

**FEDERAL REGISTER: 48 FR 14814 (April 5, 1983)**

DEPARTMENT OF THE INTERIOR

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Parts 701, 779, 780, 783, 784, 816, 817, and 828

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Definitions and Terminology

ACTION: Final rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is amending the definitions of the terms "adjacent area," "affected area," and "permit area." The term "mine plan area" is removed from various regulatory provisions and replaced where appropriate with either "permit area," "permit area and adjacent area," or other appropriate language. These changes are made to clarify and simplify the existing rules and as a result of litigation on the permanent regulatory program regulations.

This final rule also provides notice that OSM has determined that no further action is necessary with respect to the 2-acre exemption and that the final 2-acre exemption rule, which was published at *47 FR 33424*, August 2, 1982, will remain in effect unchanged.

EFFECTIVE DATE: May 5, 1983.

FOR FURTHER INFORMATION CONTACT: Joel Yudson, Division of Surface Mining, Office of the Solicitor, U.S. Department of the Interior, Phone: 202-343-5207.

**SUPPLEMENTARY INFORMATION:**

- I. Introduction.
- II. Definitions Relating to Areal Descriptions.
  - A. "Mine Plan Area"
  - B. "Adjacent Area"
  - C. "Affected Area"
  - D. "Permit Area"
- III. 2-Acre Exemption.
- IV. Procedural Matters.

**I. INTRODUCTION**

On January 4, 1982 (*47 FR 41*), OSM published a notice of proposed rulemaking to amend 30 CFR Chapter VII with respect to the 2-acre exemption (Section 700.11(b)), the definition of certain terms, and the regulations regarding special bituminous coal mines in Wyoming. OSM previously issued final rules with respect to the 2-acre exemption and special bituminous coal mines in Wyoming (*47 FR 33424*, August 2, 1982).

OSM today is issuing final rules with respect to the definition of the terms "adjacent area," "affected area," and "permit area." This rule also removes the term "mine plan area" from the regulations, except where an existing provision using that term is subject to another proposed revision.

The term "road" which was proposed to be amended in the January 4, 1982 rulemaking is being finalized in a separate rulemaking with the performance standards for roads and therefore is not included in this final rule. No final action is being taken with respect to the definitions of "area of potential subsidence" and "area of expected subsidence" and the proposal to add definitions for those terms is being withdrawn.

This final rule also provides notice that OSM has determined that no further action is necessary with respect to the 2-acre exemption and that the August 2, 1982, final rule will remain in effect unchanged.

Public comments on these proposed rules were solicited for 30 days ending on February 3, 1982. This period was subsequently extended to February 16, 1982. Those persons offering comments during this period included State

officials, citizens, environmental groups, and industry representatives. A public hearing was scheduled for January 25, 1982, but no testimony was offered. OSM carefully considered all comments received in drafting these final rules.

## II. DEFINITIONS RELATING TO AREAL DESCRIPTIONS

### A. "MINE PLAN AREA"

In response to the suspension of the use of the term "mine plan area" by order of the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulations Litigation*, No. 79-1144 (D.D.C.), Slip op. at pp. 35-36 (February 26, 1980) and Slip op. at pp. 57-58 (May 16, 1980), and the general confusion with respect to areal descriptions used in the regulations, OSM proposed to remove the phrase "mine plan area" from its permanent program regulations and use alternative areal descriptors. This final rule reflects the alternatives included in the proposed rule and comments received on the rulemaking.

The final rule deletes the term "mine plan area" from the regulations, with a few exceptions that will be accomplished in other pending rulemakings. The proposed rule omitted reference to a prior rulemaking completed in August 1980, which deleted certain references to "mine plan area" from the permanent program regulations. (See *45 FR 51550*, August 4, 1980.) Changes proposed as part of this rulemaking which overlap changes covered by the prior rulemaking are discussed with the analysis of each section, below. Each use of the term "mine plan area" in the existing regulations, and the substitute selected for use in replacement of that term are detailed below. The discussion encompasses changes already made, changes made in this rule, and changes that will be made as part of other pending revisions.

### PROVISIONS CHANGED

The proposed rules in 30 CFR Chapter VII published on January 4, 1982, (*47 FR 41*) are divided into three groups. The first group contains the rules proposed on January 4, 1982, that were previously revised on August 4, 1980, (*45 FR 51550*). The following provisions are not revised since no additional action is necessary:

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Section	
779.11	779.12(b).
779.22(c)	779.24(i).
779.25 (e) & (j)	783.11.
783.12(b)	783.22(c).
783.24(i)	783.25 (e) & (j).
779.13(a)	779.15(a).
779.16(a)	779.17.
779.25 (f) & (g)	780.21(a)(1), (a)(3) & (c).
783.13 (a) & (a)(1)	783.14(a).
783.15(a)	783.16(a).
783.17	783.25 (f) & (g).
784.14(a)(1), (a)(3) & (c)	779.18(a).
779.22(b)	779.25 (d) & (h).
779.27(a), (b)(5), (d), (d)(1) & (d)(2)	780.11.
780.14(b)(2)	780.21(b)(1).
780.25 (a) & (b)	780.37(e).
783.18(a)	783.22(b).
783.25 (d) & (h)	783.27(b)(5).
784.11	784.14(b)(1) & (d).
784.16 (a) & (b)(1)	784.23 (b)(2).
784.24(e)	779.16(b)(2).
779.24(g)	783.16(b)(2).
783.24(g)	780.21(b)(3).

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The second group contains the proposed rules from the January 4, 1982, notice that are now also being considered in other rulemaking actions. For this reason, no additional action is being taken on the following rules at this time:

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Section	
779.13(b)(1)	779.14(a).
785.19(c)(1)	816.41(a).
816.51(b)	816.52(a)(1).
817.41(a)	817.52(a)(1).
764.15(a)(7)	770.5.
786.14(b)(3)	785.19(e)(1)(iv).
816.104(a), (b), (b)(1) & (b)(3)	786.19(c).
816.116(b)(2)(ii)	816.105(a), (b), (b)(1) & (b)(4).
816.52(a)(2)	817.116(a) & (b)(2)(ii).
783.14(a)(2)	817.52(a)(2).
788.13(b)	771.23 (e)(1) & (e)(2).
	825.11 (b)(2) & (b)(6).

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The third group contains the following rules that are revised by this rulemaking action:

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Section	
779.24(k)	783.24(k).
816.13	817.13.
828.11(e)	828.12(a).
780.14(b)	784.23(b).
779.12(a)	783.12(a).

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## RESPONSE TO GENERAL COMMENTS

Two commenters stated that the elimination of the term "mine plan area" from the regulations was not in accordance with the requirements of the U.S. District Court opinion, since the Court directed OSM to "revise the term" in accordance with the informational requirements of the Act. One of these commenters also stated that the terms used in place of the term "mine plan area" require information beyond OSM's authority. As indicated in the preamble to the proposed rule, OSM has conducted a thorough review of the use of the term "mine plan area" throughout the regulations and has found that no single term satisfactorily covers the Act's requirements in each instance. While it may be possible, in some instances, to develop a new definition for "mine plan area" that would be acceptable, OSM feels that to use the term "mine plan area" is unnecessary and would be confusing. Rather, the final rule utilizes terms that have a more direct relationship to language in the Act and which have a generally accepted meaning.

Several commenters observed that the term "coal mining and reclamation operations" which is used several times in the proposed definitions, is in fact itself undefined. Most recommended that the existing term "surface coal mining and reclamation operation" be retained since it is a defined term. The term "surface coal mining and reclamation operations" has been used in the final rule.

Some commenters stated that OSM had failed to specifically address reasons why certain uses of the broad interpretation provided under the term "mine plan area" had been eliminated. These comments were not specific enough to allow response. The bases for the changes are presented in sufficient specificity to provide a rationale for the terms used in each section. Some commenters stated that the Act allows OSM to require collection of information outside the

permit area only for hydrologic data. These commenters suggested that the term "permit area" be used in all locations, other than those that relate to the hydrologic balance, rather than the phrase "permit area and adjacent area." OSM disagrees with the general premise that the Act allows collection of information outside the permit area only with respect to hydrologic data. Absent specific comments on individual permit information requirements that exceed the Act's authority, it is impossible to further evaluate the merits of these comments. However, OSM does not intend to preclude individual commenters from petitioning OSM for a rule change with respect to specific informational requirements that may be unnecessary, overburdensome or excessive and which may exceed the minimum requirements of the Act. One commenter stated that the States are in the best position to know local and regional conditions and may establish limits for the adjacent area. OSM agrees that individual regulatory authorities are in the best position to establish the extent of the adjacent area for individual mines based on local conditions. The final rule defining adjacent area provides guidance to the regulatory authority in establishing these limits as part of a State program or on a mine-by-mine basis.

Several commenters stated that the introduction of new, undefined terminology such as "potentially impacted offsite areas" creates uncertainty and inhibits effective analysis. One of these commenters would define "potentially impacted offsite areas" as "the entire area to be affected over the life of the mine" because Section 507(b)(11) of the Act justifies expansive hydrologic coverage. Another commenter would define the term "potentially impacted offsite areas" as "areas outside the permit area where site specific conditions indicate that resources protected by the Act could reasonably be expected to be impacted by coal mining and reclamation operations." A third commenter would substitute the term "adjacent area" for the term "potentially impacted offsite areas." Another commenter would eliminate the phrase because the Act does not require it.

OSM is rejecting the comment that suggests that the term be defined to include the entire area to be affected over the life of the mine. Responsibility for analysis of areas potentially impacted by anticipated future mining operations other than those covered by the proposed permit, including any subsequent permits over the anticipated life of the mine, must be evaluated with the cumulative hydrologic impacts for the proposed mine required under Section 510(b)(3) of the Act. (See proposed hydrology rule: *47 FR 27712*, June 25, 1982.) OSM agrees that Section 507(b)(11) anticipates an evaluation of the probable hydrologic impacts of the proposed mining operations beyond the bounds of the permit area. That section requires a determination of the probable hydrologic consequences of mining both "on and off the mine site." The use of the term "potentially impacted offsite areas" would have reflected the requirements of the Act in 507(b)(11) and 508(a)(13) with respect to the consideration of impacts of a proposed mining operation both "on and off the mine site." However, the majority of commenters felt that the use of a new term related solely to hydrologic impacts was unnecessary and that the term "adjacent area" could be used to adequately reflect the required analysis of hydrologic impacts outside the permit area. OSM is accepting these comments and has used the term "adjacent area" rather than "potentially impacted offsite area" to replace "mine plan area" in the final rule. Additionally, the definition of the term "adjacent area" has been revised to reflect consideration of hydrologic resources. (See discussion below.)

One commenter observed that the deletion of underground workings, including those associated with underground mining activities, in situ mining, and auger mining, from the term "permit area and potentially impacted offsite areas," could result in failure to provide the necessary protection and analysis with regard to the hydrologic balance required by the Act. The commenter is correct in pointing out an ambiguity in the proposed rules. As discussed below, OSM has resolved this ambiguity by adopting a sufficiently broad definition for the term "adjacent area" which includes areas potentially impacted by underground workings associated with underground mining activities, auger mining, and in situ mining.

779.11; 779.12(b); 779.22(c); 779.24(i) and (k); 779.25(e) and (j); 783.11; 783.12(b); 783.22(c); 783.24(i) and (k); 783.25(e) and (j); 816.13 and 817.13

In each of the above, the proposed rule would have replaced the phrases "mine plan and adjacent areas" and "mine plan area and adjacent area" with "permit area and adjacent area." One commenter agreed with the proposal, except that in Section 779.22(c), 779.24(k), 779.25(e), 783.22(c), 783.24(k), and 783.25(e), the term "permit area" should be used to more accurately reflect the area of concern. No other specific comments were received on these .

779.11; 779.12(b); 779.24(i); 779.25(j); 783.11; 783.12(b); 783.24(i); and 783.25(j) were previously revised at *45 FR 51550*, August 4, 1980, in accord with the proposal. No additional change is necessary under the proposed rule and, therefore, no final action on these is necessary.

779.22(c) and 783.22(c) require permit applications to include information on existing land uses and land use classifications. These require information relevant to the postmining land use requirements of Sections 816.133 and 817.133. 816.133 and 817.133 require that the postmining land use be approved based upon land uses in the surrounding area and the adjacent area under certain circumstances, including where the land had been previously mined, improperly managed, or where an alternative postmining land use is proposed. Thus, information on land uses and land use classifications in the permit area and adjacent area may be necessary to evaluate compliance with these performance standards and no change has been made in response to the comment. 779.22(c) and 783.22(c) were previously revised at *45 FR 51550*, August 4, 1980, in accord with the proposal. No additional change is necessary under the proposed rule and, therefore, no final action on these is necessary.

779.24(k) and 783.24(k) require information on land within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System to ensure compliance with Section 522(e)(1) of the Act. Section 522(e)(1) generally prohibits mining within the boundaries of such Systems. The requirements of Section 522(e)(1) do not apply to adjacent areas. Therefore, the comment has been accepted and the final rule revises Sections 779.24(k) and 783.24(k) by deleting the existing reference to "permit area and adjacent area" and using the term "permit area."

779.25(e) and 783.25(e) require information on known workings of active, inactive, or abandoned underground mines. Since underground mines may have impacts beyond the boundaries of the underground mines and because mining is prohibited within 500 feet from underground mines, except in certain circumstances, information on such mines may be necessary to ensure compliance with applicable performance standards. (See 30 CFR 816.79 and 817.79.) 779.25(e) and 783.25(e) were previously revised at *45 FR 51550*, August 4, 1980, in accord with the proposal. No additional change is necessary under the proposed rule and, therefore, no final action on these is necessary.

No comments were received on the proposed revisions to Sections 816.13 and 817.13. Therefore, the proposal is adopted in the final rule.

779.13(a) and (b)(1); 779.14(a); 779.15(a); 779.16(a); 779.17; 779.25(f) and (g); 784.14(a)(1), (a)(3) and (c); 785.19(c)(1); 816.41(a); 816.51(b); 816.52(a)(1); 817.41(a); 817.52(a)(1); 828.11(e); 828.12(a)

In each of the above, the proposed rule would have replaced the terms "mine plan area," "mine plan area and adjacent area(s)," or "mine plan or adjacent area(s)" with the phrase "permit area and potentially impacted offsite areas." Several commenters would use the phrase "permit area and adjacent area," since "potentially impacted offsite areas" was not defined and this could cause confusion in implementation of the regulations. Another commenter suggested that the phrase "permit area and adjacent area" be used because the Act does not authorize the use of the term "potentially impacted offsite areas." Another commenter suggested that "permit area and adjacent area" be used because the term "potentially impacted offsite areas" could extend beyond the adjacent lands. As previously discussed, the final rule utilizes the phrase "permit area and adjacent area," rather than "permit area and potentially impacted offsite area." The bases for use of this phrase are indicated above. No additional response to these comments is necessary.

779.13(a); 779.15(a); 779.16(a); 779.17; 779.25 (f) and (g); 784.14(a)(1), (a)(3) and (c) were previously revised at *45 FR 51550*, August 4, 1980, in accord with the usage of the phrase "permit area and adjacent area" in this final rule. No additional change is necessary and, therefore, no action on the proposal will be taken.

779.13(b)(1) and 779.14(a) were previously revised at *45 FR 51550*, August 4, 1980, by deletion of the term "mine plan area" and substitution of the term "permit area." This final rule would have revised these by using the phrase "permit area and adjacent area" rather than "permit area," to be consistent with the use of the former phrase in other of the regulations except that these provisions are proposed to be removed entirely in another rulemaking.

No comments were received on the proposed rule specifically related to Sections 785.19(c)(1); 816.41(a); 816.51(b); 816.52(a)(1); 817.41(a); 817.52(a)(1); 828.11(e); and 828.12(a). Therefore, Sections 828.11(e) and 828.12(e) are revised, as indicated above, by substitution of the phrase "permit area and adjacent area" for "mine plan area," "mine plan and adjacent area(s)," "mine plan or adjacent area(s)," or related terms. The other are the subject of pending rulemakings and will be revised accordingly in the future.

764.15(a)(7); 770.5; 771.23(e)(2); 779.18(a); 779.22(b); 779.25 (d) and (h); 779.27(a), (b)(5), (d)(2) locations), (d)(1), and (d)(2), 780.11; 780.14(b)(2); 780.21(b)(1); 780.25 (a) and (b); 780.37(e); 783.18(a); 783.22(b); 783.25 (d)

and (h); 783.27(b)(5); 784.11(j); 784.14 (b)(1) and (d); 784.16 (a) and (b)(1); 784.23(b)(2); 784.24(e); 785.19(e)(1)(iv); 786.14(b)(3); 786.19(c) 816.104 (a), (b)(1) and (b)(3); 816.105 (a), (b), (b)(1) and (b)(4); 816.116(b)(2)(ii); 817.116 (a) and (b)(2)(ii)

In each of the above , the proposed rule would have replaced the term "mine plan area" with the term "permit area."

One commenter would replace the term "mine plan area" in Sections 780.11; 780.14(b)(2); 780.21(b)(1); 780.25 (a) and (b); 780.37(e); 784.11; 784.14 (b)(1) and (d); 784.16 (a) and (b)(1)(j); 784.23(b)(2); and 786.19(c) with a broader term than "permit area" because Section 507(b)(11) requires consideration of potential impacts over the life of the mine. As previously indicated, OSM agrees that Section 507(b)(11) anticipates an evaluation of the probable hydrologic impacts of proposed mining operations beyond the bounds of the permit area. However, the analysis required by this section must be separated into two parts: (1) a determination of the probable hydrologic consequences of the operations covered by the permit "on and off the mine site," or in the "permit area and adjacent area," as that phrase is used in this rule; and (2) and assessment of the probable cumulative impacts of all anticipated mining on the hydrologic balance. As indicated in the proviso to Section 507(b)(11) of the Act, submission of hydrologic information outside the "permit area and adjacent area" is optional and the operator may wait for necessary information to be provided by appropriate Federal or State agencies. Additionally, Section 507(b)(11) provides requirements for the collection and analysis of data on the hydrologic regime and does not require descriptions of mining operations not covered by the permit application. Each of the cited by the commenters relates to the description of proposed mining operations, land affected by those operations, and structures related to those operations. For these reasons, the commenters' suggestion is rejected.

Specifically, 780.11; 780.14(b)(2); 780.21(b)(1); 780.25 (a) and (b); 780.37(e); 784.11(j); 784.14 (b)(1) and (d); 784.16 (a) and (b)(1); and 784.23(b)(2) are all related to the provision of information on proposed mining operations, land affected by those operations, and structures related to those operations required by definition to be within the "permit area" and not to the collection of hydrologic data outside the permit area. Each of these was previously revised at *45 FR 51550*, August 4, 1980, by deletion of the term "mine plan area" and substitution of the term "permit area." Therefore, no action on the proposal with respect to these will be taken.

Section 786.19(c) contains criteria for permit approval as provided in Section 510(b)(3) of the Act, and not the permit information requirements of Section 507(b)(11). Section 510(b)(3) requires that proposed operations be designed to prevent material damage to the hydrologic balance outside the "permit area." Therefore, the commenters' suggestion with respect to this section is rejected. The final rule would have revised Section 786.19(c) to parallel the language of Section 510(b)(3) by deleting the term "mine plan area" and replacing it with the term "permit area," except that Part 786 is proposed to be removed in another rulemaking.

No comments were received on the proposed revisions to the other listed above. However, all of these other provisions either are subject to another pending revision or were previously revised at *45 FR 51550*, August 4, 1980, by deletion of the term "mine plan area" and substitution of the term "permit area." Therefore, no action on the proposal with regard to these will be taken.

780.14 and 784.23

The proposed rule would have deleted the terms "mine plan" and "adjacent area" in the first sentence of Sections 780.14 and 784.23; and deleted the phrase "Unless specifically required for the mine plan area or adjacent area by the requirements of this section" from Sections 780.14(b) and 784.23(b). No comments were received with respect to these proposals. Therefore, although the term "mine plan area" was previously replaced, the proposal is adopted in the final rule.

779.16(b)(2), 779.24(g), 783.16(b)(2), 783.24(g)

In each of the above the proposed rule would have deleted the term "mine plan area." One commenter suggested substituting the phrase "within the proposed permit area" rather than simply deleting the term "mine plan area." This comment was accepted. These were previously revised at *45 FR 51550*, August 4, 1980, in accord with the comments. No additional change is necessary and, therefore, no action on the proposal will be taken.

### SECTION 780.21(b)(3)

The proposed rule would have revised Section 780.21(b)(3) by deleting the term "mine plan area" and replacing it with the term "disturbed area." One commenter recommended that the term "permit area" be used rather than "disturbed area" in this section. This comment was accepted. This section was previously revised at *45 FR 51550*, August 4, 1980, in accord with the comment. No additional change is necessary and, therefore, no action on the proposal will be taken.

### 816.52(a)(2) and 817.52(a)(2)

The proposed rule would have deleted the phrase "on or off the mine plan area" in the above and replaced it with the phrase "permit area and potentially impacted offsite areas." One commenter suggested that these be revised in a manner consistent with other aspects of the proposal. Other comments suggested use of the phrase "permit area and adjacent area" rather than "permit area and potentially impacted offsite areas." Although these comments have been accepted, Sections 816.52(a)(2) and 817.52(a)(2) are subject to removal in another rulemaking and will not be amended at this time.

### SECTION 783.14(a)(2)

The proposed rule would have revised Section 783.14(a)(2) by replacing the phrase "The geology of those surface lands within the proposed mine plan area" with the phrase "The geology of those lands." Two commenters were concerned that the proposed rule could be interpreted such that geologic information would be required over the entire coal basin. Another commenter was concerned that the proposed rule places no limitation on the area for which geologic information could be required. This was not the intent of the proposed rule. These commenters suggested use of the term "permit area" or "permit area and adjacent area" rather than deletion of the term "mine plan area."

Section 783.14(a)(2) was previously revised at *45 FR 51550*, August 4, 1980, by deleting the term "mine plan area" and replacing it with term "permit area." Neither the proposed rule nor the existing rule as revised on August 4, 1980, resolves the ambiguity perceived by the commenters. OSM accepts the comment that the geologic description required by Section 783.14(a)(2) be limited to the "permit area and adjacent area." This change will be incorporated in the final geology permitting rules which are currently subject to revisions.

### 771.23 (e)(1) and (e)(2)

The proposed rule would have revised Section 771.23(e)(1) by deleting the phrase "the remainder of the mine plan area

and \* \* \*." One commenter recommended the use of the term "permit area" in place of "mine plan area." As indicated in the proposal, the required scale of the maps for areas within the permit area is specified in Section 771.23(e)(1). The use of the phrase "permit area and adjacent area" in this context would be contradictory. Therefore, the comment is rejected.

The proposed rule would have revised Section 771.23(e)(2) by deleting the phrase "at any place within the mine plan area." No comments were received on the proposed change.

771.23 (e)(1) and (e)(2) are the subject of another rulemaking and will not be revised at this time.

### 779.12(a) and 783.12(a)

The proposed rule would have revised Sections 779.12(a) and 783.12(a) by deleting the phrase "of the subareas of the mine plan area." This section was previously revised at *45 FR 51550*, August 4, 1980, by deletion of the term "mine plan area" and substitution of the term "permit area."

One commenter suggested revision of the language of Sections 779.12(a) and 783.12(a) to clarify the intent of the regulation. The commenter would revise Paragraph (a) as follows:

"(a) The lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought,

and \* \* \*."

The suggestion is accepted and the final rule revises Sections 779.12(a) and 783.12(a) in accord with the comment.

#### SECTION 788.13(b)

The proposed rule would have deleted the phrase "including, but not limited to, any remainder of the mine plan area described in the application for the existing permit," in Section 788.13(b). No comments were received on this proposed change. However, Section 788.13(b) is the subject of another rulemaking and will not be amended at this time.

825.11 (b)(2) and (b)(6)

The proposed rule would have deleted the terms "mining plan" and "mine plan" in Sections 825.11 (b)(2) and (b)(6) and replaced them with the term "permit." No comments were received on this proposed change. However, Part 825 was revised on August 2, 1982, in a manner which moots the proposal.

#### **B. "ADJACENT AREA"**

The definition of the term "adjacent area" is being revised to eliminate the reference to the term "mine plan area" and to more closely complement the other areal descriptors used, such as "permit area" and "affected area." The term "adjacent area" is intended to refer to an area of variable size in which specified resources could be adversely impacted by mining operations. The size of the adjacent area could vary on a case-by-case basis depending upon whether impacts on water, fish and wildlife, cultural resources, or others are being considered; it could also be established on a programmatic basis in a State program. (See also *43 FR 41671*, September 18, 1978.)

The proposed rule provided two alternative ways of defining "adjacent area." The proposed rule also would have used the term "potentially impacted offsite areas" rather than "adjacent area" in applications dealing with the hydrologic balance.

The final rule adopts the basic language of the first alternative (Alternative A) from the proposal. Under this standard, the term "adjacent area" is defined to include areas outside the permit area where a resource is or resources are located and where those resources will be or could reasonably be expected to be adversely impacted by surface coal mining and reclamation operations. The extent of this area will be determined within the particular context in which the term is used in the regulations and the particular resource under consideration.

As indicated above, the use of the term "potentially impacted offsite areas" has been rejected in favor of continued use of the term "adjacent area." No definition was included in the proposal for the term "potentially impacted offsite area."

Several commenters suggested a definition substantially similar to the proposed definition for the term "adjacent area" and for the term "potentially impacted offsite area," while others suggested simply that the term "adjacent area" be used rather than defining a new term. Another commenter expressed concern that the use of the term "potentially impacted offsite areas" could result in omission of consideration of the hydrologic impacts of underground workings. Based upon these comments, OSM is not using the term "potentially impacted offsite areas." The term "adjacent area," however, has been revised to encompass consideration of potential offsite hydrologic impacts and to include specifically the probable impacts from underground workings, whether they be associated with underground mining activities, auger mining, or in situ mining. This definition will be used to encompass those areas where the hydrologic regime will be impacted by the proposed mining operation, while excluding unnecessary information on areas where there is no reasonable expectation of such an impact. The use of the term "adjacent area" rather than "potentially impacted offsite areas" will apply as well to the use of the term in the proposed hydrology rulemaking (*47 FR 27712*, June 25, 1982).

The majority of commenters supported Alternative A because it provided a more objective and administratively reasonable standard. Several of these commenters would have inserted "adversely" before "impacted," and "immediately" before "outside" to avoid listing of irrelevant information and to confine "adjacent" to its commonly accepted meaning.

The modifier "adversely" was included in the previous rule. In the final rule, OSM accepts the suggestion and inserts the word "adversely" before "impacted." This is consistent with OSM's intended meaning and was inadvertently omitted



from the proposal. The suggestion to add the word "immediately" before "outside" was not accepted. OSM anticipates that the term "adjacent area" will be applied within the context in which the term is used in the regulations and of the particular resource under consideration. Thus, in some circumstances the resources impacted may be "immediately" outside the permit area, while in others, there could be some distance between the permit area and the resource.

Several commenters supported the second alternative (Alternative B). Some believed it would have given the States more flexibility to require permit information. Regulatory authorities have adequate flexibility under the rule adopted to ensure that permit applications include all information necessary to evaluate mining operations in accordance with the requirements of the Act. Individual regulatory authorities that prefer the second alternative, and deem it more appropriate within the context of their individual State regulatory programs, may incorporate the language of Alternative B as part of their programs inasmuch as that alternative is consistent with the "adjacent area" definition adopted.

One commenter preferred Alternative B because it was deemed impossible to determine in all cases whether an area will actually be affected and, therefore, it was argued that the definition should encompass all areas that might be affected. The final rule recognizes that it may be impossible to determine in all cases whether an area will actually be adversely impacted. For this reason, the adjacent area is defined to include areas where an adverse impact can reasonably be expected to occur. The adjacent area need not extend to areas where the potential impacts are remote and speculative and cannot reasonably be expected to occur.

Several commenters felt that neither alternative was acceptable and argued that the term "adjacent area" could only be used under the Act to refer to information related to the hydrologic balance. OSM disagrees with the asserted premise that the Act allows collection of information outside the permit area only with respect to hydrologic data. Thus, the recommendation that the use of the term "adjacent area" be restricted to information related to the hydrologic balance is rejected. (See the above discussion under "Mine plan area" for a more complete response on this issue.)

One commenter criticized the proposal as being too vague, not defining the resources protected, and potentially subject to arbitrary application. This commenter did not suggest an alternate approach. Another commenter suggested that the definition be revised to state specifically that its application would depend upon site specific conditions.

OSM has reviewed the proposed definition and has decided to retain a necessary degree of uncertainty in the final language. The area determined to be within the "adjacent area" must be defined within the context of the particular resource being evaluated and often will depend upon local conditions. A further resolution of the term will be accomplished either on a permit-by-permit basis or as part of a State program. Thus, the adjacent area may differ from case to case depending upon the factors under consideration. This can be best resolved by the regulatory authority within the context of the particular requirement of the regulatory program and the conditions within the particular State, region, or locale where the proposed mining operation is located. To help clarify this intent, the language of the rule has been revised to reflect more clearly that the resource or resources requiring consideration are determined by the context in which the term "adjacent area" is used in a particular regulatory section. This is not intended to be a substantive change. No further change is necessary to reflect site specific conditions or circumstances where a particular resource does not exist or could not be impacted; only resources impacted or which could be impacted are included.

### **C. "AFFECTED AREA"**

This final rule revises the definition of the term "affected area" to more closely reflect the scope of areas covered in Section 701(28) of the Act, and to clarify ambiguity in its application to roads and lands that overlie underground workings. Proposed revisions to the definition of "affected area" were also discussed in the final "two-acre rule," promulgated on August 2, 1982 (*47 FR 33424*). This rule is in accord with the action taken in that prior rulemaking.

The proposed rule provided four alternative approaches for determining when a road should be included within the "affected area" for a mine. This final rule adopts the second alternative with one modification. When describing roads not within the "affected area," it deletes the requirement for road construction standards as stringent as those applicable to access and haul roads under the applicable State program and requires instead that the road be constructed to meet the road construction standards for other public roads of the same classification in the local jurisdiction. With this change, the final rule excludes from the "affected area" any part of a road which (a) was designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (c) there is substantial (more than incidental)

public use. Every other access or haul road used for purposes of a surface mining and reclamation operation is included within the affected area.

Comments received on this aspect of the "affected area" definition are addressed in the August 2, 1982 Federal Register and are incorporated here by reference as the basis for this final rulemaking (See *47 FR 33430-33431*.)

The proposed rule would also have revised the definition of "affected area" by including in the term for underground mines, in situ mines, and auger mines, either the phrase "area of expected subsidence" or the phrase "area of potential subsidence." Based upon comments received, neither term has been adopted. The final rule requires that, with respect to underground mining, in situ mining, and auger mining, the affected area must include the area located above the underground workings.

Several commenters suggested that the reference to subsidence be deleted entirely from the definition of "affected area." They argued that Congress provided for separate treatment of subsidence under Section 516 of the Act, and exclusion of subsidence would clarify that a reclamation bond need not be posted for areas of expected subsidence.

These comments have been rejected. Because of the potential for surface impacts in areas overlying underground workings, these areas should continue to be included within the "affected area" for the mine. In contrast to the position advanced by the commenters, OSM believes that 516(b)(1) and 516(c) of the Act evidence Congressional intent to include some protection for surface lands from subsidence. Thus, the existing interpretation of the term "affected area," which includes lands overlying underground workings, has not been changed. These commenters are also incorrect in their assertion that the term "affected area" dictates which areas are to be covered by a performance bond. That position would be corrected if the previous definition of "permit area," which included all affected areas, had been retained. That definition is revised, as discussed below. These issues will be covered in more detail by a separate rulemaking on the Subchapter J requirements, which are related specifically to required bond protection.

One commenter supported limiting the term "affected area" to the "area of expected subsidence" because surface areas above underground workings which are designed not to subside are not "affected." Other commenters stated that the existing definition should be retained because determining the areas likely to be affected by underground mining is difficult. Another commenter stated that the "area of expected subsidence" is too broad because it may require an operator to include all areas overlying the projected underground workings merely on the presumption that subsidence may occur. This commenter argued that the requirement in Section 507(b)(14) of the Act for maps showing the location of underground mines is only to provide an opportunity to determine if the proposed underground coal mining could affect certain urbanized areas. Another commenter, however, argued that Section 507(b)(14), as well as 516(b)(1) and (c) of the Act, strongly support including as part of the affected area all surface areas overlying areas of potential subsidence.

In addition to these comments, OSM also received several comments on the related proposal to include a new definition for the term "area of expected subsidence" or "area of potential subsidence." Several commenters objected to either definition. These commenters also expressed a general preference for the term "area of potential subsidence" rather than the term "area of expected subsidence," if one of the two were to be included in the final rule. Several commenters supported including a definition of the term "areas of expected subsidence," because it was believed to be more consistent with Section 516(b)(1) of the Act and because it was believed that the "areas of potential subsidence" was too broad and unworkable. Other commenters suggested revising the term "area of expected subsidence" to mean simply the area addressed in the subsidence control plan. Another commenter stated that either definition was too narrow, since subsidence may cause serious effects on the hydrologic balance. One commenter stated that OSM's preamble statement that "potentially affected areas" would include all areas except where geologic conditions at the mine would preclude subsidence of the surface, appeared to conflict with OSM's preamble to the existing rules which stated that there has been no "evidence that subsidence can be definitely precluded as a possibility in any circumstance." Another commenter stated that while he agreed that the concept of the "area of expected subsidence" was reasonable, Congressional intent could not be carried out unless the area of underground workings is included within the definition of "affected area."

OSM has reviewed all of the comments received on the proposal and has decided to accept the comments suggesting that neither definition be adopted and that the term "affected area" continue to include the entire area overlying underground workings. OSM recognizes that Congress provided for the regulation of underground mines only to the extent that they have a surface impact. Ideally this would include a precise prediction of all surface impacts and a

corresponding resolution of the extent of OSM jurisdiction under the Act. However, the state of the art in subsidence prediction does not currently allow OSM to define these limitations clearly. On the other hand, Congress specified that the Act was intended to protect society and the environment from the adverse effects of surface coal mining operations (including the surface impacts of underground mining operations) and to assure that such operations are conducted so as to protect the environment. On balance, Congressional intent is more nearly met by including all areas overlying underground workings in the "affected area." For these reasons, OSM has decided to retain the existing scope of the definition of the term "affected area" and to not adopt the proposed definition of "area of expected subsidence" or "area of potential subsidence." If at some point in the future better predictive methodologies are developed which will allow the prediction of the surface impacts of underground workings, OSM may reconsider these definitions.

One commenter suggested deleting auger mining from the definition of "affected area." This comment has been rejected. Auger mining is included as a form of mining covered under Section 701(28) of the Act and as such is properly included within the definition of the "affected area."

One commenter suggested that "fee" tracts of property should be excluded from the "affected area" as well as any areas requested by the land owner. Another commenter objected to the inclusion of any provisions related to subsidence in the definition of "affected area," because it would require that underground mine operators comply with performance standards on lands they typically do not own or control. These comments have been rejected. The Act does not provide a basis for excluding areas from the "affected area" based upon land ownership.

#### **D. PERMIT AREA**

The final rule revises the definition of the term "permit area" to follow the definition of "permit area" in Section 701(17) of the Act more closely and to indicate that overlapping permit areas for more than one operation are not required. The proposed rule included two alternatives. The first alternative (Alternative A) would have defined permit area as the area of land indicated on the operator's approved plan submitted with the permit application, which includes the area of land upon which the operator will conduct surface coal mining and reclamation operations under the permit. The second alternative (Alternative B) would have defined "permit area" as the area of land and water within boundaries designated on the permit application maps, as approved by the regulatory authority, including all "affected areas." The final rule adopts the first alternative with a few revisions.

The majority of the commenters preferred the first alternative as more consistent with the Act. One, however, stated that there is no need to define "permit area" since the Act defines it. One commenter supported the first alternative because it was related to the land on which the operator would conduct operations and not an affected area. Another commenter supported the first alternative since it clarified that the permit area would include the areas of land where the operator conducts operations. One commenter, who supported the first alternative also specifically supported the exclusion of areas adequately bonded under another valid permit from the "permit area." Another commenter, however, opposed the provision allowing the exclusion of areas otherwise bonded. This commenter believed that the provision was confusing and unnecessary since the regulatory authority would ensure that no area was double permitted or bonded. Some commenters who preferred the first alternative over the second alternative, also indicated a preference for the language in the Act that specifically related the "permit area" to the bonding requirements.

Several commenters recommended that the second alternative be selected. One commenter believed the second alternative preferable because it would include the area of potential subsidence. Another commenter stated that the second alternative would be preferable only if the final version included all areas of potential rather than expected subsidence.

One commenter thought that neither alternative was workable since they both would exclude parts of an operation. This commenter would have preferred the second alternative if all areas overlying underground workings were included.

OSM has considered all comments received in the development of the final rule. Based upon these comments, the first alternative has been selected. This alternative has been revised in two respects. First, to clarify the relationship further between the "permit area" and the bonding requirements, the definition has been revised to state explicitly that the permit area means the area required to be covered by the operator's performance bond under Subchapter J. This is not a substantive change, since Section 509(a) of the Act specifies bond coverage for an area coextensive with the first proposed alternative definition for "permit area." That is, the performance bond must cover the area of land upon which

the operator will conduct surface coal mining and reclamation operations during the term of the permit. Second, the definition has been revised to indicate that at a minimum the permit area must include all disturbed areas. Again this is not intended to be a substantive change, since the operator would necessarily conduct surface coal mining and reclamation operations in all disturbed areas. These changes have been made to clarify the intent of the definition and minimize the potential for confusion in application.

The final rule retains the provision from the proposed rule allowing the exclusion from the permit area of areas adequately bonded under another valid permit. This provision is considered appropriate since each bond must be adequate to cover the anticipated costs of reclamation of the area involved, and therefore, duplicative bonding is unnecessary.

The comments suggesting that the term "permit area" specifically include all areas overlying underground workings has been rejected. The Act requires that the "permit area" include the land covered by the operator's bond. As stated above, this includes all areas upon which surface coal mining and reclamation operations are conducted. Those are the areas for which reclamation operations are planned and for which the performance bond can be accurately set. Although there is a potential for subsidence causing material damage in areas overlying the underground workings, there is no reclamation work planned there (unless there will also be a surface coal mining operation on that area). Thus there is no need for a performance bond on those areas. Operator financial responsibility for areas outside the permit area is covered under the liability insurance requirements of Section 507(f) of the Act. Accordingly, to the extent the definition of "permit area" is tied to the bonding requirements of the Act, it is incorrect to include in the definition any reference to the "areas overlying the underground workings" or to the "affected area."

Under the revised definition of permit area, the performance standards of the Act will continue to apply to all surface coal mining and reclamation operations. Also, where informational requirements must apply to areas outside the redefined permit area, the provisions enunciating these requirements will be revised if necessary to include information from adjacent areas or other locations.

### **III. TWO-ACRE EXEMPTION**

On August 2, 1982, OSM published final regulations implementing the 2-acre exemption under the permanent regulatory program. (*47 FR 33424.*) As part of a settlement agreement in *National Wildlife Federation v. Watt*, Civil Action No. 82-0320 (D.D.C.), the Department agreed to include the final 2-acre rule in the supplemental Environmental Impact Statement (EIS) on its permanent program regulations and reconsider the rule if the supplemental EIS demonstrated a need to do so.

The two-acre exemption was subsequently analyzed in OSM's "Final Environmental Impact Statement OSM EIS-1: Supplement." Based upon this supplemental EIS, it has been determined that the August 2, 1982 rule was properly and lawfully promulgated; therefore there is no need to reconsider the issue at this time.

Regarding the two-acre exemption, this notice serves as the record of decision based upon the supplemental EIS and is consistent with the preferred alternative published in Volume III of the supplemental EIS as well as the final rule published on August 2, 1982.

### **IV. PROCEDURAL MATTERS**

#### **Executive Order 12291 and the Regulatory Flexibility Act**

The Department of the Interior (DOI) has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (*5 U.S.C. 601 et seq.*) Furthermore, Section 8(a)(2) of E.O. 12291 applies to these final rules which are needed to facilitate resolution of the pending legal challenge to the August 2, 1982 revision to the 2-acre exemption.

#### **National Environmental Policy Act**

OSM has analyzed the impacts of these final rules in the "Final Environmental Impact Statement, OSM EIS-1: Supplement," in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (*42 U.S.C. 4332(2)(C)*). The final EIS is available in OSM's Administrative Record in Room 5315, 1100 L Street, NW,

Washington, D.C., or by mail request to Mark Boster, Chief, Branch of Environmental Analysis, Room 134, Interior South Building, U.S. Department of the Interior, Washington, D.C. 20240.

This preamble serves as the record of decision under NEPA. The following differences are noted between this final rule and the preferred alternative in Volume III of the EIS.

1. The final rule amends the of the rules that are changed by the definitions included in this rulemaking. The definitions were analyzed in the EIS text. The application of the performance standards of the Act is not changed.

2. Additional clarification is made in Parts 779, 780, 783, 784 and 788 concerning permit applications, maps, plans, and information on the permit application that is within the scope of the EIS analysis.

3. The definition for "permit area" in the final rule is clarified to show that the permit area is covered by the operator's performance bond under Subchapter J of 30 CFR Chapter VII and includes all disturbed areas. These changes are consistent with the EIS analysis.

#### Federal Paperwork Reduction Act

There are no new information collection requirements established by these rules requiring approval of the Office of Management and Budget under *44 U.S.C. 3507 et seq.*

#### **LIST OF SUBJECTS**

##### 30 CFR Part 701

Coal mining, Law enforcement, Surface mining, Underground mining.

##### 30 CFR Part 779

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

##### 30 CFR Part 780

Coal mining, Reporting and recordkeeping requirements, Surface mining.

##### 30 CFR Part 783

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

##### 30 CFR Part 784

Coal mining, Reporting and recordkeeping requirements, Underground mining.

##### 30 CFR Part 816

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

##### 30 CFR Part 817

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

##### 30 CFR Part 828

Coal mining, Environmental protection, Surface mining, Underground mining.

Accordingly, 30 CFR Parts 701, 779, 780, 783, 784, 816, 817 and 828 are amended as set forth below.

Dated: March 28, 1983.

Daniel N. Miller, Jr., Assistant Secretary, Energy and Minerals.

**PART 701 -- PERMANENT REGULATORY PROGRAM**

In Section 701.5, the definition of Mine plan area is removed and the definitions of Adjacent area, Affected area, and Permit area are revised to read as follows:

**SECTION 701.5 - DEFINITIONS.**

\* \* \* \* \*

**ADJACENT AREA** means the area outside the permit area where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed mining operations, including probable impacts from underground workings.

**AFFECTED AREA** means any land or water surface area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings. The affected area shall include every road used for purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road (a) was designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (c) there is substantial (more than incidental) public use.

\* \* \* \* \*

**PERMIT AREA** means the area of land, indicated on the approved map submitted by the operator with his or her application, required to be covered by the operator's performance bond under Subchapter J of this chapter and which shall include the area of land upon which the operator proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided that areas adequately bonded under another valid permit may be excluded from the permit area.

\* \* \* \* \*

**PART 779 -- SURFACE MINING PERMIT APPLICATIONS -- MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES**

2. Section 779.12 is amended by revising paragraph (a) to read as follows:

**SECTION 779.12 - GENERAL ENVIRONMENTAL RESOURCES INFORMATION.**

\* \* \* \* \*

(a) The lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought; and

\* \* \* \* \*

**PART 780 -- SURFACE MINING PERMIT APPLICATIONS -- MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN**

3. Section 780.14 is amended by revising the introductory paragraph and the introductory text to paragraph (b) to read as follows:

**SECTION 780.14 - OPERATION PLAN: MAPS AND PLANS.**

Each application shall contain maps and plans as follows:

\* \* \* \* \*

(b) The following shall be shown for the proposed permit area:

\* \* \* \* \*

**PART 783 -- UNDERGROUND MINING PERMIT APPLICATIONS -- MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES**

4. Section 783.12 is amended by revising paragraph (a) to read as follows:

**SECTION 783.12 - GENERAL ENVIRONMENTAL RESOURCES INFORMATION.**

\* \* \* \* \*

(a) The lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought; and

\* \* \* \* \*

**PART 784 -- UNDERGROUND MINING PERMIT APPLICATIONS -- MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN**

5. Section 784.23 is amended by revising the introductory paragraph and the introductory text to paragraph (b) to read as follows:

**SECTION 784.23 - OPERATION PLAN: MAPS AND PLANS.**

Each application shall contain maps and plans as follows:

\* \* \* \* \*

(b) The following shall be shown for the proposed permit area:

\* \* \* \* \*

**PARTS 779, 783, 816, 817, and 828 [AMENDED]**

**SECTIONS 779.24 and 783.24 [Amended]**

6. 779.24(k) and 783.24(k) are amended by removing the words "permit area and adjacent area" and inserting in their place the words "permit area."

**SECTIONS 816.13 and 817.13 [Amended]**

7. 816.13 and 817.13 are amended by removing the words "mine plan and adjacent area" and inserting in their place the words "permit area and adjacent area."

**SECTIONS 828.11 and 828.12 [Amended]**

8. 828.11(e) and 828.12(a) are amended by removing the words "mine plan and adjacent area" and "mine plan and in adjacent areas" and inserting in their places the words "permit area and adjacent area."

Authority: Pub. L. 95-87, *30 U.S.C. 1201* et seq.

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