

SUBCHAPTER L--PERMANENT PROGRAM INSPECTION AND ENFORCEMENT PROCEDURES

PART 840--STATE REGULATORY AUTHORITY INSPECTION AND ENFORCEMENT

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Authority: Pub. L. 95-87, 30 U.S.C. 1201 et seq., and Pub. L. 100-34, unless otherwise noted.

Sec. 840.1 Scope.

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This Part sets forth the minimum requirements for the Secretary's approval of the provisions for inspection and enforcement by a State of surface coal mining and reclamation operations and of coal exploration operations which substantially disturb the natural land surface, where a State is the regulatory authority under an approved State program.

Sec. 840.10 Information collection.

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(a) The collections of information contained in part 840 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1029-0051. The information is being collected by States for use in assessing penalties as evidence in enforcement cases and as an inspection management record. The obligation to respond is required to obtain a benefit in accordance with 30 U.S.C. 1201 et seq.

(b) Public reporting burden for this information is estimated to average 3.7 hours per response, including the time for the reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, 1951 Constitution Ave, NW, Room 640, NC, Washington DC 20240; and the Office of Management and Budget, Paperwork Reduction Project 1029-0051, Washington, DC 20503.

Sec. 840.11 Inspections by State regulatory authority.

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(a) The State regulatory authority shall conduct an average of at least one partial inspection per month of each active surface coal mining and reclamation operation under its jurisdiction, and shall conduct such partial inspections of each inactive surface coal mining and reclamation operation under its jurisdiction as are necessary to ensure effective enforcement of the approved State program. A partial inspection is an on-site or aerial review of a person's compliance with some of the permit conditions and requirements imposed under an approved State program.

(b) The State regulatory authority shall conduct an average of at least one complete inspection per calendar quarter of each active or inactive surface coal mining and reclamation operation under its jurisdiction. A complete inspection is an on-site review of a person's compliance with all permit conditions and requirements imposed under the State program, within the entire area disturbed or affected by the surface coal mining and reclamation operations.

(c) The State regulatory authority shall conduct such inspections of coal explorations as are necessary to ensure compliance with the approved State program.

(d) (1) Aerial inspections shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.

(2) Any potential violation observed during an aerial inspection shall be investigated on site within 3 days: Provided, That any indication of a condition, practice or violation constituting cause for the issuance of a cessation order under Section 521(a)(2) of the Act shall be investigated on site immediately, and provided further, that an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of Paragraphs (a) and (b) of this Section.

(e) The inspections required under Paragraphs (a), (b), (c), and (d) of this Section shall:

(1) Be carried out on an irregular basis so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

(2) Occur without prior notice to the permittee or any agent or employee of such permittee, except for necessary on-site meetings; and

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of the approved State program.

(f) For the purposes of this Section, an inactive surface coal mining and reclamation operation is one for which:

(1) The State regulatory authority has secured from the permittee the written notice provided for under Section 816.131(b) or 817.131(b) of this Chapter; or

(2) Reclamation Phase II as defined at Section 800.40 of this Chapter has been completed and the liability of the permittee has been reduced by the State regulatory authority in accordance with the State program.

(g) Abandoned site means a surface coal mining and reclamation operation for which the regulatory authority has found in writing that:

(1) All surface and underground coal mining and reclamation activities at the site have ceased;

(2) The regulatory authority or the Office has issued at least one notice of violation or the initial program equivalent, and either:

(i) Is unable to serve the notice despite diligent efforts to do so; or

(ii) The notice was served and has progressed to a failure-to-abate cessation order or the initial program equivalent;

(3) The regulatory authority:

(i) Is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(ii) Is taking action pursuant to section 518(e), 518(f), 521(a)(4) or 521(c) of the Act or their regulatory program counterparts to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(4) Where the site is, or was, permitted and bonded:

(i) The permit has either expired or been revoked; and

(ii) The regulatory authority has initiated and is diligently pursuing forfeiture of, or has forfeited, any available performance bond.

(h) In lieu of the inspection frequency established in paragraphs (a) and (b) of this section, the regulatory authority shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year.

(1) In selecting an alternate inspection frequency authorized under the paragraph above, the regulatory authority shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (h)(2) of this section. Following the inspection and public notice, the regulatory authority shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

(i) How the site meets each of the criteria under the definition of an abandoned site under paragraph (g) of this section and thereby qualifies for a reduction in inspection frequency;

(ii) Whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

(iii) The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

(iv) The degree to which erosion and sediment control is present and functioning;

(v) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

(vi) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and

(vii) Based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(2) The public notice and opportunity to comment required under paragraph (h) (1) of this section shall be provided as follows:

(i) The regulatory authority shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments.

(ii) The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the regulatory authority where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

Sec. 840.12 Right of entry.

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(a) Within its jurisdiction, the States regulatory authority shall have authority that grants its representatives a right of entry to, upon, and through any coal exploration or surface coal mining and reclamation operation without advance notice upon presentation of appropriate credentials. No search warrant shall be required, except that a State may provide for its use with respect to entry into a building.

(b) The State regulatory authority shall have authority that authorizes its representatives to inspect any monitoring equipment or method of exploration or operation and to have access to and copy any records required under the approved State program. This authority shall provide that the representatives may exercise such rights at reasonable times, without advance notice, upon presentation of appropriate credentials. No search warrant shall be required, except that a State may provide for its use with respect to entry into a building.

Sec. 840.13 Enforcement authority.

FEDERAL REGISTER CITE: 59 FR 54306 (54352)
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(a) The civil and criminal penalty provisions of each State program shall contain penalties which are no less stringent than those set forth in Section 518 of the Act and shall be consistent with Part 845 of this Chapter.

(b) The enforcement provisions of each State program shall contain sanctions which are no less stringent than those set forth in section 521 of the Act and shall be consistent with Secs. 843.11, 843.12, 843.13, and 843.23 and subchapters G and J of this chapter.

(c) The procedural requirements of each State program relating to the penalties and sanctions mentioned in Paragraphs (a) and (b) of this Section shall be the same as or similar to those provided in Sections 518 and 521 of the Act, respectively, and consistent with Parts 843 and 845 and Subchapters G and J of this Chapter.

(d) Nothing in the Act or this part shall be construed as eliminating any additional enforcement rights or procedures which are available under State law to a State regulatory authority, but which are not specifically enumerated in Sections 518 and 521 of the Act.

Sec. 840.14 Availability of records.

FEDERAL REGISTER CITE: 48 FR 44777 (44781)

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(a) Each State regulatory authority shall make available to the Director, upon request, copies of all documents relating to applications for and approvals of existing, new, or revised coal exploration approvals or surface coal mining and reclamation operations permits and all documents relating to inspection and enforcement actions.

(b) Copies of all records, reports, inspection materials, or information obtained by the regulatory authority shall be made immediately available to the public in the area of mining until at least 5 years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area, except--

(1) As otherwise provided by Federal law; and

(2) For information not required to be made available under Sections 772.15 and 773.13(d) of this Chapter or Paragraph (d) of this Section.

(c) The State regulatory authority shall ensure compliance with Paragraph (b) of this Section by either:

(1) Making copies of all records, reports, inspection materials, and other subject information available for public inspection at a Federal, State, or local government office in the county where the mining is occurring or proposed to occur; or

(2) At the regulatory authority's option and expense, providing copies of subject information promptly by mail at the request of any resident of the area where the mining is occurring or is proposed to occur, Provided, That the regulatory authority shall maintain for public inspection, at a Federal, State, or local government office in the county where the mining is occurring or proposed to occur, a description

of the information available for mailing and the procedure for obtaining such information.

(d) In order to protect preparation for hearings and enforcement proceedings, the Director and the State regulatory authority may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such materials.

Sec. 840.15 Public participation.

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Each State program shall provide for public participation in enforcement of the State program consistent with that provided by Parts 842, 843, and 845 of this Chapter and 43 CFR Part 4.

Sec. 840.16 Compliance conference.

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(a) The State program may provide for compliance conferences between a permittee and an authorized representative of the regulatory authority as described in Paragraphs (b)-(e) of this Section.

(b) A permittee may request an on-site compliance conference with an authorized representative of the regulatory authority to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of Section 517 of the Act and Section 840.11.

(c) The State regulatory authority may accept or refuse any request to conduct a compliance conference under Paragraph (b) of this Section.

(d) The authorized representative at any compliance conference shall review such proposed conditions and practices in order to advise whether any such condition or practice may become a violation of any requirement of the Act, the approved State program, or any applicable permit or exploration approval.

(e) Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the regulatory authority or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such compliance conference; or

(2) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.