

TITLE 62: MINING  
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 280  
ILLINOIS SURFACE COAL MINING OPERATIONS

Section

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AUTHORITY: Implementing Section 1 et seq. and authorized by Section 12 of the Surface-Mined Land Conservation and Reclamation Act [225 ILCS 715].

SOURCE: Adopted at 3 Ill. Reg. 5, p. 819, effective February 2, 1979; emergency amendment at 4 Ill. Reg. 22, p. 290, effective June 1, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 44, p. 472, effective November 21, 1980; emergency amendment at 5 Ill. Reg. 8104, effective July 29, 1981, for a maximum of 150 days; amended at 6 Ill. Reg. 1, effective January 14, 1982, codified at 7 Ill. Reg. 9905; recodified from the Department of Mines and Minerals to the Department of Natural Resources at 21 Ill. Reg. 16192.

Section 280.10 Definitions

Except where the context clearly requires special meaning, the following terms shall have the following definitions:

"Adjudicative Hearing" means a formal hearing pursuant to rules of the Authority, consistent with the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1991, ch. 127, par. 1001-1 et seq.).

"Application" means an application for a permit for a new mine, or an application for an amendment where amendment of a Section 4 permit is required.

"Combined permit" is the permit issued to a new surface coal mining operation which is required to meet the requirements of Section 4 and Section 17 of the Surface-Mined Land Conservation and Reclamation Act and these regulations; or,

a previously issued Section 4 permit into which these regulations incorporate Section 17 conditions.

"Complete Application" means an application which appears to the Authority to contain information required by the Authority before application processing begins.

"Consultation" means a discussion, in person, by telephone or by written communication, concerning possible standards and conditions of a permit, or factors affecting a determination.

"Determination" is an action by the Authority that grants permission, directs reclamation or other regulated effort, stipulates performance standards or criteria, or like action which is within the power and judgement of the Authority. Determinations may occur in the course of operations by a permittee; any determination applicable to permitted operations shall operate as a condition of the applicable permit.

*"Director" means the Director of the Department of Natural Resources or such officer, bureau or commission as may lawfully succeed to the powers and duties of such Director.*

"Existing Surface Mine" means the area within the definition of surface coal mining operations, which possessed a permit under Section 4 of the Surface-Mined Land Conservation and Reclamation Act prior to February 3, 1978.

"Existing Underground Coal Mine" means the area included within the definition of surface coal mining operations, as to which notice of opening was filed pursuant to the Coal Mining Act [225 ILCS 705] before February 3, 1978.

"Federal Act" means the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87; 30 U.S.C. 1201, et. seq.).

"Federal Surface Regulations" means performance standards, procedures, definitions, requirements and the provisions of the following interim rules of the Department of Interior, Office of Surface Mining: 30 CFR 700.5, 700.11, 710.2, 710.5, 710.11, 710.12, Part 715 (all), Part 716 (all), and Part 720 (all).

"Federal Underground Mine Regulations" means 30 CFR 717, and such other regulations as are referred to therein.

"Findings" means a factual, technical or legal finding of the Regulatory Authority.

"Illinois Act" or "Act" means the Surface-Mined Land Conservation and Reclamation Act, as amended by P.A. 80-1342 [225 ILCS 715].

"Interagency Committee" or "IC" means the Interagency Committee on Surface Mining Conservation and Reclamation established for a given permit application pursuant to Section 17 (f) (1) of the Illinois Act.

"Meeting" means a public meeting, not including a hearing.

"Mine" means a coal mine.

"New Mine" means a surface coal mining operation upon which construction commenced after February 2, 1978, or which was opened for the first time after February 2, 1978.

"Office of Surface Mining" or "OSM" means the Office of Surface Mining Reclamation and Enforcement in the United States Department of the Interior.

"Person" means any individual, proprietorship, partnership, corporation, joint venture, unit of local government, county, state or the United States.

"Prime Farmland" means lands defined as prime farmlands by 30 CFR 716.7 (a) (1) and (b).

"Public Hearing" means a quasi-legislative type hearing held pursuant to rules of the Authority, consistent with the Illinois Administrative Procedure Act, (Ill. Rev. Stat. 1991, ch. 127, par. 1001-1 et seq.) but may include presentation of testimony and evidence, and an opportunity for cross-examination.

"Regulatory Authority" or "Authority" means the Director and Land Reclamation Division in the Illinois Department of Natural Resources.

"Request for Determination" means a written request by a permittee or owner or operator of a surface coal mining operation for permission or a certification of compliance from the Regulatory Authority, where a permit application is not required, and includes requests for approvals required to be given by the Regulatory Authority pursuant to the Federal Surface Regulations or the Federal Underground Mine Regulations where no public hearing is required.

"Section 4 permit" means a permit required by Section 4 of the Illinois Act.

"Section 17 conditions" are those conditions of a permit imposed pursuant to Section 17 of the Illinois Act and these regulations upon an existing surface mine.

"Section 17 permit" is the permit issued in accordance with Section 17 of the Illinois Act and these regulations to surface coal mining operations that are not subject to Section 4 of the Illinois Act.

"Section 4 Regulations" means the Rules of the Illinois Department of Natural Resources adopted pursuant to Section 12 of the Illinois Act and applicable to persons or operations required to obtain a permit pursuant to Section 4 of the Illinois Act.

"Surface coal mining operation" includes both surface and underground coal mining operations as defined in Section 701 (28) of the Federal Act and 30 CFR 700.5

"Surface Mining" means surface mining for coal as defined in the Illinois Act, Section 3 (c) [225 ILCS 715/3].

#### Section 280.20 General Provisions

The following regulations shall apply to all surface coal mining operations:

- a) Determinations
  - 1) All requests for a determination must be submitted to the Regulatory Authority in writing. Each submission shall set forth facts necessary to the determinations, the specific request requiring action and contain a citation to the Federal Regulation Section involved. Letters of request for determination shall be attested as to the truth of the facts stated therein and notarized.
  - 2) Acknowledgement of receipt of a request for a determination will state:
    - A) Notice that the request is incomplete and that additional information is required.
    - B) Notice that the request appears to be complete.
  - 3) All determinations shall be available for public inspection at the office of the Authority.

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- b) **Deadlines.** All persons engaged in surface coal mining operations are required to meet all deadlines set forth in the Federal Regulations for submitting requests for determination of compliance with the performance standards. The honoring of requests for determination after federal deadlines have expired shall not be binding upon the Office of Surface Mining nor any person other than the Regulatory Authority, and such requests shall not constitute a bar or defense to federal enforcement.
- c) **Conflicts**
- 1) In the event a permittee believes there is a conflict within a combined permit between conditions imposed by Section 4 and conditions imposed by Section 17, the permittee shall request a finding by the Authority.
  - 2) The request shall set out the alleged conflicting conditions, including the pertinent rules and facts, and may include comments by the permittee. The permittee shall also include a statement as to which condition or rule is more stringent. Regulations which provide for control of surface coal mining operations, and as to which there is no similar provision in the Federal Act or Section 17 Regulations, shall be construed consistent with Section 17 Regulations. Conflicts shall not be deemed to exist unless conformance with a given standard or condition significantly interferes with or precludes conformity with another standard or condition.
- d) **Stringency.** The Federal Surface Regulations shall apply to all surface coal mining operations in connection with surface mining of coal in Illinois. The Federal Underground Mine Regulations shall apply to all surface coal mining operations in connection with underground coal mines in Illinois. Standards used and conditions imposed in the administration and enforcement of Section 17 shall be no more stringent than required by the Federal Act and Federal Regulations thereunder. If any other provision of the Illinois Act, or any provision of the Section 4 Regulations, or a provision of any other State law or regulation thereunder, now or hereafter effective, provides for more stringent land use and environmental control standards or conditions upon surface coal mining operations than the Federal Act or Regulations, it shall be applicable and enforceable in accordance with its terms. The Regulatory Authority shall determine which of any conflicting standards or conditions are more stringent, taking into account factors of technological practicability, cost, environmental protection and the goal of reclamation to optimal conditions.
- e) **Permit Applications.** Applications shall be filed with the Regulatory Authority, Land Reclamation Division, at its offices in Springfield, Illinois, and shall, at a

minimum, contain information sufficient to demonstrate that the applicant will comply with all requirements of the Illinois Act, Section 17 Regulations, and, if applicable, Section 4 Regulations. The application shall be submitted on forms provided by the Regulatory Authority, with supplements as deemed necessary.

- f) Requirement of a Permit. No person shall open, develop or operate a surface coal mining operation without a permit issued by the Authority, or without a permit expressly deemed to exist under these Regulations, nor shall any person open, develop or operate a surface coal mining operation except in compliance with such permit and determinations of the Authority.
- 1) All existing surface mines must possess a Section 4 permit which incorporates Section 17 conditions.
  - 2) All existing underground coal mines must possess a Section 17 permit.
  - 3) All new surface mines which are subject to Section 4 must possess a combined permit.
  - 4) All new underground coal mines must possess a Section 17 permit.
  - 5) All other new surface coal mining operations which are not subject to Section 4 or exempt and under Section 17 must possess a Section 17 permit.
  - 6) All operations to recover coal from a deposit (mine waste disposal site) that is not in its natural geological location (carbon recovery operations), if they have not already done so, must complete and submit a permit application form provided by the Department for a Section 17 permit. Carbon recovery operations may continue in operation, or in preparation to operate, after September 22, 1981, only if a completed application form was received by that date, pending a final decision by the Department. For operations contemplated during the interim period between September 22, 1981, and eight months after permanent program approval, if no application was filed by September 22, 1981, no operation may commence or continue until such time as the operator submits and the Department issues the interim permit. All new and existing carbon recovery operations are subject to the performance standards of 30 CFR 715, as adopted by Section 280.50 of these regulations until eight months after a state permanent program is approved, or until a permanent program permit is issued, whichever is earlier.

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- g) Federal Act Prohibitions. Subject to valid existing rights as determined in writing by the Regulatory Authority, no surface coal mining operations except those which existed August 3, 1977, shall be permitted:
- 1) on any lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under Section 5 (a) of the Wild and Scenic Rivers Act (16 U.S.C. 127.1 et seq.) and National Recreation Areas designated by Act of Congress;
  - 2) on any Federal lands within the boundaries of any national forest: Provided, however, that surface coal mining operations may be permitted on such lands if the Secretary of Interior finds that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations, and surface operations and impacts are incident to an underground coal mine;
  - 3) which will adversely affect any publicly owned park or places included in the National Register of Historic Sites unless approved jointly by the Regulatory Authority and the federal, state, or local agency with jurisdiction over the park or the historic site;
  - 4) within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the Regulatory Authority may permit such roads to be relocated or the area affected to lie within one hundred feet of such road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected; or
  - 5) within three hundred feet from any occupied dwelling, unless waived by the owner thereof, nor within three hundred feet of any public building, school, church, community, or institutional building, public park, or within one hundred feet of a cemetery.
- h) Time for Final Action. Final action on an application shall occur within 120 days of receipt of a complete application by the Regulatory Authority unless time for such action is waived by the applicant. For surface coal mining operations subject to Section 4 requirements, the deadline for final action may be tolled by notice pursuant to Section 4 Regulations. If no final action occurs within the time in which final action is required, the applicant upon written notice to the Regulatory

Authority may deem the application denied. The Regulatory Authority shall acknowledge the receipt of a complete application in writing, noting the date of receipt.

- i) Violations
  - 1) No person shall open, develop or operate a surface coal mining operation except in compliance with these regulations.
  - 2) No person shall perform any act in connection with the opening, developing or operation of a surface coal mining operation prior to obtaining a permit, determination, approval, exemption, finding or other authorization where such permit, determination, approval, exemption, finding or other authorization is required by these regulations or the Federal Regulations.
  - 3) The fact that a person, permittee, owner or operator is , or would be, entitled to a favorable ruling on a request for a determination, approval, exemption, finding or other authorization shall not constitute a defense to an enforcement proceeding brought for failure to timely request a determination, approval, exemption, finding or other authorization.
- j) Maps Required. All persons conducting surface coal mining and reclamation operations must have on file two copies of an accurate map of the operation or permit area at a scale of 1 inch to 400 feet or larger, showing, as of May 3, 1978, lands in the permit area from which coal had not yet been removed and the lands disturbed and structures used to facilitate mining as of that date. One copy of the map must be on file with the Authority, and one copy must be on file with the Regional Director, Office of Surface Mining, Region 3, P.O. Box 44294, Indianapolis, Indiana 46204.
- k) It shall be the policy of the Regulatory Authority to honor any court decision of competent jurisdiction that is binding upon and directed to the Office of Surface Mining, respecting the interpretation or enforcement of 30 CFR, and the initial environmental protection regulations of the Secretary of the Interior. Persons believing that such court decisions require the alteration or deletion of any of these Regulations, or affect interpretation thereof, are encouraged to state their conclusions in writing to the Authority, together with citation of the appropriate court order.

(Source: Amended at 6 Ill. Reg. 1, effective January 14, 1982)

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Section 280.30 Existing Surface Mines

- a) Permits
- 1) The Section 4 permits of all existing surface mines are hereby deemed to incorporate Section 17 conditions. The additional terms and requirements of such permits are that holders shall comply with Section 502 (c) and 522 (e) of the Federal Act, with the Federal Regulations and with these Regulations. Section 4 permits with Section 17 conditions include all structures or facilities used in connection with, or to facilitate mining where such structures or facilities are located within the boundaries of a Section 4 permit.
  - 2) Where structures or facilities used in connection with, or to facilitate mining, are not included in a present surface mining permit, a permittee must file an application on a form designated by the Authority no later than February 28, 1979, or such further time as allowed in writing by the Authority.
- b) Actions Required of Existing Surface Mines. In addition to other requirements which are applicable by their terms, all permittees of existing surface mines shall request the following determinations pursuant to the Federal Regulations, and obtain approval from the Authority before commencing or performing any of the acts indicated in the respective sections of the Federal Regulations referenced below.
- 1) Structures or Facilities. All structures or facilities used in connection with, or to facilitate mining must comply with the performance standards contained in the regulations unless otherwise exempted by the Authority. Exemptions granted on a case by case basis pursuant to written request where it is shown that granting the exemption will have no adverse impact on health, safety or the environment.
  - 2) Signs and Markers, 30 CFR 715.12 (c). Permittees shall obtain approval for means of perimeter marking other than clear, durable and easily recognized markers prior to use.
  - 3) Alternative Post-Mining Land Use, 30 CFR 715.13 (d). All reclamation plans approved prior to May 3, 1978, remain in full force and effect and are deemed to have been issued in compliance with 30 CFR 715.13 (d). Owners and operators shall obtain approval of changes in previously approved post-mining land use. If a reclamation plan revision is proposed,

an application for amendment pursuant to Illinois law must be made and county review afforded in conjunction with determination under 30 CFR 715.13 (d).

- 4) Final Graded Slope Measurements, 30 CFR 715.14 (a). Permittees shall obtain approval of pre-mining slope measurements prior to mining, of final graded slope measurement prior to final slope completion, and of final grade.
- 5) Final Graded Slope Variations and Terracing, 30 CFR 715.14 (b). Permittees shall obtain approval prior to regrading or terracing.
- 6) Small Depressions, 30 CFR 715.14 (d). Approval of the use of small depressions shall be obtained by the permittee prior to use.
- 7) Thin Overburden, 30 CFR 715.14 (f) and (g). If thin overburden exists, permittees shall obtain approval for transport, backfill and grade plans prior to first transport.
- 8) Stabilizing Rills and Gullies, 30 CFR 715.14 (i). If significant additional erosion and sedimentation occurs or threatens to occur, or if the approved post-mining land use will be adversely disrupted, permittees shall obtain advance approval of rill and gully correction measures to be used.
- 9) Use of Waste Material and Backfilling, 30 CFR 715.14 (j). If waste materials are causing or threatening to cause the formation of acids, toxic materials, combustible materials or upward migration of salts, permittees shall request an immediate determination of the adequacy of cover from the Regulatory Authority. Permittees shall request approval of stabilization techniques and use of waste materials as fill in advance, if not already specified in Section 4 permits.
- 10) Disposal of Surplus Spoil, 30 CFR 715.15. Permittees shall obtain approval prior to disposal of surplus spoil.
- 11) Topsoil Handling and Supplemental Material. Topsoil shall be handled in a manner consistent with the topsoil handling requirements of 30 CFR 715.16 on all lands mined after May 3, 1978. Requests under 30 CFR 715.16 (a) (4) for use of selected overburden material shall be approved prior to use.

- 12) Topsoil Storage, 30 CFR 715.16 (c). No topsoil shall be stockpiled without prior approval of the Regulatory Authority. Requests to move stockpiled topsoil prior to redistribution shall be obtained in advance.
- 13) Exemption from Use of Sedimentation Ponds. All permittees must comply with 30 CFR 715.17 (a), unless an exemption for the use of sediment ponds is requested and obtained from the Regulatory Authority.
- 14) Approval of Surface Water Monitoring Program, 30 CFR 715.15(b) (1). All permittees must have a surface water monitoring program approved and on file with the Authority.
- 15) Stream Channel Diversions, 30 CFR 715.17 (d). All permittees must submit a permit amendment application at least 120 days prior to desired use, if not already approved in a Section 4 permit.
- 16) Mining Through a Perennial or Intermittent Stream, 30 CFR 715.17 (d) (3). Permittees shall obtain approval prior to such mining.
- 17) Sedimentation Pond Storage Volume and Control Technology, 30 CFR 715.17 (e) and 715.17 (e) (2). Permittees shall obtain approval prior to use of alternative storage volume and control technology. If a permit amendment is required, submittal of an application at least 120 days before desired approval is required.
- 18) Acid and Toxic Materials, 30 CFR 715.17 (g) and 715.14 (j). Permittees shall identify to the Regulatory Authority materials that will be toxic to vegetation or that will adversely affect water quality if not treated or buried, if treatment or burial not in conformity with 30 CFR 715.14 (j) is desired.
- 19) Monitoring Groundwater, 30 CFR 715.17 (h) (3). All permittees must have a groundwater monitoring program approved and on file with the Authority.
- 20) Permanent Water Impoundments, 30 CFR 715.17 (k). Permittees must submit a permit amendment application at least 120 days prior to desired approval unless permanent water impoundments are already approved in an existing permit.
- 21) Temporary Fords Across Dry Streams, 30 CFR 715.17 (1) (2). Permittees must obtain approval prior to construction of temporary fords.

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- 22) Permission to Leave Dams or Avoid Regrading, Revegetation and Stabilization, 30 CFR 715.17 (b) (8). Unless already approved by permit, permittees must submit a permit amendment application.
- 23) Use of Explosives. All employees supervising blasting operations shall possess a Certificate of Competency issued by the Regulatory Authority. Those working with transportation, storage and use shall be trained prior to performing any duties.
- 24) Blasting Schedules.
- A) If blasting is planned, a permittee shall submit a Blasting Plan at least 45 days prior to blasting, and shall follow all notice and publication requirements of 30 CFR 715.19. Schedules shall be deemed approved unless objections are noted to the operator by the Regulatory Authority, or by any owner or occupant of a manmade dwelling within one-half mile of the blasting area or site. Such objections should be in writing, should contain the name, address and telephone number of the objector, the reason for the objection, and if the objector desires, a suggested alternative schedule more convenient to the objector. After receipt of an objection to a blasting schedule the Authority shall approve the schedule or make such appropriate adjustments necessary for the protection of life and property.
- B) All publications and notice to the public under Section 715.19 shall include the following language:
- "Any person who objects to this schedule is requested to notify the .....(name of operator)..... and the Land Reclamation Division, Illinois Department of Natural Resources, Office of Mines and Minerals, 524 South Second Street, Springfield, Illinois 62701".
- 25) Preblasting Survey. On written request to the Regulatory Authority by a resident or owner of a manmade dwelling or structure that is located within one-half mile of any part of the permit area, the permittee shall conduct a preblasting survey pursuant to 30 CFR 715.19 (b).
- 26) Blasting Procedures will be followed as per 30 CFR 715.19 (e) (l) (i) through (vi).

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- A) Blasting distances which are less than distances set out in Section 715.19 (e) (1) (vii) shall be allowed only after inspection by the Regulatory Authority and a showing by the permittee that the blasting standards of 30 CFR 715.19 (e) (2) (i) through (vi) shall be met.
  - B) Records of blasting operations will be retained for three years and shall contain information as outlined in 30 CFR 715.19 (e) (4).
  - C) The Authority may reduce maximum peak particle velocity pursuant to 30 CFR 715.19 (e) (2) (ii) or prescribe such other conditions as are in its judgment necessary to prevent:
    - i) injury to persons,
    - ii) damage to public and private property outside the permit area,
    - iii) adverse impacts on any underground mine, and
    - iv) change in the course, channel, or availability of ground or surface water outside the permit area.
- 27) Revegetation. Permittees shall comply with 30 CFR 715.20.
- 28) Methods of Revegetation. All existing permittees shall be deemed to have submitted and received approval of a revegetation plan, including species selected and planting plans, Pursuant to 30 CFR 715.20 (e), as to areas covered by existing permits. The Regulatory Authority in consultation with the landowner and the permittee shall determine when the area is ready for livestock grazing.
- 29) Introduced Non-native Species, 30 CFR 715.20 (b). Permittee shall obtain approval of the Authority before introducing non-native species.
- 30) Reference Areas. Permittees shall submit to the Authority a proposed designation of reference areas together with documentation showing that the reference areas meet the requirements of 30 CFR 715.20 (f). The estimating techniques used to determine the degree of success in the revegetated area shall be determined by the Authority. Where there is no physically available reference area due to prior mining, permittees shall propose a reference plan that will assure restoration in harmony with

surrounding land. The Authority shall determine the appropriateness of such reference plans.

- 31) Prime Farmland Determinations. Existing surface mines, or portions thereof, which were not under permit before August 3, 1977, are subject to requirements concerning prime farmland determinations for lands not under permit before August 3, 1977. Reference is hereby made to Section 280.70 of these Regulations.

c) Permit Fees and Bonds

- 1) Additional permit fees and bonds shall be deposited pursuant to notice from the Authority, as and when required pursuant to Section 5 (a) of the Act.
- 2) All permittees shall file with the Authority an amendment or revision to the bond filed in connection with a Section 4 permit, executed in accordance with the Act which states that, in addition to any prior requirements, the bond shall be conditioned upon faithful compliance with the Federal Act, the Federal Surface Regulations, the Illinois Act and these Regulations. Said amendments must be filed no later than February 28, 1979.
- 3) All permittees shall file with the Authority an amendment or revision to the bond filed in connection with a Section 4 permit, executed in accordance with the Act which includes in its coverage all surface structures or facilities now required to be permitted under the initial program. Said amendment or revision must be filed with the Authority no later than February 28, 1979.

Section 280.40 Existing Underground Coal Mines

a) Permits

- 1) All existing underground mines are deemed to possess a Section 17 permit. Section 17 permits include all structures and facilities used in connection with or to facilitate mining. The terms and conditions of such permits are that holders shall comply with Section 502 (c) and 522 (e) of the Federal Act, and with 30 CFR 710.11, and 717, except 717.17 (e), and with Illinois law and these Regulations.

- 2) All owners or operators of existing underground coal mines, in addition to other requirements which are applicable by their terms, must submit an application to the Regulatory Authority no later than February 28, 1979, upon forms supplied by the Authority. Additional documentation shall accompany an application form as necessary or appropriate to demonstrate compliance with Federal Underground Mine Regulations.
  - 3) No owner or operator of an existing underground coal mine shall develop or operate an underground coal mine after February 28, 1979, or such further time as allowed in writing by the Authority, unless an application has been submitted to the Authority.
- b) Actions Required of Existing Underground Coal Mines. In addition to other requirements which are applicable by their terms, all permittees of existing underground coal mines shall request the following determinations pursuant to the Federal Regulations, and obtain approval from the Authority before commencing or performing any of the acts indicated in the respective sections of the Federal Regulations referenced below.
- 1) Signs and Markers. All existing underground coal mines shall have signs and markers in place in accordance with 30 CFR 717.12.
  - 2) Regrading of Roads and Support Facilities, 30 CFR 717.14 (a). Upon completion of underground mining, all permittees shall comply with the backfilling and grading requirements of 30 CFR 717.14 (a). Permittees shall obtain final approval of grading from the Authority consistent with approved reclamation practice and 30 CFR 717.14 (a) (1) and (2).
  - 3) Terracing. Permittees shall obtain written approval of the Regulatory Authority for terracing as an appropriate substitution for construction of lower grades on reclaimed lands, pursuant to the standards of 30 CFR 717.14 (b).
  - 4) Regrading or Stabilizing Rills and Gullies is required whenever significant erosion or sedimentation is threatened pursuant to 30 CFR 717.14 (d). Whenever such a threat exists permittees shall immediately request a determination from the Authority of the steps to be taken.
  - 5) Protection of the Hydrologic System shall be accomplished pursuant to a plan consistent with 30 CFR 717.17. All existing underground coal mines shall have a plan approved and on file with the Authority.

- 6) Water Quality Standards and Effluent Limitations of 30 CFR 717.17 (a) shall be met in accordance with the Clean Water Act (33 U.S.C. 1251) or its amendments. The Regulatory Authority may grant exemptions on written request pursuant to Section 717.17 (a), but such exemptions shall not exempt a permittee from applicable standards or limitations under the Clean Water Act (33 U.S.C. 1251) or its amendments, the Environmental Protection Act, or the Rules of the Illinois Pollution Control Board.
- 7) Surface Water Monitoring Programs, 30 CFR 717.17 (b). All existing underground coal mines shall have a surface water monitoring program approved and on file with the Authority.
- 8) Diversions of Overland Flows shall be consistent with good reclamation practice and shall meet the requirements of 30 CFR 717.17 (c). No diversion structures shall be left in place after mining without written approval of the Authority, as well as other state and federal agencies having jurisdiction over such structures.
- 9) Stream Channel Diversions shall be approved by the Regulatory Authority pursuant to standards set forth in 30 CFR 717.17 (d). Such approval shall not exempt the permittee from other applicable requirements of state or federal law regarding stream diversion.
- 10) Sediment Control Measures (Reserved)
- 11) Acid and Toxic Materials shall be handled and disposed of so as to avoid drainage into ground and surface waters, consistent with 30 CFR 717.17 (g). Permittees shall obtain approval by the Regulatory Authority of methods consistent with 30 CFR 717.17 (g) in advance.
- 12) Ground Water Monitoring, 30 CFR 717.17 (b). All existing underground coal mines shall have a ground water monitoring plan approved and on file with the Authority.
- 13) Hydrological Impact of Roads. Roads constructed since May 3, 1978, shall be subject to 30 CFR 717.17 (j). Permittees shall request a determination of the Authority in advance of construction or modification of roads when varying from the standards of 717.17 (j).
- 14) Standards for Dams. 30 CFR 717.18 shall apply only to dams constructed after May 3, 1978. Plans for such dams shall be submitted in advance and approval obtained prior to construction. The submittal shall be made

immediately in the case of dams upon which construction began after May 3, 1978. All approvals by the Authority required by 30 CFR 717.18 shall be obtained in advance of construction, modification, or removal.

- c) **Bond Requirements.** All owners or operators of existing underground coal mines shall have on file with the Authority a bond which meets all the requirements of Section 5(a) and 8 of the Act, 62 Ill. Adm. Code 300.40, (a), (b) and (c). Bond release shall be in accordance with 62 Ill. Adm. Code 300.180 (a) and (b). The conditions of the bond filed with the Authority shall be that the owner or operator comply with Federal Underground Mine Regulations, 30 CFR 717, that reclamation shall be completed in accordance with the plan, and that all operations shall be placed and maintained in compliance with 30 CFR 717 (except Section 717.17 (e)), and with Section 8 of the Act.
- d) **Other Provisions.** As provided by Section 17 of the Act, Sections 2, 3, 5(a), 8, 9, 10, 11, 13 and 13(a), 15 and 16 of the Act are applicable to existing underground coal mines, which shall be deemed surface mining operations in the context of the cited Sections for purposes of this paragraph. Permit fees and bond as required under Section 5(a) of the Act shall be deposited pursuant to notice from the Authority.

#### Section 280.50 New Surface Mines

The regulations and requirements of this Part shall apply to surface coal mining operations except underground coal mines which did not have a Section 4 permit prior to February 3, 1978.

- a) **Application.** An application shall be submitted upon forms supplied by the Authority. Additional documentation shall accompany an application form as necessary or appropriate to establish that all Federal Surface Regulations will be met by the applicant.
- b) **Mines Possessing Section 4 Permits Before August 11, 1978.** Mines possessing permits pursuant to Section 4 issued by the Department of Natural Resources, Office of Mines and Minerals prior to the effective date of Section 17 of the Illinois Act, shall be entitled to continue in operation, subject to compliance with the Federal Surface Regulations provided an application is currently on file with the Authority. (Such mines shall request determinations required of existing surface mines in Part 3 hereof.) If a permittee does not have a complete application on file with the Authority, or the Authority denies an application, operations of mines to which this paragraph applies shall cease forthwith, reasonable security measures for the protection of property and safety excepted,

and shall not commence again until such application is filed or approved by the Regulatory Authority.

- c) No person shall open or operate a surface coal mining operation which is not subject to Section 4, or exempt under Section 17, without a Section 17 permit.
- d) No person shall open or operate a surface coal mining operation for which a Section 4 permit would have been required but was not issued before August 11, 1978, without a combined permit.
- e) Processing an Application
  - 1) Applications will be received by the Authority and reviewed for completeness. Such review shall be as to form only, for purposes of initiating review, and shall not preclude later requests for more complete or additional information from the applicant. The authority will notify the applicant as to whether the application is complete.
  - 2) When an application is found to be complete, the Authority shall forward copies for Interagency Committee review, and shall see to it that copies are filed by the permit applicant with the appropriate County Board. The Interagency Committee shall review each application in accordance with its designated responsibilities and expertise. Comments shall be returned to the Authority within 45 days of receipt of the complete application by the Authority, and copies thereof will be sent to the applicant and filed with the County Clerk of the appropriate County.
  - 3) Prime farmland review shall be conducted in accordance with Section 280.70 hereof.
  - 4) The Authority shall consider all written comments received, including comments of a County Board. The Authority may discuss comments with the applicant, Interagency Committee Members or other technically trained experts and may require additional information to be provided. If review and comment reveals that inadequate information has been received from an applicant, the applicant will be asked to supply additional information. Failure to supply satisfactory information in support of an application is grounds for permit denial.
- f) Permit Grant. Permits shall be granted by the Authority provided:
  - 1) that Prime Farmland Review is completed pursuant to Section 280.70 hereof.

- 2) that the application shows compliance with all Federal Regulations; and
  - 3) that all provisions and conditions deemed necessary or appropriate by the Authority to assure compliance with the Act and all regulations are agreed to by the applicant.
- g) Permit Denial. Permit denial shall occur whenever the Authority determines:
- 1) that Prime Farmland requirements under Section 280.70 hereof will not be met; or
  - 2) when, based upon the application and comments in the record, it is the judgment of the Authority that 62 Ill. Adm. Code 300 on Federal Regulations will not be met.
- h) Determinations. After a permit is issued, determinations shall be requested in accordance with Section 280.30 hereof.

#### Section 280.60 New Underground Coal Mines

The following Part applies to underground coal mines for which a notice of mine opening was filed on or after February 3, 1978.

- a) Application. An application shall be submitted upon forms supplied by the Authority. Additional documentation shall accompany an application form as necessary or appropriate to demonstrate compliance with Federal Underground Mine Regulations.
- b) Underground Coal Mines for which Notice of Opening was Filed Before August 11, 1978 shall be entitled to continue in operation, subject to compliance with Federal Underground Mine Regulations and provided an application for a Section 17 permit is currently on file with the Authority. Such mines shall request the determinations required of existing underground coal mines in Section 280.40 hereof. If a permittee does not have a complete application on file with the Authority, or if the Authority denies the application, operation of the mine shall cease forthwith, reasonable safety and property protection measures excepted, and shall not commence again until such application is filed or a Section 17 permit is granted.
- c) No person shall open or operate an underground coal mine for which a Notice of Mine Opening was not filed before August 11, 1978 until a Section 17 permit is issued for the mine.

- d) No person shall operate an underground coal mine except in conformity with the Act and the Federal Underground Mine Regulations, 30 CFR 717 (except 717.17 (e)).
- e) Permit Application Process. The permit application process for underground coal mines shall be the same as for new surface mines, except that no review by or filing with County Boards shall be required of an applicant. An applicant may elect to have its application reviewed by County Boards. Comments of a County Board are encouraged by the Authority. County Board comments will be considered by the Authority prior to final action on an application if submitted within 75 days of the filing of an application. A County Board may request copies of underground coal mine applications.
- f) Determinations. After a permit is issued, determinations shall be requested in accordance with Section 280.40 hereof.

#### Section 280.70 Prime Farmland Determinations and Findings

- a) All Surface Mines Covered. Every Illinois surface coal mining operation is subject to this Section, unless exempt pursuant to Section 510 (d) (2) of the Federal Act, as applied pursuant to Paragraph (b) below.
- b) Exemption
  - 1) This Section shall not apply to mines open for ongoing operations immediately prior to August 3, 1977, to permits issued before August 3, 1977, or to operations under renewals or revisions of such permits. Revisions or renewals of such permits under this Paragraph (b) shall extend to and include only those areas that:
    - A) were in the area covered by a permit issued, or were in a mining plan approved prior to August 3, 1977; or
    - B) are contiguous to areas for which a permit was issued or a mining plan approved before August 3, 1977, and which under state law or regulation, or practice, normally would have been considered a renewal or revision of a previously approved mining plan.
  - 2) Persons claiming an exemption under this Paragraph (b) shall have the burden of establishing such exemption. Reliance upon an exemption hereunder shall not excuse a failure to comply with this Section, unless the area and time involved in the exemption relied on are approved in writing

by the Authority, by OSM, or by court order in a case in which the Authority or OSM are parties. Nothing in this Section shall excuse compliance with the more stringent parts of 62 Ill. Adm. Code 300.110(d) or other applicable provisions of the Illinois Act. The subsequent granting of an exemption shall not constitute a defense to an enforcement proceeding brought for prior failure to meet the prime farmland requirements.

- c) Prime Farmlands. Prime farmlands are those lands defined in 30 CFR 716.7 (b), that have been used for the production of cultivated crops, including nurseries, orchards, and other specialty crops, and small grains, for at least five years out of the twenty years preceding the date of determination or, in the case of applications for new mining permits, the date of application. The date of determination shall, in the case of existing mines, be August 3, 1977.
- d) Identification of Prime Farmland. Existing operations not exempt under this Paragraph (d) and all applicants for mining permits after August 2, 1977, not exempt pursuant to Paragraph (b) , must have on file with the Authority soil surveys meeting the requirements of 30 CFR 716.7 (c), except as to areas for which an application for negative determination has been made pursuant to 30 CFR 716.7 (d). All applicants hereunder shall submit soil surveys required by 30 CFR 716.7 (c) or apply for negative determination at the time of application.
- e) Negative Determination. The Authority shall make a negative determination upon submittal of a demonstration that any of the situations listed in 30 CFR 716.7 (d) exists.
- f) Plan for Restoration. All operations in areas not exempt under Paragraph (b) must submit a plan for mining and reclamation of prime farmland within the area under permit, or under a proposed permit, as the case may be. The plan shall include the information required under 30 CFR 716.7 (e), and may include any additional information that the submitter believes will be relevant and helpful to the making of a determination by the Authority under 30 CFR 716.7 (f) (1) (i). Prior to making its determination, the Authority will consult with the Soil Conservation Service, pursuant 30 CFR 716.7 (f) (2). In the case of applications covering areas of surface mines as to which no public hearing has been held under Section 5 (f) of the Illinois Act, the Authority shall consult with and receive comments from the Interagency Review Committee and local County Board under Section 17 (f) (3) of the Illinois Act. All non-exempt existing mines must have the plan required under this subparagraph currently on file with the Authority at the time of application for all other mines. Prime farmland determinations shall have priority over other determination requests except emergency situations. The Regulatory

Authority will make a finding within 45 days of receipt of a prime farmland determination request unless for good cause the Authority finds that it must extend the time for its finding.

#### Section 280.80 Enforcement Procedures

The regulations of this Part set forth the general procedures governing issuance of permit suspensions, notices of violation and orders to show cause pursuant to Section 17 (g) of the Act.

- a) Notices and Orders. All Notices and Orders issued pursuant to this Part shall set forth with reasonable specificity:
  - 1) the nature of the violation and the remedial action required;
  - 2) the period of time established for abatement; and
  - 3) a reasonable description of the portion of the surface coal mining operation to which the Notice or Order applies.
- b) Imminent Dangers and Harms
  - 1) If the Director receives information of conditions or practices, or of violations of applicable performance standards, including Federal and State Regulations, or of violations of conditions contained in any permit which create an imminent danger to the health or safety of the public, the Director may immediately order suspension of a permit of a surface coal mining operation or that portion of the operation relevant to the condition, practice, or violation.
  - 2) If the Director receives information of conditions or practices, or of violations of applicable performance standards, including Federal and State Regulations, or of violations of conditions contained in any permit, which are causing or can be reasonably expected to cause significant, imminent environmental harm to land, air, or water resources, the Director may immediately order suspension of a permit of a surface coal mining operation or that portion of the operation relevant to the condition, practice or violation.
  - 3) The Regulatory Authority may impose affirmative obligations on the operator which the Authority deems necessary to abate the condition, practice, or violations if;

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- A) a permit suspension order is issued under paragraph (a) or (b) of this section; and
  - B) the permit suspension and resulting cessation of mining or reclamation activities will not completely abate the imminent danger or harm, or eliminate the practices or conditions that contributed to the imminent danger or harm.
- 4) When imposing affirmative obligations under this Part, the Regulatory Authority shall require abatement of the imminent danger or harm in the most expeditious manner physically possible. The affirmative obligation shall include a time by which abatement shall be accomplished and may include, among other things, the use of existing or additional personnel and equipment.
  - 5) Reclamation operations not directly the subject of the order of suspension or affirmative obligation may continue during any permit suspension order.
  - 6) The Regulatory Authority shall terminate its permit suspension order issued under paragraph (a) or paragraph (b) of this section by written notice when the Regulatory Authority determines that the conditions or practices or violations that contributed to the imminent danger to life, or the environment have been eliminated.
- c) Non-Imminent Danger or Harm
- 1) If the Regulatory Authority finds conditions or practices, or violations of applicable performance standards, including Federal and State Regulations or violations of conditions included in any permit which do not create an imminent danger to life or the environment the Regulatory Authority may issue a notice of violation fixing a reasonable time for abatement.
  - 2) The Regulatory Authority may extend the time to abate a violation by written notice if the failure to abate within the time set was not caused by the permittee's lack of diligence.
  - 3) The Regulatory Authority may establish interim steps in an abatement period. If the permittee fails to meet any interim step within the time set, the Regulatory Authority may extend the time set for meeting the interim step, by written notice or may issue a permit suspension order pursuant to (d) of this Section.

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- 4) The total time for abatement as originally fixed and subsequently extended shall not exceed ninety days.
- d) **Failure to Abate.** The Director may suspend, modify, or revoke the permit if a coal mining operation, or the portion relevant to the violation, when a notice of violation has been issued under (c) of this Section and the permittee fails to abate the violation within the time originally fixed or subsequently extended. In a suspension, modification, or revocation order issued under this Section, the Regulatory Authority shall impose affirmative obligations to abate the violations in the manner provided in (b) of the Section. Reclamation operations not directly subject to the affirmative obligations imposed may be allowed to continue during a suspension, modification, or revocation order. Any order issued under this Section may be terminated when the Regulatory Authority determines that the conditions or practices, or violations have been abated.
  - e) **Service of Notice.** Notices and orders issued under this Part shall be given to the permittee or his designated agent. If no designated agent is found at the mine site, service will be made on the person who, based on reasonable inquiry by the Regulatory Authority, appears to be in charge of the surface coal mining operation. The person receiving service shall be responsible for any immediate compliance actions required by the notice or order. If no person is present or available to receive service, service may be made by posting a copy of the notice of violation at the mine. Service is complete on posting at the mine; however, a copy of each notice or order shall be mailed to the permittee at the address listed on the records of the Regulatory Authority.
  - f) **Hearings--Permit Suspension, Modification, or Revocation**
    - 1) Within 10 days after the permittees has received any permit suspension, modification, or revocation order under this Part the Regulatory Authority may conduct a hearing at the mine site or within such reasonable proximity to the mine that it may be visited during the hearing. No hearing will be required if the condition, practice, or violation in question has been abated or if the permittee waives the hearing.
    - 2) All hearings held in connection with a permit suspension, modification, or revocation order shall be conducted in accordance with Article 10 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1991, ch. 127, par. 1010-5 et seq.) provided that Section 10-45 shall not apply to those hearings where the Director is present at the hearing.

- 3) Notices of the time, place and subject matter of the hearing shall be given to the permittee, any citizen who filed a report which led to the order to be reviewed and the Federal Office of Surface Mining. Notice of the hearing also shall be posted at the appropriate district or field office, at the mine site, and to the extent possible in a newspaper in the area of the mine.
  - 4) Within 15 days of the close of the hearing, the Regulatory Authority shall affirm, modify, or vacate the order. The decision shall be in writing and shall be sent to the permittee, any citizen who filed a report which led to issuance of the order and the Federal Office of Surface Mining.
  - 5) The Director may appoint an employee of the Regulatory Authority or an attorney licensed to practice law in Illinois to conduct hearings under this Part.
- g) Hearings--Notice of Violation
- 1) Within 30 days after the permittee has received a notice of violation under this Part the Regulatory Authority may conduct a hearing at the mine site or within such reasonable proximity to the mine that it may be visited during the hearing. Unless the permittee files a request for a hearing within 15 days after receipt of the notice of violation or within the time fixed for abatement of the violation, whichever comes first, its right to a hearing shall be deemed waived, and the citation shall stand as admitted.
  - 2) All hearings held under this Section shall be conducted in the same manner as hearings held under Section (f), except that the 15-day period for decision contained in (f) (d) shall not apply.

#### Section 280.90 Transitions

- a) The provisions of The Surface-Mined Land Conservation and Reclamation Act as amended (Ill. Rev. Stat. ch. 96 1/2, pars. 4501-4520) and corresponding regulations shall remain in effect insofar as they apply to the mining of coal as defined in 30 CFR 700.5, until the publication in the Federal Register of notice of the approval, conditional or unconditional, of the proposed Illinois permanent program by the Secretary of the Interior.
- b) The effectiveness of Articles I through VIII of The Surface Coal Mining Land Conservation and Reclamation Act, (Ill. Rev. Stat. 1981, ch. 96 1/2, par. 7901.01 et seq.) approved September 22, 1979, and any regulations promulgated in the

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Federal Register of Notice of the approval, conditional or unconditional, of the proposed Illinois permanent program by the Secretary of the Interior.

- c) All permits issued under The Surface-Mined Land Conservation and Reclamation Act and regulations promulgated thereunder, and bonds accepted therewith, will remain effective and valid, and are hereby extended to the earliest in occurrence of the following: 8 months after the effective date of the Secretary's approval of a State program, or the date of approval of a permit application under an approved State program; provided, however, that a person conducting surface coal mining operations under a permit from the State Regulatory Authority, issued in accordance with the provisions of the Section 17 Interim Regulations for Illinois Surface Coal Mining Operations may conduct such operations beyond such period if an application for a permit has been filed in accordance with the provisions of the Federal Surface Mining Control and Reclamation Act of 1977, but the decision on the application has not been made.
- d) Any operator may elect to submit an informal application for a permit to conduct surface coal mining operations at any time after August 1, 1980, including in the application information which will be required under The Surface Coal Mining Land Conservation and Reclamation Act.
- e) Nothing in these Transition Rules is to be construed to change or affect the applicable law and regulations governing the aggregate mining industry as defined in the Surface-Mined Land Conservation and Reclamation Act, as amended.
- f) To the extent consistent with the Surface Coal Mining Land Conservation and Reclamation Act, all bonds, plans, duties and requirements pursuant to "The Open Cut Land Reclamation Act," approved August 10, 1961, as amended, and "The Surface-Mined Land Conservation and Reclamation Act," approved September 17, 1971, as amended, shall remain in full force and effect with respect to mining commenced prior to the effective date of the Surface Coal Mining Land Conservation and Reclamation Act.