adequate advance written notice by publication and/or posting of the planned blasting schedule to local governments and to residents who might be affected by the use of such explosives, and maintain a log of the magnitudes and times of blasts for a period of at least two years.

(ii) Limit the size, timing, and frequency of blasts as determined by the physical conditions of the site, to prevent personal injury or damage to public and private property.

(14) The operator shall construct, maintain, and, when they are no longer necessary, remove roads, pipelines, powerlines, and similar utility access facilities into and across the area of operations in a manner that will prevent to the maximum extent practicable erosion and siltation, pollution of water, damage to fish or wildlife or their habitats, or public or private property, except that the Mining Supervisor with the concurrence of the authorized officer of the surface management agency, may approve the retention, after mining of specific roads where consistent with the proposed post-mining use of the affected lands.

(15) The operator shall refrain from constructing roads or other access ways in or near stream beds or drainage channels that

would seriously alter the normal flow of water therein.

(16) The operator shall, except where other reclamation is expressly provided for in an approved mining plan, establish on the regraded areas and all other affected lands a diverse vegetative cover, native to the area if capable of self-regeneration, at least equal in density and permanence to the natural vegetation. The Mining Supervisor, with the concurrence of the authorized officer of the surface management agency, may allow the use of introduced species as an interim measure where desirable to achieve quick cover.

(17) The operator shall assume responsibility for successful revegetation, as herein provided. The operator's responsibility and liability for revegetation of each planting area shall extend until such time as the authorized officer of the surface management agency, in consultation with the Mining Supervisor, determines that successful revegetation in compliance with subparagraph (b)(16) of this section has occurred; provided that, this period shall extend for a minimum of five full years after the first year of planting and for a total period of liability not to exceed ten years from the original planting, and further provided that, where the authorized officer of the surface management agency determines that natural conditions, such as annual precipitation, soil characteristics and native vegetation, are stable and favor rapid revegetation, and that revegetation pursuant to subparagraph (b)(16) of this section is likely to occur before the expiration of such minimum period, he may specify in the lease, permit, or license that such minimum period will not apply with respect to some or all of the lands included in the lease, permit, or license.



(18) The operator shall allow access to and upon the affected Federal land subject to lease, permit, or license for all lawful and proper purposes except where such access would unduly interfere with the authorized use or would constitute a hazard to public health and safety.

(19) The operator shall in all areas of active operations including lands undergoing reclamation, regulate public access, vehicular traffic, and wildlife or livestock grazing to protect the public, wildlife, and livestock from hazards associated with the operations and to protect the revegetated areas from unplanned and uncontrolled grazing. For this purpose the operator shall provide warnings, fencing, flag men, barricades, and other safety and protective measures as appropriate.

(20) In areas in which there are no current operations, the operator shall substantially backfill, fence, protect, or otherwise effectively close all surface openings, auger holes, subsidence holes, surface excavations or workings which are a hazard to people or animals. Openings at all underground mines which are temporarily closed shall be adequately fenced or equipped with a substantial incombustible gate or door which shall remain locked when not in use. Conspicuous signs shall be posted prohibiting entrance of unauthorized persons. All such protective measures shall be maintained in a secure condition during the term of the lease, permit, or license. Before permanent abandonment of operations, the operator shall:

(i) Close or backfill all openings and excavations, including water discharge points, or otherwise permanently deal therewith in accordance with sound engineering practices and according to the

approved mining plan.

(ii) Promptly complete final reclamation and clean-up of surface areas around and near permanently abandoned operations including, except where otherwise expressly provided in the approved mining plan, removal of equipment and structures following cessation of mining operations.

(c) Prior to the issuance of a permit, lease, or license, the authorized officer may, in consultation with the Mining Supervisor, and the authorized officer of the surface management agency if other than the BLM, establish additional and more stringent requirements to meet exceptional and special circumstances, such as the degree of slope, soil condition, and other site characteristics, and, if he does so, such additional and more stringent requirements shall be included in the permit, lease, or license.

(d) If the authorized officer of the surface management agency determines, after the issuance of the lease, permit, or license, that an approved exploration or mining plan should be required to be revised or supplemented to adjust to changed conditions or to correct oversights, he may propose such revision or supplement to the Mining Supervisor. Upon approval of the Mining Supervisor, such plan may be revised or supplemented pursuant to paragraph 211.10(d) of 30 CFR Part 211.

(e) The following special provisions shall be applicable to the surface effects of underground mining.

(1) Each operator of an underground coal mine shall adopt measures consistent with feasible known technology in order to prevent

or control subsidence, maximize mine stability, and maintain the value and use of surface lands, except in those instances where the mining method used requires planned subsidence in a predictable and controlled manner.

(2) Where pillars or panels are not removed and controlled subsidence is not part of the mining plan, pillars or panels of adequate dimensions shall be left to assure surface stability giving due consideration to the thickness and strength characteristics of the coal beds and of the strata above and immediately below the coal bed.

(3) The Mining Supervisor may require the operator to install a subsidence monitoring system consisting of elevation stations and tiltmeters in a number sufficient to determine the extent of area that may be affected. All records of such surveys shall be accessible for review by the Mining Supervisor.

(f) Visual resources.

The operator shall take visual resources into account in the planning, design, and construction of facilities on the affected lands in accordance with lease terms and the approved plan.

(g) Fish and wildlife.

The operator shall employ such measures as are deemed necessary to protect fish and wildlife and their habitat in accordance with lease terms and the approved plan.

(h) Cultural and scientific resources.

The operator shall conduct operations that might have an effect on known or suspected archeological, paleontological, historical, or other

cultural and scientific values in accordance with lease terms and the approved plan.

§ 3041.0-8 Use of surface.

(a) The operator shall be entitled to use only so much of the surface of the lands within the affected lands as is deemed necessary and has been designated in an approved plan. Any use of the Federal lands for a power generation plant or a commercial or industrial facility will be authorized only under a separate permit issued by the appropriate agency for that specific use and subject to all terms and conditions which it may include in that permit. The uses of the lands within the area of operation are subject to the supervision of the Mining Supervisor, and the uses of the remaining lands are subject to the supervision of the appropriate surface management agency. The operator shall not be entitled to use any mineral materials subject to the Materials Act except as provided by Part 3600 of this Chapter.

(b) Operations under other authorized uses on the same lands shall not unreasonably interfere with or endanger operations under uses authorized under the regulations in this chapter nor shall operations under the regulations in this Chapter unreasonably interfere with or endanger operations under any lease, license, permit, or other authorized use pursuant to the provisions of any other Act.

§ 3041.1 Applications

(a) Any person desiring a lease, permit, or license for coal development shall file an application in the proper BLM office,

in accordance with the regulations in this Chapter.

(b) The application shall contain a preliminary plan of operation as described in § 3041.1-1 of this Subpart.

§ 3041.1-1 Preliminary plan

The preliminary plan required by these regulations shall include the following information:

(1) A map, or maps, available from State or Federal sources, showing the topography of the land applied for, on which the applicant shall show physical features, drainage patterns, present road and trail locations, present utility systems, proposed road and trail location, proposed location of surface and subsurface exploration sites, such as pits, seismic lines, drill holes, trenches, surface or underground mine workings; the proposed location of development or extraction facilities; and the proposed location and aerial extent of the areas to be used for pits, overburden, and tailings; and the location of water sources or other resources which may be used in the proposed operation or facilities incidental thereto.

(2) A narrative statement setting forth his proposed plan, methods, and schedule for diligent operations.

The narrative statement shall also describe the measures proposed to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, air and noise pollution and hazards to public health and safety during lease activities, including measures for monitoring the effects of operations on air and water. Such measures shall also

include the actions to be taken and the methods to be utilized to meet the performance standards set forth in § 3041.0-7 of these regulations. The applicant shall not enter upon the land for any operational purpose, except for casual use, until he has received a lease, permit, or license and submitted to the Mining Supervisor an exploration or mining plan and received approval thereof. Casual use, as used in this section means activities which do not cause significant surface disturbance, or damage lands, resources and improvements, such as activities which do not include use of heavy equipment, or explosives or vehicular movement off established roads and trails which cause such disturbance.

§ 3041.2 Technical examination/environmental analysis.

In connection with an application for a coal lease, permit or license, or on BLM motion, the authorized officer, with the assistance of the Mining Supervisor, shall make a technical examination and environmental analysis (TEEA).

(a) The technical examination shall include:

(1) An examination of the technical feasibility of the preliminary plan and;

(2) An evaluation of the effect of the preliminary plan on other land uses, resources, or programs on or adjacent to the area.

(b) The environmental analysis shall include:

An analysis of the impact of the preliminary plan and alternatives on the living and non-living components of the environment.

§ 3041.2-1 Technical examination/environmental analysis report.

(a) The TEEA report shall contain a summary which, using infor-

mation from the TEEA, sets forth recommended bonding requirements and stipulations formulated to: (1) require conformance with the performance standards found in § 3041.0-7 of this Chapter, (2) identify specific reclamation requirements (3) identify tracts requiring special environmental consideration, and (4) minimize adverse impacts on the environment and other resources, land uses or programs.

(b) If it is recommended that a specific area within the applied for lands should be excluded from a lease, permit, or license, or modification thereof, or if it is recommended that an environmental impact statement is required, the TEEA report shall substantiate these findings.

§ 3041.3 Basis for denial of lease, permit, or license based upon past forfeiture.

(a) An application for a lease, permit, or license to conduct coal exploratory or extractive operations may be denied any applicant or offeror who has forfeited a bond because of failure to comply with an approved exploration or mining plan. However, a lease, permit, or license may not be denied an applicant or offeror because of the forfeiture of a bond if the affected lands under his previous lease, permit, or license have subsequently been reclaimed without cost to the Federal Government.

§ 3041.4 Compliance or performance bond

(a) The provisions of the regulations in Subpart 3504 of this Chapter are hereby made applicable to these regulations. In addition each compliance bond will be conditioned upon faithful compliance with the regulations in this Subpart and any additional terms and conditions of the lease, permit, or license. In determining the amount

of the compliance bond to be required, the authorized officer of the surface management agency and the Mining Supervisor shall consider the cost of complying with the performance and reclamation standards in § 3041.0-7, and with the terms and conditions of the lease, permit, or license.

(b) The authorized officer shall set the amount of a bond and take the necessary action for an increase or for a complete or partial release of a bond. He shall take such actions only after consultation with the Mining Supervisor.

#### § 3041.5 Public notice and inspection of records.

Any application for a lease, permit, or license, together with proposed terms, conditions, and special stipulations shall be made available in the proper BLM office. A notice that such material is available shall be posted in the proper BLM office, sent to the County Clerk for the County in which the affected lands are located for posting, and mailed to the surface owner of record if other than the United States. Except as otherwise provided in Part 3520 of this Chapter, the applicant shall, at no expense to the Federal Government, have published a copy of such notice in a newspaper of general circulation in the county in which the lands are situated once a week for four consecutive weeks, or for such other period as may be deemed advisable. Interested parties shall have a period of 30 days after publication of notice that such material is available for public inspection and comment thereon.

#### § 3041.6 Reports

(a) Operations. An operator, under a coal lease, permit or



license, shall file with the Mining Supervisor, within 30 days after the end of each calendar year or within 30 days after the cessation of operations, a report, in duplicate, containing the following:

(1) Serial number of the lease, permit or license and a description of the lands affected by operations.

(2) The number of acres disturbed and the number of acres

reclaimed, including revegetation.

(3) A description of the reclamation work remaining to be done.

(b) Grading and backfilling. Upon completion of backfilling and grading required by the operating plan, the operator shall submit a report thereon, in duplicate, to the Mining Supervisor and request inspection for approval. Whenever it is determined by such inspection that the backfilling and grading, which may proceed in appropriate stages, has met the requirements of the approved plan, the Mining Supervisor shall recommend to the authorized officer of the Bureau of Land Management, and/or other Federal surface management agency the release of an appropriate amount of the bond for the area satisfactorily backfilled and graded.

(c) Revegetation.

(1) The operator shall file a report, in duplicate, with the Mining Supervisor within 30 days after each planting is completed. The report shall:

(1) Identify the lease, permit, or license.

(ii) Show the type of planting or seeding, including mixtures and amounts.

(iii) Show the date of planting or seeding.

(iv) Identify or describe the planted or seeded lands.

(v) Describe fertilization and irrigation procedures, if any, and contain such other information as may be considered relevant.

(2) The Mining Supervisor and the authorized officer of the surface management agency shall, as soon as possible after each full

growing season, inspect and evaluate the revegetated areas to determine whether satisfactory vegetative growth has been established, or whether additional revegetation efforts may be required.

(d) Cessation or abandonment of operations.

(1) Not less than 30 days prior to cessation or abandonment of operations, the operator shall submit to the Mining Supervisor, in duplicate, a report of his intention to cease or abandon operations, together with a statement of the exact number of acres affected by his operations, the extent and kind of reclamation accomplished, and a statement as to the structures and other facilities that are to be removed from or remain on the leased, permitted, or licensed lands.

(2) Upon receipt of such report, the Mining Supervisor and the authorized officer of the surface management agency shall make a joint inspection to determine whether operations have been completed in accordance with the approved operating plan. When the operator has complied with all requirements of the lease, permit, or license and the regulations of this Subpart, the Mining Supervisor shall recommend to the authorized officer of the Bureau of Land Management and/or the other Federal surface management agency that the period of bonded liability be terminated.

(3) When the surface of lands in a lease, permit or license

is not owned by the United States, the Mining Supervisor shall consult the surface owner and obtain his recommendation as to whether the operation has been completed in accordance with the approved operating plan before recommending to the appropriate authorized officer that the period of liability of the bond be terminated.

§ 3041.7 Notice of noncompliance: Revocation.

(a) The authorized officer and the Mining Supervisor shall have the right to enter upon the lands under lease, permit, or license, at any reasonable time.

(b) If the authorized officer of the Federal surface management agency determines that an operator is conducting activities which are not in compliance with the requirements of a lease, permit, or license, applicable regulations, or the approved plan and such activities threaten immediate, serious, or irreparable damage to the environment, resources, health and safety of the employees and the public, the authorized officer may order the immediate cessation of such activities and shall promptly notify the Mining Supervisor. Upon such notification, The Mining Supervisor shall orally order immediate remedial action and issue a written notice of noncompliance, where appropriate.

(c) If the authorized officer determines that an operator is in noncompliance with the requirements of a lease, permit, or license, applicable regulations, or the approved plan and such noncompliance does not threaten immediate, serious, or irreparable damage to the environment, resources, health and safety of the employees and the public, the authorized officer shall refer the matter to the Mining Supervisor for remedial action.

(d) Failure of the operator to take action in accordance with a written notice of noncompliance issued by the Mining Supervisor in accordance with the provisions of 30 CFR 211.72 shall be grounds for suspension of the operation and for possible cancellation of the lease, permit, or license in accordance with the regulations in 43 CFR 3500 of this Chapter.

§ 3041.8 Application of State Laws, Regulations, Practices, and  
Procedures as Federal Law by Federal Officers

(a) Upon request of the Governor of any State, the Secretary shall promptly review the laws, regulations, administrative practices and procedures in effect or due to come into effect with respect to reclamation of lands disturbed by surface mining of coal subject to the jurisdiction of that State, to determine whether such controls may appropriately be applied as Federal law to operations relating to coal owned by or subject to the jurisdiction of the United States. In such review the Secretary may hold such public hearings within the State as he may deem necessary and appropriate, and may receive evidence of mining or enforcement practices submitted in writing under oath by any person. He will take into account all relevant constructions and applications of such controls by competent State and local judicial and regulatory authorities, the desirability and practicability of uniformity between Federal and State controls, and the public policy of the State regarding the development of coal resources located therein.

(b) After such review, the Secretary may, by order, direct that all or part of such State laws, regulations, practices and procedures shall be applied as Federal law by the authorized officers of the Department with

respect to coal within that State owned by or subject to the jurisdiction of the United States, if he determines that such application would

(1) effectuate the purposes of this Subpart;

(2) result in protection of environmental values which is at least as stringent as would otherwise occur under exclusive application of Federal controls; and

(3) would be consistent with the interest of the United States in the timely and orderly development of its coal resources.

(c) Pending issuance of an order under subsection (b) hereof, nothing in this section shall be deemed or construed to stay or suspend any otherwise applicable Federal law, regulation, practice or procedure. Any such order under subparagraph (b) shall specifically set forth the controls to be applied by Federal officers, and may include specific findings of fact or interpretations thereof which shall be binding upon such officers. Any such order shall remain in effect until rescinded or modified by subsequent order of the Secretary, upon his own motion or at the request of a Governor.