



## COALEX STATE COMPARISON REPORT - 278

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### **TOPIC:** AVAILABILITY OF PERMIT, INSPECTION AND ENFORCEMENT RECORDS

**INQUIRY:** According to 30 CFR 840.14 and 842.16, copies of permit applications, inspection and enforcement records, etc. "shall be made immediately available to the public in the area of mining...." Compliance with the availability requirement can be accomplished by making copies "available for public inspection at a Federal, State, or local government office in the county where the mining is occurring..." or by having the regulatory authority mail copies of information promptly (provided a description of the information available and mailing procedures are posted in the county where the mining is occurring). Please locate any material that indicates what information is to be included as part of "a description of the information available". How do the other states implement this requirement?

**SEARCH RESULTS:** Research was conducted using the COALEX Library and other materials available in LEXIS. Retrieved were the regulatory history of the relevant federal rules and Federal Register preambles where OSM discussed amendments to state regulatory programs. Research was supplemented by a telephone survey to selected states across the country. Findings indicate that copies of permit application packages, renewals, significant revisions, etc. that require public comment are kept at the county/local level while copies of inspection and enforcement records are kept at regional or district offices; states will provide copies of requested information by mail; no state surveyed provides the public with a specific list of the types of documents available for review or that may be requested by mail [Illinois provided a Memorandum that lists the documents forwarded to counties for public review, see the attached packet of Illinois material].

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The list of what is included as part of this Report is as follows:

### **REGULATORY HISTORY OF FEDERAL RULES:**

1. 700.14 General; Availability of records



2. 773.13(d) Requirements for permits and permit processing; Public participation in permit processing; Public availability of permit applications. (Formerly 786.15)
3. 840.14 State regulatory authority inspection and enforcement; Availability of records.
4. 842.16 Federal inspections and monitoring; Availability of records.

**COPIES OF MATERIALS INCLUDED WITH REPORT (some complete, some excerpted):**

1. Federal Register preambles of final rules.
2. Federal final rules.
3. State rules.
4. Federal Register preambles discussing OSM approval or disapproval of state program amendments.
5. West Virginia case regarding the placement of permit-related advertising.

**SURVEYED STATES WITH REGULATIONS ALLOWING MAILING OF RECORDS AS WELL AS THOSE WHOSE REGULATIONS DO NOT STATE THAT THEY MAIL RECORDS REGARDING:**

1. Where permit applications and other records which require public review and comment are filed and where copies are retained.
2. Where copies of inspection and enforcement records and other permit-related materials are retained.

**REGULATORY HISTORY OF FEDERAL RULES**

- A. 700.14 General; Availability of records.
  1. 44 FR 14902 (MARCH 13, 1979). Final rule. 700.14(a) "Records required by the Act to be made available to the public shall be retained at the geographically closest office of the State or Federal regulatory authority having jurisdiction over the area involved."
- B. 773.13(d). Requirements for permits and permit processing; Public participation in permit processing; Public availability of permit applications.
  1. 44 FR 14902 (MARCH 13, 1979). Final rule. 786.15(a). "Information contained in permit applications on file with the regulatory authority shall be open, upon written request, for public inspection and copying at reasonable times."
  2. 48 FR 44343 (SEPTEMBER 28, 1983). Final rule. Part 786 was removed. 733.13(d). "(1) General availability. Except as provided in (d)(2) or (d)(3) of this section, all applications for permits; revisions; renewals; and transfers,



assignments or sales permit rights on file with the regulatory authority shall be available, at reasonable times, for public inspection and copying."

- C. 840.14 State regulatory authority inspection and enforcement; Availability of records.
1. 44 FR 14902 (MARCH 13, 1979). Final rule. 840.14(b). "...copies of all records, reports, inspection materials, or information obtained by the State under a State program shall be made immediately available to residents of that area."
  2. 47 FR 35620 (August 16, 1982). Final rule.
    - a. 840.14(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 five 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...."
    - b. 840.14(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..., Provided, that the regulatory authority shall maintain for public inspection, at a Federal, State, or local government office..., a description of the information available for mailing and the procedure for obtaining such information."
  3. 46 FR 59464 (DECEMBER 1, 1981). Proposed rules. 840.14. Availability of records. "New 840.14 is proposed to provide flexibility with respect to the methods by which States make records available to interested persons. This flexibility will assist those States (principally in the West) which do not have offices throughout coal mining regions. The Office believes that allowing for mail responses to requests for information submitted by interested persons would meet the 'conveniently available' requirement of Section 517(f) of the Act."
  4. 47 FR 35620, 35624 (AUGUST 16, 1982). Final rule. 840.14 "Three commenters stated that the proposal to allow mailing of records violates section 517(f) of the Act, which requires records to be 'conveniently available' in 'central and sufficient' locations. These commenters noted



that, without a way to review the files, residents cannot intelligently request particular documents. One commenter stated that citizens should be able to obtain an index to records..... Using the mailing method actually affords greater convenience to interested persons than does placing the records in an office. OSM agrees, however, that a description of the records available and how to obtain them by mail should be provided in each county so that interested persons may conveniently determine what is in fact available."

5. 48 FR 44777 (SEPTEMBER 30, 1983). Final rule. 840.14(b)(2). Section references were revised; all other language remained unchanged.
- D. 842.16 Federal inspections and monitoring; Availability of records.
1. 44 FR 14902 (MARCH 13, 1979). 842.16(a). Essentially the same language as 840.14(b).
  2. 47 FR 35620 (AUGUST 16, 1982). Final rule.
    - a. 842.16(a). Essentially the same language as 840.14(b).
    - b. 842.16(b). Essentially the same language as 840.14(c).
  3. 48 FR 44777 (SEPTEMBER 30, 1983). Final rule. 842.16(a)(2). Section references were revised; all other language remained unchanged.

## **STATE PROGRAM REGULATIONS: FEDERAL REGISTER PREAMBLES**

These are enclosed for background:

1. Alabama: 56 FR 4542 (FEBRUARY 5, 1991).
2. Illinois: 53 FR 43112 (OCTOBER 25, 1988).
3. Indiana:
  1. 45 FR 78482 (NOVEMBER 25, 1980).
  2. 53 FR 45459 (NOVEMBER 10, 1988).
4. Maryland: 56 FR 23505 (MAY 22, 1991).
5. Ohio:
  1. 47 FR 34688 (AUGUST 10, 1982).
  2. 52 FR 26959 (JULY 17, 1987).
  3. 59 FR 11227 (MARCH 10, 1994).
6. Pennsylvania: 47 FR 33050 (JULY 30, 1982).
7. West Virginia: 55 FR 21304 (May 23, 1990).

"At OSM's request, West Virginia revised its rules to clarify that, at a minimum, such information must include applications for permit approvals; permit revisions; permit renewals; transfers; assignment or sale of permit rights; prospecting approvals; and all inspection and enforcement documents. The revised rule provide that all records relative to surface mining reclamation operations and prospecting operations are to be maintained and made available to the public for a period of at least five years after final bond release."



## STATE CASE LAW

One state case, from West Virginia, was identified that addresses publication requirements for surface mining permit applicants:

ZIRKLE v FAERBER, CMMR, WV DOE AND ENOXY COAL, INC., 350 SE 2d 3 (W Va 1986).

"SYNOPSIS: Where an applicant for a surface-mining permit publishes the advertisement required by W.Va. Code 22A-3-20 [1985] before his permit application is complete, the advertisement must be republished upon the submission of the complete application, and concerned parties must be permitted to comment as envisaged by W.Va. Code 22A-3-20(b) [1985]."

## COMPARISON OF REGULATIONS I

State program regulations comparable to these federal rules were retrieved from COALEX and are included as part of this Report. The final column indicates whether state sections corresponding to 840.14 and 842.16 provide the state with the option to mail information.

STATE	DOES THE STATE HAVE REGULATIONS COMPARABLE TO 700.14 (Y/N)	733.13/786.15 (Y/N)	840.14 (Y/N)	842.16 (Y/N)	DOES THE STATE PROVIDE THE OPTION TO MAIL INFORMATION (Y/N)?
ALABAMA	Yes	Yes	Yes	No	No
ARKANSAS	Yes	Yes	No	Yes	No
COLORADO	Yes	Yes	Yes	No	No
ILLINOIS	Yes	Yes	Yes	No	Yes
INDIANA	No	Yes	Yes	No	No
KENTUCKY	No	Yes	Yes	No	Yes
LOUISIANA	Yes	Yes	No	Yes	No
MARYLAND	No	Yes	Yes	No	No
MISSISSIPPI	Yes	Yes	Yes	No	No
MISSOURI	Yes	Yes	Yes	No	No
MONTANA	No	No	No	Yes	Yes
NEW MEXICO	Yes	Yes	No	No	No
OHIO	Yes	Yes	Yes	No	No
OKLAHOMA	Yes	Yes	No	Yes	Yes
PENNSYLVANIA	No	Yes	Yes	No	No
TEXAS	Yes	Yes	Yes	No	Yes



UTAH	Yes	Yes	Yes	No	Yes
VIRGINIA	Yes	Yes	Yes	No	Yes
WEST VIRGINIA	No	Yes	No	Yes	No
WYOMING	No	No	Yes	No	No

## SURVEY OF STATES

The six states, aside from Oklahoma, that have regulations allowing compliance of record availability requirements by providing copies of inspection and enforcement information by mail were surveyed by telephone [see the Table, above]. The states were asked how they implement the requirements of their program version of 840.14 and 842.16. As a "control group", five states whose regulations do not indicate that they provide copies of material by mail were also surveyed. All eleven states were surveyed on their implementation of the rules requiring public availability of permit applications (733.13). Results of the survey follow.

### GENERAL FINDINGS FOR ALL STATES SURVEYED:

1. The "master set" of the documents relating to a permit are kept at the central/main offices of the regulatory authority of each state.
2. Copies of pending permit applications, major permit revisions, renewals, and other such documents that are required to go through a public comment period are kept in the area of the mine until the permit, revision, renewal, etc. is issued. Generally, after permit, revision or renewal approval, copies of these documents are not required to be kept or maintained at the local level and may be removed. Exception: In Kentucky, preliminary applications are filed at the regional offices or the central office [see below].
3. Illinois and Indiana send copies of inspection and enforcement records, as well as other permit-related correspondence, to the local repository of permit information. Utah and Virginia keep complete copies of inspection and enforcement materials at the central office, but can make the information available for review at the regional/district/field office. Kentucky, Montana, Texas, Ohio, Pennsylvania, Wyoming and West Virginia maintain inspection and enforcement records at the central offices and regional offices.
4. Wherever they are located, permit records relating to permit applications, renewals, revisions, inspection reports, enforcement actions, correspondence, etc. are available for public review and copying. Exception: parts of files may not be publicly available if they relate to an aspect of a case that is in litigation.
5. Regardless of whether the regulations state that information may be requested by phone, all of the states surveyed allow the public to call and request information to be copied and mailed from the central offices or the regional offices where copies of the materials are kept. Fees for providing this service may or may not be required depending on the state, the amount of material requested and the time involved in fulfilling the request. Illinois provided an internal memorandum containing the list of documents it sends to the local



repository. None of the states surveyed indicated that they post a list of materials available for review and copying at the local repository.

## SPECIFIC STATE RESPONSES FOLLOW:

### STATES WITH MAILING REGULATIONS

#### ILLINOIS

Permit applications are filed with the county clerk's office in the county where the mining will occur. A second copy is filed with the county board. The main files, containing permit renewals and revisions, inspection reports and enforcement actions, are kept in Springfield and duplicates are in the southern district office. Copies of documents such as permit renewals, revisions, inspection reports and enforcement actions are sent to the county clerk's office; however, the state regulatory authority has no control over the county offices and does not monitor how the records are kept and the files maintained. [See the attached Illinois Memorandum for a list of the documents forwarded to counties.]

#### KENTUCKY

Preliminary permit applications are filed either at the seven regional offices or at the central office. The main files are kept in Frankfort and copies of all permit-related documents (applications, correspondence, inspection reports, etc.) are kept at the seven regional offices through bond release or forfeiture, at which time the files from the regional office are merged with the inspectors files and maintained at the central office.

At the beginning of SMCRA in Kentucky, the regulatory authority sent copies of permit materials to the counties. The counties complained that they had no room to store all of the required material; therefore, the practice was stopped.

#### MONTANA

Permit and major revision applications are filed at county courthouses or local libraries. Inspection and enforcement records and originals of all records are maintained at the state capitol with duplicates available at the Billings office.

#### TEXAS

Permit applications "in process" are filed at local courthouses. Copies of documents requiring public comment, such as significant permit revisions and bond release applications, are sent to the county courthouses. Complete copies of permit applications, correspondence, inspection reports and enforcement actions are maintained at the two regional offices which are located in the general mining areas of the state and in Austin.



## **UTAH**

Copies of permit applications, renewals and revisions are kept on file at county office, as well as at the main office in Salt Lake City. Inspection and enforcement documents are kept at the main office. The field office may have copies of the documents comprising permit files but they are not "official files" and, therefore, do not purport to be complete. The public may, however, review whatever materials the field office has available.

## **VIRGINIA**

Materials related to permit applications and any other documents that require public comment are kept at county offices until the permit, or revision, etc. is issued, as required. Complete records of inspection and enforcement materials are kept at Big Stone Gap. The records can be made available to the public for review and copying at the northern field office.

## **CONTROL GROUP**

## **INDIANA**

Copies of permit applications and related documents are kept on file at the field offices and at the local representative library. At a fixed time after the permit has been approved, the permit packages may be removed from the library. However, copies of subsequent permit correspondence, plan changes, inspection reports and enforcement actions will continue to be kept on file at the local representative library even if the application part of the file is removed.

## **OHIO**

Permit applications are filed with Columbus. The applicant is responsible for sending copies of the documentation to the local county, this may be the local SCS office or one of the seven district offices if an office is located in that county. Copies of inspection and enforcement records are kept at Columbus and at the district offices.

## **PENNSYLVANIA**

Copies of permit records, from initial application through permit issuance, are kept at the county offices (county conservation districts). Copies of inspection and enforcement records are kept in the six district offices. Copies of all records are available in Harrisburg.

## **WEST VIRGINIA**



Copies of permit applications, major revisions and any other pending documents required to go through the comment process are kept at local courthouses. Copies of inspection and enforcement documents are kept at the field office. The master set of permit documents is on file at the headquarters.

## WYOMING

Copies of the permit application packages are kept on file at the county level until permit approval. Copies of inspection and enforcement records are kept in Cheyenne and three district locations. Copies of all permit records are available in Cheyenne.

### COMPARISON OF REGULATIONS II

Local Repository = Courthouse, Library, SCS office, etc.

Main Office = Main/central/headquarters office

Regional Office = Regional/district/field office

STATE	Location where copies of documents requiring public comment are filed or available for review.	Are these documents required to be maintained at the local repository? [Y/N]	Are copies of all permit-related records available at local repository? [Y/N]	Location where copies of inspection and enforcement records are retained.	Are lists of permit-related documents available for review posted at local repository? [Y/N]
<b>STATES WITH RULES ALLOWING THE OPTION TO MAIL INFORMATION</b>					
ILLINOIS	Local Repository	No	Yes	Local Repository; Main Office; Regional Office	No
KENTUCKY	Regional Office	No	No	Main Office; Regional Office	No
MONTANA	Local Repository	No	No	Main Office; Regional Office	No
TEXAS	Local Repository	No	No	Main Office; Regional Office	No
UTAH	Local Repository	No	No	Main Office* * Copies of information	No



				can be made available at the regional office.	
VIRGINIA	Local Repository	No	No	Main Office* * Copies of information can be made available at the regional office.	No
<b>STATES WITHOUT SUCH SPECIFIC REGULATIONS</b>					
INDIANA	Local Repository	No	Yes	Local Repository; Main Office; Regional Office	No
OHIO	Local Repository	No	No	Local Repository; Main Office; Regional Office	No
PENNSYLVANIA	Local Repository	No	No	Main Office; Regional Office	No
WEST VIRGINIA	Local Repository	No	No	Main Office; Regional Office	No
WYOMING	Local Repository	No	No	Main Office; Regional Office	No

## ATTACHMENTS

- A. Copies of current federal regulations: 30 CFR 700.14, 840.14, 842.16 and 773.13(d) [formerly 786.15].
- B. Federal Register preambles for federal regulations
  - 1. 44 FR 14902 (March 13, 1979). Final rules. [Excerpts]
  - 2. 46 FR 58464 (December 1, 1981). Proposed rules.[Excerpts]
  - 3. 47 FR 27694 (June 25, 1982). Proposed rule. [Excerpts]
  - 4. 47 FR 35620 (August 16, 1982). Final rule.
  - 5. 48 FR 44344 (September 28, 1983). Final rule.
  - 6. 48 FR 44777 (September 30, 1983). Final rule.
  - 7. 54 FR 52092 (December 20, 1989). Final rule. [Excerpts]
- C. Alabama:



OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT  
U.S. Department of the Interior

1. Reg. Sec. 880-X-2A-.10
  2. Reg. Sec. 880-X-8K-.09
  3. Reg. Sec. 880-X-11A-.04
  4. 56 FR 4542 (February 5, 1991) [Excerpts].
- D. Arkansas:
1. Reg. Sec. 700.14
  2. Reg. Sec. 786.15
  3. Reg. Sec. 842.16
- E. Colorado:
1. Reg. Sec. 1.08
  2. Reg. Sec. 2.07.5
  3. Reg. Sec. 5.02.4
- F. Illinois:
1. Reg. Sec. 1700.14
  2. Reg. Sec. 1773.13
  3. Reg. Sec. 1840.14
  4. 53 FR 43112 (October 25, 1988) [Excerpts].
  5. Memorandum, "Documents forwarded to Counties" (1994).
- G. Indiana
1. Reg. Sec. 310 IAC 12-3-106
  2. Reg. Sec. 310 IAC 12-3-110
  3. Reg. Sec. 310 IAC 12-6-4
  4. 45 FR 78482 (November 25, 1980) [Excerpts].
  5. 47 FR 32071 (July 26, 1982) [Excerpts].
  6. 53 FR 45459 (November 10, 1988) [Excerpts].
- H. Kentucky:
1. Reg. Sec. 410 KAR 8:010, Sec. 12
  2. Reg. Sec. 410 KAR 12:010, Sec. 4
- I. Louisiana:
1. Reg. Sec. 100.14
  2. Reg. Sec. 186.16
  3. Reg. Sec. 242.16
- J. Maryland:
1. Reg. Sec. 08.13.09.04
  2. Reg. Sec. 08.13.09.40
  3. 56 FR 23505 (May 22, 1991) [Excerpts].
- K. Mississippi:
1. Reg. Sec. 100.14
  2. Reg. Sec. 186.15
  3. Reg. Sec. 240.14
- L. Missouri:
1. Reg. Sec. 10 CSR 40-8.070
  2. Reg. Sec. 10 CSR 40-6.070
  3. Reg. Sec. 10 CSR 40-8.030
- M. Montana:



1. Reg. Sec. 26.4.1203
- N. New Mexico:
1. Reg. Sec. 29-16
  2. Reg. Sec. 11-15
- O. Ohio:
1. Reg. Sec. 1501:13-5-01
  2. Reg. Sec. 1501:13-1-10
  3. 47 FR 34688 (August 10, 1982) [Excerpts].
  4. 52 FR 26959 (July 17, 1987) [Excerpts].
  5. 59 FR 11227 (March 10, 1994).
- P. Oklahoma:
1. Reg. Sec. 700.14
  2. Reg. Sec. 786.15
  3. Reg. Sec. 842.16
  4. Reg. Sec. 842.17
- Q. Pennsylvania:
1. Reg. Sec. 86.35
  2. Reg. Sec. 86.214
  3. 47 FR 33050 (July 30, 1982) [Excerpts].
- R. Texas:
1. Reg. Sec. 051.07.04.006
  2. Reg. Sec. 051.07.04.210
  3. Reg. Sec. 051.07.04.672
- S. Utah:
1. Reg. Sec. 614-100.700
  2. Reg. Sec. 645 300.100
  3. Reg. Sec. 454-400.100
- T. Virginia:
1. Reg. Sec. 480-03-19.700.14
  2. Reg. Sec. 480-03-19.773.13
  3. Reg. Sec. 480-03-19.840.14
- U. West Virginia:
1. Reg. Sec. 38-2-18
  2. Reg. Sec. 55 FR 21304 (May 23, 1990) [Excerpts].
- V. Wyoming:
1. Statute Sec. 35-11-1101
- W. ZIRKLE v FAERBER, CMMR, WV DOE AND ENOXY COAL, INC., 350 SE 2d 3 (W Va 1986).