FEDERAL REGISTER: 48 FR 24638 (June 1, 1983)

DEPARTMENT OF THE INTERIOR
AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Parts 784, 785, 816, 817, and 818
Surface Coal Mining and Reclamation Operations;
Permanent Regulatory Program: Subsidence Control,
Concurrent Surface and Underground Mining Operations and Contemporaneous Reclamation

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is issuing final rules on information required for subsidence control plans for underground mining operations and on performance standards for subsidence from underground mining operations, concurrent surface and underground mining, and contemporaneous reclamation.

A subsidence control plan is required, to furnish the regulatory authority with information on the underground mining operation. The subsidence control plan must be submitted and approved as part of the permit application for the underground mine.

The final performance standards establish a distinction between damage to land and damage to structures or facilities. All subsidence-caused material damage to land or diminution of the value and reasonably foreseeable use of land is required to be corrected by restoration of the land. Operator responsibility for material damage to structures or facilities resulting from subsidence is tied to liability under State law. The final rule for contemporaneous reclamation allows the regulatory authority to establish schedules that define contemporaneous reclamation. The final rule also provides requirements for obtaining a variance from the requirement of reclamation as contemporaneously as possible for concurrent surface and underground mining. The part containing special permanent program performance standards for concurrent operations is removed as proposed.

EFFECTIVE DATE: July 1, 1983.

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SUPPLEMENTARY INFORMATION:

I. BACKGROUND

On April 16, 1982, OSM proposed permanent program rules *(47 FR 16604)* to amend 30 CFR 784.20, 817.121, 817.122, 817.124, and 817.126 pertaining to subsidence control, in order to eliminate unnecessary or confusing requirements in the previous rules. For a discussion of the extent of the problem and the legal basis for those rules under the Surface Mining Control and Reclamation Act of 1977, *30 U.S.C. 1201* et seq. (the Act), see the Federal Register preamble to the proposed rules. The rules adopted today require a subsidence control plan as part of the permit application for an underground mining operation. The subsidence control plan must be submitted and approved before the permit is issued. The final performance standards recognize a distinction between operations that intend to use planned subsidence and those that intend to use available technology to prevent or minimize subsidence. The final rule also distinguishes between damage to land and damage to structures or facilities. All material damage to land that results in a diminution of its value and reasonably foreseeable use must be corrected by restoration of the land. Operator responsibility for damage to structures or facilities is tied to liability under State law.

OSM also, on April 16, 1982 *(47 FR 16604)*, proposed to revise 30 CFR 785.18, 816.79, 816.100, and 817.100 and to eliminate 30 CFR Part 818. These rules pertain to the variance from the contemporaneous reclamation requirement and the minimum distance between surface and underground mines where concurrent surface and underground mining

operations will be conducted. These rules implement Sections 515 (b)(12) and (b)(16) of the Act and are adopted as final with some modifications.

A public hearing was initially scheduled for May 13, 1982, but no one requested to testify. The public comment period was initially open until May 17, 1982 *(47 FR 16604);* was reopened on May 13, 1982 *(47 FR 20631);* was extended until August 25, 1982 *(47 FR 30266,* July 13, 1982); and was later extended until September 10, 1982 *(47 FR 39201,* September 7, 1982). During this comment period, OSM received comments from sources representing industry and associations, environmental groups, and Federal and State agencies. Comments received concerning each of the proposed rules in this rulemaking are addressed below.

II. RESPONSE TO COMMENTS AND RULES ADOPTED

A. SUBSIDENCE CONTROL PLAN REQUIREMENT -- SECTION 784.20

Authority for this section is found in Sections 102, 201(c), 501(b), 503(a), 505, 507(b) 508(a), 510(b), 515(b), and 516 of the Act.

Section 784.20 sets out minimum requirements for subsidence control plans in permit applications for underground mining activities. The subsidence control plan must be submitted as part of the permit application for the operation.

The introductory paragraph of previous Section 784.20 provided for a survey by the operator to be used in determining whether a subsidence control plan would have to be submitted and for conditions under which the regulatory authority could waive the requirement and for a subsidence control plan. The proposed rule would have deleted this paragraph and included the requirements for a survey and a waiver of certain of the subsidence control plan requirements in proposed Sections 784.20(a)(1) and (c). Several commenters supported the attempt to eliminate the uncertainty of whether a subsidence control plan would be required and to require a plan for every underground mining operation. One State commenter recommended that the flexibility and requirements of the previous rule be retained. This commenter also suggested that the applicability of the survey to structures and renewable resource lands be retained as in the previous rule and not be revised to include surface features, such as topographic features.

Numerous commenters expressed confusion concerning the proposed change with respect to the survey requirements of proposed Paragraph (a)(1) and the waiver provisions of proposed Paragraph (c). One commenter was concerned that the survey requirement would be an expansion of the performance standards and that mining would be prohibited under any of the features mentioned in Paragraph (a)(1). This commenter also was concerned that the requirement could be used to prohibit room-and-pillar mining. The commenter suggested revising the language to clarify that the regulatory authority may not disapprove a subsidence control plan unless it fails to meet the performance standards. Another commenter suggested that the survey be eliminated because such a requirement would be inappropriate for a general subsidence control plan. A commenter suggested that the language of the proposed rule be modified to clarify whether or not consideration of the public health and safety would apply to all the items listed. One commenter asserted that the information required in the general plan would not be sufficient to enable the regulatory authority to make the waiver of the detailed plan in proposed Section 784.20(c).

After review of the comments on proposed Paragraphs (a)(1) and (c), OSM has concluded that the proposal did not accomplish the goal of eliminating the uncertainty and ambiguity of the previous rule. In fact, the comments indicate that the proposed rule may have been more confusing than the previous rule. For this reason, OSM has decided to accept the comments suggesting that the previous provision be retained and not to eliminate the introductory paragraph of previous Section 784.20.

Thus, proposed Paragraphs (a)(1) and (c) have not been adopted in the final rule. The language of the introductory paragraph of previous Section 784.20 has been retained and is repeated in the final rule solely for convenience in understanding the other requirements adopted in the final rule.

Several commenters raised legal objections to OSM's authority to regulate planned subsidence, stating that planned subsidence is exempted by the Act. Other commenters stated that planned subsidence must be allowed, but regulated, and that a subsidence control plan should be required for both planned and unplanned subsidence.

OSM recognizes that Section 516(b)(1) of the Act allows the use of planned subsidence, but does not believe that Congress intended operations that cause subsidence, which could result in material damage or diminution in the value or reasonably foreseeable use of the land surface, to be exempt from the Act's environmental protection performance requirements.

The National Coal Association (NCA) raised the issue of whether a subsidence control plan could be required for planned subsidence. In In re: Permanent Surface Mining Regulation Litigation , No. 79-1144, D.D.C. (memorandum opinion filed February 26, 1980), the U.S. District Court upheld the requirement. 14 Envir. Rep. Cas. at 1083. The court reasoned that an operator intending to use a method which completely removes the coal has to establish that the consequent subsidence will occur in a predictable and controlled manner. 14 Envir. Rep. Cas. at 1098. Thus, underground mine operators proposing to use a longwall mining method may not be exempted from the permitting requirements.

In the preamble discussion to the proposed rulemaking *(47 FR 16606)*, OSM stated its interpretation of the exception in Section 516(b)(1) of the Act. Whereas Section 516(b)(1) requires an operator to adopt certain measures to prevent subsidence from occurring, subsidence from longwall mining or any other full-extraction method cannot be prevented. The exception recognizes this and does not require subsidence-prevention measures in such instances. It allows for full-extraction methods to be used which inevitably cause subsidence to occur. OSM's view of the statutory provisions is that the exception does not extend to an exemption from the separate responsibilities to submit a subsidence control plan, or to comply with the environmental protection performance standards. This is consistent with the legislative history of the Act which simply states that the exception "specifically allows for the uses of longwall and other mining techniques which completely remove the coal." H.R. Rep. 95-218, 95th Congress, 1st Session at 126 (1977). Because there is no indication in the legislative history of the exception being as broad as a complete exemption from the other performance standards and permitting requirements of the Act, and in light of the underground mining regulatory provisions upheld by the district court in the permanent program litigation, which is discussed later in this preamble, OSM sees no reason to expand the scope of its regulatory exception.

Consequently, the final rule regulates planned subsidence, as well as operations that plan to prevent or minimize subsidence. The subsidence control plan includes informational requirements as necessary to ensure compliance with the performance standards of Section 817.121. This issue is further discussed below in relation to the application of performance standards to operations using planned subsidence.

Final Section 784.20 requires a subsidence control plan consisting of seven major elements: (a) a description of the method of coal removal; (b) a map of underground workings describing the location and extent of areas in which planned subsidence is to be used and including those areas in which measures will be taken to prevent or minimize subsidence or subsidence-related damage; (c) a description of the physical conditions that affect the likelihood or extent of subsidence and subsidence-related damage; (d) a description of the subsidence control measures proposed to be taken to prevent or minimize subsidence or subsidence-related damage, except for those areas where planned subsidence will be used; (e) an estimation of the anticipated effects of planned subsidence, if any; (f) a description of measures to be taken to mitigate or remedy any subsidence-related material damage or diminution in value or reasonably foreseeable use of (1) the land or (2) structures or facilities to the extent required under State law; and (g) other information required by the regulatory authority as necessary to demonstrate that the operation will be conducted in accordance with the performance standards of Section 817.121 for subsidence control.

The proposed rule would have separated the subsidence control plan into two parts: a general plan and a detailed plan. Several commenters questioned whether there would be sufficient information in the permit application to allow approval of the permit if the detailed subsidence control plan were not included, and whether the subsidence control plan could be approved until the regulatory authority had received public comment on, and approved, the detailed plan. One commenter contended that the requirement that both a general and detailed subsidence control plan be submitted and approved is unworkable. Another commenter was concerned that submittal of a separate detailed plan could result in mining delays if it was not approved in a timely manner by the regulatory authority. This commenter suggested that the review and approval period be clearly stated in the rule.

Upon review of the comments, OSM agrees that the proposed two-tiered concept could have been unnecessarily complex. For this reason, the final rule retains the format of the previous rule and requires a single subsidence control plan that must be approved as part of the permit application before underground workings may proceed into an area.

With the inclusion of the specific elements described above, sufficient information will be contained in the permit application to allow necessary review and permit approval. Any significant revision of the operation that would extend the underground workings into new areas not previously covered by the permit must be approved as part of a permit revision and thereby will be subject to all the public participation and procedural requirements for processing permit revisions.

One commenter complained that OSM's proposed rules were limited to onsite and surface impacts and did not address offsite or underground impacts.

OSM's final rules are not limited to onsite impacts. OSM recognizes that certain offsite areas could be affected by subsidence. The final permitting rules and performance standards apply to all lands that may be affected by subsidence. There is no limitation that these rules would only apply to lands within the permit area.

OSM continues to believe, however, that the subsidence control plan is properly directed only to the evaluation of the surface impacts of underground mines. Section 701(28) of the Act specifically defines underground mining activities regulated under the Act to include only the surface impacts incident to an underground coal mine.

Two commenters stated that insufficient information was required in the detailed plan to evaluate the hydrologic impacts. These comments are rejected. The commenters appear to have misunderstood the purpose of the subsidence control plan. Information required to evaluate hydrologic impacts is required under the rules covering hydrologic impacts. OSM is aware that underground mining and related fracturing of the geologic structure overlying a mine can result in disruption to ground-water resources and that these changes may have a surface impact. However, it is unnecessary to extend the subsidence control plan to include general hydrologic impacts. The performance standards of Section 516 of the Act and the permitting requirements of Sections 507 and 508 of the Act contain extensive requirements relating to protection of the hydrologic balance. These requirements are included in the hydrology rules. Among the permitting requirements is a requirement that the applicant provide an analysis of the probable hydrologic consequences of mining. This analysis must include potential hydrologic consequences from underground mine workings. The subsidence control plan requirements need not be unnecessarily complicated by including provisions that are duplicative of other requirements of the rules. As OSM has previously stated, these impacts are more appropriately considered in the context of the permitting requirements and performance standards for protection of the hydrologic balance (see *47 FR 16605,* April 16, 1982).

One commenter also expressed concern about the potential impacts of underground mining on property rights in the West. OSM has not changed the rule in response to the comment. OSM does not have authority to require protection of water rights that may be impacted by underground mining. If an individual's water rights acquired under State law are affected by underground mining, the appropriate avenue for relief is through State water laws. Although OSM is concerned with protecting the hydrologic balance, OSM does not intend to regulate water rights through the subsidence control plan. Adoption of the revised rules in a State regulatory program will not alter the State's water-law regime.

One commenter suggested that Subchapter D of 30 CFR Part 211 be referenced in the preamble to ensure public awareness of the responsibilities of the Minerals Management Service. OSM accepts the comment. If underground mining is to be conducted on Federal lands containing federally leased coal, the operator must also comply with the rules in Part 211.

OSM received numerous comments with respect to the information that must be contained in the subsidence control plan. One commenter suggested that the informational requirements of the previous rule be retained. Several other commenters asserted that some of the general information and all of the detailed subsidence control plan information is totally unnecessary, particularly when the operator has the right to cause subsidence or is using a mining technique which will result in planned subsidence or no subsidence. Two commenters remarked that the rules should recognize that different types and levels of information are appropriate for the two kinds of areas: One where subsidence is planned and another where it is unplanned. One of the commenters recommended that only the general plan should be required where maximum mine stability is to be provided, whereas a detailed plan should be required for areas where planned subsidence is used. Other commenters suggested that different levels of information be required for both planned and unplanned subsidence and that the survey requirement be included in the detailed plan. Another commenter suggested that detailed

information should be provided in the subsidence control plan both for areas of planned subsidence and for areas where subsidence is not planned, since both could have significant impacts.

All of the comments received on the proposed rule have been considered in the development of the subsidence control plan requirements of the final rule. As previously indicated, OSM is rejecting those comments that suggested that no subsidence control plan be required for areas where planned subsidence will be used. The subsidence control plan requirements will apply to all types of underground mining. Section 784.20(d) does, however, recognize that operations where planned subsidence is used do not necessarily use subsidence control measures designed to prevent or minimize subsidence. Rather, such mining operations are designed to allow subsidence as mining progresses. For this reason, the requirement to provide information on subsidence control measures does not apply to areas where planned subsidence is to be used.

One commenter contended that OSM's preamble discussion in the proposal provided no qualification for not requiring information at an equal level of detail for longwall and for room-and-pillar retreat-mining operations. The final rule does not distinguish between longwall and room-and-pillar mining. Rather, it makes a distinction between operations which will use planned subsidence, and those which will use measures to prevent or minimize subsidence. Both longwall and room-and-pillar mining have been given equal consideration during the rulemaking. If a room-and-pillar retreat-mining operation will result in planned subsidence, as in the longwall mining method, the information required will be that applicable to all operations using planned subsidence.

SECTION 784.20(a)

Paragraph (a) of the final rule requires a description of the method of coal removal, such as longwall mining, room-and-pillar removal, hydraulic mining, or other extraction methods, including the size, sequence, and timing for the development of underground workings. This section includes the requirements of proposed Paragraph (a)(2), with the addition of the size, sequence, and timing requirements. This latter information is needed to provide an overall areal and temporal perspective on the operation. No comments related to proposed Section 784.20(a)(2) were received.

SECTION 784.20(b)

Paragraph (b) of the final rule requires the subsidence control plan to contain a map of the underground workings which describes the location and extent of areas in which planned-subsidence mining methods will be used, and which include all areas in which measures will be taken to prevent or minimize subsidence or subsidence-related damage. This paragraph combines the requirements of proposed Paragraphs (a)(3) and (b)(1) into one provision. It does not distinguish between a general and a detailed subsidence control plan.

SECTION 784.20(c)

Paragraph (c) of the final rule requires a description of the physical conditions, such as depth of cover, seam thickness, and lithology, which affect the likelihood or extent of subsidence and subsidence-related damage. This section includes the requirements of proposed Paragraph (b)(2), with minor editorial changes.

One commenter remarked that more information, such as calculation of the strength of the floor, roof, and coal seam, should be added to the description required by proposed Paragraph (b)(2). This comment is rejected. The state of the art in subsidence analysis is imprecise and will vary depending upon site-specific conditions and past mining experience under similar circumstances. For this reason, the final rule does not attempt to provide an extensive listing of detailed informational requirements to be included in the subsidence control plan. Rather, final Section 784.20(c) requires information relating to the basic physical characteristics of the mine which affect the likelihood or extent of subsidence and subsidence-related damage. The final rule, however, recognizes that under certain conditions additional information may be necessary to enable the regulatory authority to assess the likelihood that the operation will be able to comply with the performance standards relating to subsidence. For this reason, a new Paragraph (g) has been added to the final rule to enable the regulatory authority to require the submission of additional information as necessary to ensure compliance with the performance standards of Section 817.121 for subsidence control.

SECTION 784.20(d)

Paragraph (d) of the final rule requires, except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence or subsidence-related damage, including but not limited to: (i) backstowing or backfilling of voids; (ii) leaving support pillars of coal; (iii) leaving areas in which no coal removal is planned; (iv) taking measures on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface; and (v) monitoring to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage. For areas where no coal removal is planned, the description must include a description of the overlying area to be protected by leaving the coal in place. Areas where the different subsidence control measures will be used must be shown on the map required under Paragraph (b) of the final rule. This section includes the requirements of proposed paragraph (b)(3) and contains many of the requirements of previous Section 784.20(b).

One commenter suggested that the words "subsidence and" be deleted from proposed Section 784.20(b)(3) for the reason that the concern should be only to prevent or minimize subsidence damage, not subsidence. This suggestion is rejected. The final rule recognizes two types of mining: Mining operations that propose to use planned subsidence, and those operations that propose to use mining techniques to prevent or minimize subsidence and subsidence-related damage. For those operations that plan to comply with the performance standards by preventing or minimizing subsidence, it is important for the regulatory authority to understand what measures will be used to accomplish that goal.

One commenter requested that proposed Section 784.20(b)(3) be reworded, relocated, or eliminated. He contended that the detailed plan should be limited to planned subsidence and that to require information on mining techniques used to prevent or minimize subsidence in a detailed plan is not practical. OSM disagrees with the commenter. An important aspect of meeting the performance standards for subsidence control is to use measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible. In order for the regulatory authority to ensure compliance with this requirement, it must have knowledge of the measures the operator proposes to use to prevent or minimize subsidence and subsidence-related damage.

Another commenter remarked that the list of possible measures that might be taken to prevent or minimize subsidence-related damage which appeared in the previous rule as examples should not be eliminated. Examples of technologies that may be used generally are more appropriately addressed in documents such as handbooks rather than in rules. However, in this case some additional guidance to the operator and the States may be appropriate and OSM has decided to accept the commenter's suggestion. Final Section 784.20(d) includes examples from previous Section 784.20(b)(2) and (3) of measures that may be taken to control subsidence or subsidence-related damage.

SECTION 784.20(e)

Paragraph (e) of the final rule requires a description of the anticipated effects of planned subsidence, if any. This paragraph continues the requirement of previous Section 784.20(b)(1). Proposed paragraph (b)(4), which would have required a projection of the vertical and areal extent of subsidence for both planned and unplanned subsidence, has not been adopted.

Several commenters objected to the provision requiring a prediction of the extent of subsidence where the operator is not using planned subsidence. One commenter disagreed with OSM's focus on "expected subsidence" in proposed Section 784.20(b)(4) and (5). Some other commenters indicated that no distinction should be made between "expected" and "unexpected" subsidence. One commenter suggested that the portion of proposed Section 784.20(b)(4) requiring a description of areas in which no subsidence is expected be deleted.

In response to these comments, OSM has decided not to adopt proposed Section 784.20(b)(4). Rather, the final rule continues to apply the standard of the previous rule which requires a description of the anticipated effects of planned subsidence, if any. It does not require a prediction of expected subsidence or subsidence that may result from mining methods that do not use planned subsidence. OSM recognizes the speculative nature, based on existing techniques, of predicting subsidence in areas where planned subsidence is not used. For such situations the final rule does not require such a prediction, but rather returns to the concept of the previous rule, which emphasizes consideration of the measures proposed to be taken to prevent or minimize subsidence.

One commenter pointed out the difficulty in predicting subsidence and suggested that guidelines for subsidence prediction and control be developed and disseminated. Another commenter suggested that the requirement in proposed Section 784.20(b)(4) for supporting analyses be amplified with references. Another commenter asserted that the proposed rule should be deleted because there are no sound predictive models for subsidence.

Literature on subsidence was discussed in the preamble to the previous rule and has not been repeated here. OSM has not yet developed a guidance manual for subsidence prediction, but it may conduct or sponsor research on this subject in the future. OSM recognizes the limited availability in this country of predictive models for subsidence. However, the state of the art in subsidence prediction for areas of planned subsidence has reached the stage where it is reasonable to require the operator to provide an estimation of the anticipated effects of planned subsidence.

Another commenter suggested that the requirements be clarified to indicate that subsidence should be "determined by the application of prudent mine engineering principles." OSM believes that no rule change is necessary in response to this comment. It is implicit that all areas, whether they are areas of planned subsidence or areas where subsidence is not planned, should be evaluated by the application of prudent mine-engineering principles.

One commenter asserted that the information required in proposed Section 784.20(b)(6) for room-and-pillar mining was excessive and burdensome and, therefore, suggested that this section be eliminated. Another commenter contended that the requirement in proposed Section 784.20(b)(6) was improperly located within the detailed plan because if a mine operator is planning a room-and-pillar mine without some sort of near total-extraction retreat or secondary-recovery plan, planned subsidence will not occur.

The final rule does not require the information specified in proposed Section 784.20(b)(6) to be submitted in a subsidence control plan. Basic information, such as whether an operator proposes to use support pillars as a subsidence control technique, must be specified in the plan, together with a description of the areas where such measures will be used. Additional information may be required by the regulatory authority. However, the detailed description of the size, configuration, and approximate location of pillars and entries, extraction ratios, and other information applicable to room-and-pillar mining may not be known at the time the permit application is submitted. Such information will not be completely developed until mining begins. Thus, the final rule requires an operator to submit sufficient information as part of the subsidence control plan to allow the regulatory authority and the public to assess whether a permit should be issued. As an additional measure of environmental protection, after a permit is issued and before an area is mined, an operator will have to submit more detailed information to confirm for the regulatory authority that the operator is following the subsidence control plan and is performing the detailed planning necessary to conform with the performance standards. Thus, the informational requirements of proposed Section 784.20(b)(6) are set forth in new final Section 817.121(g) rather than in these permitting rules.

SECTION 784.20(f)

Paragraph (f) of the final rules requires a description of the measures to be taken, in accordance with Section 817.121(c), to mitigate or remedy any material damage or diminution in value or reasonably foreseeable use of the land surface due to subsidence. This paragraph includes the requirements of proposed paragraph (b)(5). One commenter recommended the deletion of the phrase "that may occur due to expected subsidence" in the proposed rule. This comment has been accepted, and the final rule deletes the language referring to "expected subsidence." Final Section 784.20(f) tracks final Section 817.121(c) and clarifies that the mitigative or remedial measures apply only to material damage to (1) the land or (2) structures or facilities to the extent required under State law.

One commenter suggested that the examples of mitigative measures that may be used and which are contained in previous Section 784.20(c) should be retained. This comment has not been accepted. The mitigative measures that are required are in final Section 817.121(c). Therefore, there is no need to repeat that information in Section 784.20.

Another commenter recommended that the language of proposed Section 784.20(b)(5) be replaced with "a statement by the operator that he will mitigate or remedy any material damage or diminution in value or foreseeable use that may occur due to unexpected subsidence" and contended that this will allow the operator to treat surface disturbance on a case-by-case basis.

OSM has rejected this comment and is requiring the operator to provide a description of the proposed measures in the subsidence control plan. However, the performance standards as adopted in final Section 817.121 allow the operator ample opportunity to determine the method of treating the surface disturbance on a case-by-case basis. Revision of the language, as suggested, is therefore not necessary.

SECTION 784.20(g)

Paragraph (g) of the final rule requires other information, specified by the regulatory authority, as necessary to demonstrate that the operation will be conducted in accordance with the performance standards of Section 817.121 for subsidence control. This section has been included to ensure that the regulatory authority has the flexibility to require the subsidence control plan to consider site-specific circumstances as necessary to ensure compliance with the applicable performance standards.

One commenter requested that the requirements of previous Section 784.20(d), which required a description of measures to be taken to determine the degree of damage caused by subsidence, be retained. This commenter suggested that the requirement should be explicit in the rule so it can be readily understood by operators, regulatory authorities, local officials, and concerned public. This comment has not been accepted. It is not necessary to impose this additional requirement in the subsidence control plan. It may be to the operator's advantage to conduct presubsidence surveys or monitoring to avoid unnecessary liability or complications with the surface owners. However, the Act does not require the operator to conduct such surveys or monitoring. Further, to the extent that such measures are applicable to other aspects of the subsidence control plan, they can be included as an element of the plan (for example, under paragraph (d)(v) of the final rule).

One commenter suggested that a provision be added in proposed Section 784.20(b) to ensure that confidential information so marked will not be made public. OSM recognizes that certain information submitted by the permit applicant may be held confidential. Confidential information is protected under Sections 507(b)(17) and 508(a)(12) of the Act which are implemented in other parts of the regulations. It is not necessary to add additional requirements to protect the confidentiality of information submitted with the subsidence control plan.

One commenter was concerned that the subsidence caused by auger mining was not addressed in the proposed subsidence control rule. This issue has been addressed in Part 819, the final rules for auger mining *(48 FR 19314,* April 28, 1983).

One commenter asserted that OSM still has not addressed the liability associated with an underground mine located above another which is mining under a structure where material damage occurs.

Material damage caused from multiple-seam underground mining by the same or by different operators at the same or different times is a case-specific and complicated matter. The information required under the subsidence control plan in the final rule gives the operator an opportunity to describe the mining techniques that will be used and measures that will be taken to prevent or minimize subsidence and subsidence-related damage. This information, together with other required information, will enable the regulatory authority on a case-by-case basis to be made aware of other active or abandoned mines and evaluate the situation before the permit is issued. If subsidence causes material damage to a structure or facility, the operator, under final Section 817.121(c), may be liable if liability is imposed under State law. Responsibility to restore the land itself depends upon the actual cause of the damage. OSM will not address the matter in more specific terms.

B. SUBSIDENCE CONTROL REQUIREMENTS -- SECTIONS 817.121 AND 817.122

Section 817.121 provides performance standards for subsidence control. It implements Sections 516(b)(1) and 516(c) of the Act and also reflects the provision of Section 516(b)(10) for surface impacts not otherwise specified in Section 516(b) to apply the requirements of Section 515 with modifications to recognize the distinct differences between surface and underground mining. It is also based in part of Section 507(f) of the Act.

The provision for surface-owner protection in the proposed rule is changed in final Section 817.121(c). The proposed paragraph contained little change from previous Section 817.124. The underground mine operator would have been given several options to remedy all material damage caused by subsidence. The final rule establishes a distinction between

damage to land and damage to structures or facilities. As discussed below, all subsidence-caused material damage to the land is required to be repaired. Operator responsibility for material damage caused to structures or facilities is tied to liability under State law. If the operator has no liability under State law, the material damage need not be repaired and compensation need not be paid.

SECTION 817.121(a)

Paragraph (a) implements Section 516(b)(1) of the Act. It requires the underground mine operator to adopt measures consistent with known technology to prevent subsidence causing material damage to the extent technologically and economically feasible, to maximize mine stability, and to maintain the value and reasonably foreseeable use of surface lands. As an alternative, the operator may adopt a mining technology which causes planned subsidence to occur in a predictable and controlled manner. The paragraph also provides that nothing in Part 817 is to prohibit the standard method of room-and-pillar mining. The rule is being made final as proposed.

One commenter believed that the phrase "consistent with known technology" should be removed because the phrase "to the extent technologically and economically feasible" adequately covers the technological aspects of what is possible in the area of subsidence control. This commenter also contended that OSM has added extra and superfluous requirements to the paragraph and therefore the rule has become less flexible. This commenter also questioned the term "value" as being extremely nebulous so that it could be construed to pertain to almost anything.

The paragraph was proposed to be revised to make clear that mining methods resulting in planned subsidence were not prohibited. *47 FR 16606,* April 16, 1982. The previous rule, although tracking Section 516(b)(1) of the Act, did not contain the exception for mining methods using planned subsidence. With the addition of the provision recognizing the right to use mining methods resulting in planned subsidence, more flexibility is afforded the operator.

The phrase which the commenter suggests deleting is taken from Section 516(b)(1) of the Act. The commenter assumes that measures that are consistent with known technology are ones which are necessarily technologically feasible; in other words, the phrase adds nothing to the rule. The important point is that the regulatory authority cannot require the operator to adopt measures which are beyond the state-of-the-art in subsidence control. The regulatory authority cannot, in effect, require the operator to adopt experimental methods to prevent subsidence. The phrase does add a limitation, but it may be one which is overshadowed by the "technologically and economically feasible" limitation. Since the phrase is taken from the Act, it will not be deleted from the rule.

With respect to the comment that the term "value" is nebulous, the commenter does not suggest any alternative. Again, the term is found in Section 516(b)(1) of the Act. To define the term in the rules could unreasonably restrict the latitude of the regulatory authorities in carrying out their programs. Moreover, Section 101(c) of the Act describes the adverse effects which coal mining can cause, and Section 102(d) provides that the Act is to assure that the environment is protected. Thus, the surface effects of underground mining are regulated in order to assure the maintenance of the value of the land and its reasonably foreseeable uses. For these reasons, no change is made in the paragraph.

SECTION 817.121(b)

Paragraph (b) requires the underground mine operator to comply with the subsidence control plan approved by the regulatory authority under Section 784.20. This provision continues the requirement of previous Section 817.121(b). The paragraph recognizes that the subsidence control plan submitted as part of the permit application will contain the standard to which the operator must adhere.

One comment was received which asserted that the plan referred to in the proposed paragraph was ambiguous. The commenter indicated that, since both general and detailed subsidence control plans were proposed to be added to the rules, in Section 784.20 (a) and (b) *(47 FR 16608-16609),* it was unclear to which subsidence plan reference was made. The final rule does not adopt the proposed two-tiered subsidence control plan. For this reason, the possible ambiguity to which the commenter referred has been eliminated and no change is deemed necessary. Although approval of the more detailed information submitted under Section 817.121(g) is not required prior to an area being mined, that information will describe how the plan is being implemented.

SECTION 817.121(c)

Paragraph (c) establishes the operator's responsibility for material damage caused by subsidence. The statutory authority for its provisions are Sections 516 (b)(1) and (b)(10), 515 (b)(2) and (b)(3), and 507(f) of the Act.

A revision to Section 817.121(c) has been made as a result of the comments received and in light of the February 1, 1983, order of the U.S. Court of Appeals for the District of Columbia Circuit in In re: Permanent Surface Mining Regulation Litigation, No. 80-1810. In remanding the case to the U.S. District Court, the Court of Appeals directed the Secretary of the Interior to consider the issues and arguments in that appeal as part of the administrative record on the proposed rules. The validity of the surface-owner protection provision, Section 817.124 of the previous rules, was an issue in that case and must be considered as part of this rulemaking.

A basic liability distinction is recognized by the two paragraphs of final Section 817.121(c): (1) Liability for subsidence-caused damage to land is provided for under the Act, and therefore the underground mine operator has a duty to restore all land which is materially damaged; and (2) liability for damage to surface and subsurface structures and facilities under Section 507(f) of the Act is tied to liability under State law. Within these differences, the options open to the operator under the previous and proposed rules have been restructured for clarity, but generally are encompassed under the final rule. Material damage to land must be remedied and the affected land restored. However, material damage to structures and facilities need be remedied or money damages paid only if the operator is liable under State law. The applicable remedies will continue to include rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may continue to be accomplished by the purchase, prior to mining, of a noncancellable premium-prepaid insurance policy.

The previous subsidence control rules did not provide for a situation where the operator has purchased a structure overlying the underground workings, where the operator has purchased the right to cause subsidence under a structure, or, as in the State of Pennsylvania, where State legislation has established subsidence responsibilities for different classes of structures. The previous rules did not allow the operator the alternative of not repairing damaged structures where he or she had no legal liability under State law. To more closely follow the provisions of Sections 507(f), 515, and 516 of the Act, the rule is changed to accommodate situations in which under State law the operator is not liable for subsidence damage to structures. However, the duty to restore land materially damaged by subsidence will apply irrespective of the operator's liability under State law for damage to structures and facilities.

A number of comments addressed general features of proposed Section 817.124(c). One commenter concurred with the statement in the preamble of the proposed rule *(47 FR 16606-16607)* that the operator is required to remedy subsidence-caused material damage regardless of whether a subsidence control plan has been submitted and approved. Although Section 817.121(b) requires the underground mine operator to comply with the subsidence control plan, paragraph (c) establishes responsibilities independent of the submission and approval of a plan. No change in the rule is necessary as a result of the comment.

Another commenter expressed the concern that the proposed paragraph did not require the correction of material damage caused to subsurface features, such as a subsurface drainage or irrigation system. The commenter also advocated a change in the requirement that remedial work be undertaken promptly. The commenter's contention was that subsidence may occur over an extended period of time. Taking remedial action as soon as subsidence starts may prove futile if it continues over a prolonged period.

OSM does not agree with the first part of the comment. As previously indicated, Section 701(28) of the Act only applies to surface impacts incident to underground mines. Manmade features such as irrigation or drainage systems, either surface or subsurface, however, will be subject to the provisions of Section 817.121(c)(2) since they necessarily relate directly to a surface activity.

OSM has accepted the second part of the comment and removed the provision that required prompt action by the operator. If prompt or immediate remedial action is called for, such as jacking up a building or providing additional temporary support for the walls or foundation of a structure, the regulatory authority can require the operator to take the necessary temporary measures until it is determined that the full extent of damage has occurred. When that determination is made, the operator can then either undertake permanent restoration work on the structures or facilities or pay money damages to the owner for the diminution in value. No additional language is considered necessary to provide for the

regulatory authority's discretion to require that permanent remedial measures be deferred until the full extent of the subsidence has occurred.

Several commenters contended that OSM does not have the authority to require operators to compensate surface owners for surface damage and that compensation for surface owners should be governed by State law or, according to one commenter, be left to common law.

Some commenters stated that under proposed Section 817.121(c) the operator's liability was unknown and open-ended. One commenter indicated that this rule would constitute an unlawful taking of property. According to several other commenters, it would also impair contracts between operators and surface owners.

One commenter suggested that the language of this rule be revised to require the operator to restore the land surface to the extent technologically and economically feasible and leave the correction of surface-structure damage to applicable State laws. One commenter from Pennsylvania suggested that it may even be appropriate to grant Pennsylvania a "State window" on subsidence rules, under 30 CFR 731.13.

The duty to restore the land arises from sections 515(b)(2), 516(b)(1), and 516(b)(10) of the Act. Under Section 516(b)(10), the performance standards of Section 515 are made applicable with respect to surface impacts not specified in Section 516(b). Section 516(b)(1) deals with the prevention of subsidence causing material damage, not remedial measures. The provision does not address the issue of the operator's liability once subsidence has caused material damage. Therefore, provisions of Section 515 are made applicable to the extent they pertain to remedial measures. Section 515(b)(2) of the Act requires an operator to restore affected land to a condition capable of supporting its premining uses, or higher or better uses. Although the proviso to Section 516(b)(10) of the Act directs the Secretary to make such modifications as are necessary to accommodate the distinct differences between surface and underground mining, there are no such differences which would necessitate not applying the restoration standards to lands materially damaged by subsidence. The district court in In re: Permanent Surface Mining Regulation Litigation, memorandum opinion filed February 26, 1980, 14 Envir. Rep. Cas. 1083, upheld the surface-owner protection provision and its restoration provision in previous Section 817.124, on the grounds that it was supported by Section 515(b)(2) of the Act. Section 515(b)(2) only establishes a duty to restore the land which OSM views as extending only to the land in its unimproved or natural state. Thus, where both land and structures are materially damaged and where it would be easier for the operator to pay money damages to the surface owner, if there is liability under State law, rather than undertake any repair to the structure, the operator is nevertheless responsible for restoring the land. To the extent that restoration of the land causes further damage to structures and facilities, operator liability for that further damage will be determined under Section 507(f) of the Act in accordance with State law.

The authority of OSM to require an operator to compensate an owner for material damage to structures or facilities resulting from subsidence or to repair of such material damage derives from Section 507(f) of the Act. This authority was upheld by the district court in In re: *Permanent Surface Mining Regulation Litigation, supra,* and was one of the issues on appeal that must now be considered. Section 507(f) of the Act requires liability insurance for personal injury and property damage in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations who are entitled to compensation under the applicable provisions of State law. Although the previous rule did not limit the compensation requirement to situations where liability exists under State law, a more precise reading of the Act requires the imposition of such a constraint in this final rule. This rule continues the previous provision requiring operator responsibility for material damage to structures or facilities to the extent an owner is entitled to compensation under State law.

This change in Section 817.121(c) lessens the concern that the contract in which the operator may have obtained the right to subside the surface under a structure will be impaired. One commenter pointed out the possible constitutional infirmity of State laws, which are a necessary consequence of a State obtaining primary regulatory responsibility, impairing the contract entered into between the purchaser or owner of the coal and the surface owner in which the surface owner may have waived the right to subjacent support. This issue will be avoided to the extent a waiver of surface support is recognized under State law because it will be given effect with respect to structures and facilities under Section 817.121(c)(2). To the extent that such a waiver includes damage to the land, it will not be recognized. Section 817.121(c)(1) requires restoration of the land surface in all instances of material damage. No unconstitutional impairment of a contract is worked by the requirement for restoration of the land. The constitutionality of the Act has been upheld, although the issue raised in this comment was not involved. *Hodel v. Va. Surface Mining and Reclam. Ass'n, 452 U.S.*

264 (1981) and *Hodel v. Indiana, 452 U.S. 314 (1981).* Because the Act is a valid exercise of the power to regulate interstate commerce, the contention is incorrect that a contractual right not to restore materially damaged land would be impermissibly impaired.

One commenter, representing the bituminous coal mining industry in Pennsylvania, argued that the legislative scheme established in that State, the Bituminous Mine Subsidence and Land Conservation Act of 1966 (Purdons), 52 Pa. Stat. Ann., Section 1406 et seq., which establishes classes of protected structures, Section 4, should be given deference. The change in this paragraph allows the Pennsylvania legislature's choice to protect certain classes of structures to stand. Thus, in Pennsylvania an occupied dwelling which is materially damaged either will have to be repaired by the operator or the owner will have to be compensated for the diminution in value, as the Bituminous Mine Subsidence Act now provides, if the dwelling was in existence when that act was passed into law in 1966. However, in other States which have not enacted special subsidence legislation, the uncodified State law will determine whether the operator is liable to a surface owner. Generally, the surface owner is entitled to a right of subjacent support. Thus, any damage to the surface owner's property would give rise to a claim against the mine operator. Liability of the operator where the owner of the surface facility may have conveyed the right to support or may have waived it will also be left to determination under State law.

One State requested that the rule be republished as a proposed rule if it is to be modified. While the final rule does represent a modification of the proposal, all changes are within the scope of the proposal. They have been made as the result of comments, in light of the remand order of the Court of Appeals and on the basis of OSM's reading of the Act. Therefore, the requested further comment period is rejected.

SECTION 817.121(d)

Section 817.121(d) establishes a class of structures and features to which greater protection is owed because of their public character or important nature. For these features, it is particularly important that damage be prevented before it occurs and not that damage can be corrected afterwards. Specifically, Section 817.121(d) provides for the protection of public buildings and facilities; churches, schools, and hospitals; and impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more. It requires the underground mine operator to demonstrate to the regulatory authority that mining activities underneath or adjacent to such areas will not cause material damage or reduce the reasonably foreseeable use of those features or facilities. If the operator cannot so demonstrate, underground mining is prohibited in those areas. It also provides discretion to the regulatory authority to protect such features or facilities and any aquifer or body of water that serves as a significant water source for any public water supply system from material damage by limiting the percentage of coal extracted under or adjacent thereto.

Paragraph (d) is founded on the authority in Sections 516(b)(1), (b)(7), (b)(8), (b)(9), and (c) of the Act among others. Section 516(b)(1) requires the adoption of measures to prevent subsidence and Section 516(c) recognizes a separate class of structures and areas for which greater protection is necessary. The district court in In re: *Permanent Surface Mining Regulation Litigation, supra,* upheld previous Section 817.126, which is similar to final Section 817.121(d). 14 Envir. Rep. Cas. at 1109. In that case, industry's opposition to the provision was that there was no statutory authority for the prohibition feature of the section. However, the court upheld the rule, citing Section 516(b)(1) as general authority and Section 516(b)(9) as authority for the inclusion of streams, bodies of water, and aquifers. The validity of previous Section 817.126 was appealed and must be considered in this rulemaking in accordance with the previously referenced remand order of the U.S. Court of Appeals.

It is OSM's view that final Section 817.121(d) has a statutory basis for the reasons cited in OSM's brief to the U.S. Court of Appeals in the earlier case. However, on the basis of the comments on the proposed rule, several changes are made in the final rule. Section 817.121(d)(1), which provides protection for public buildings and facilities, tracks previous Section 817.126(c). Paragraph (d)(2) as proposed would have provided special protection for private facilities generally used by the public, such as churches, schools, and hospitals. To reduce uncertainty in application of this requirement which could have been interpreted more broadly than was intended, the final rule simply provides special protection for all churches, schools, and hospitals. This portion of the rule is broader than its predecessor, Section 817.126(c), which applied only to public buildings.

Section 817.121(d) (3) and (4), as proposed, would have required a showing of no material damage for bodies of water, including streams, impoundments, and aquifers. This is changed in the final rule to require a showing of no

material damage only for mining under or adjacent to impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more. The second sentence of the proposed paragraph, which would have authorized the regulatory authority to prohibit or limit the amount of coal extracted from under the facilities listed in the first sentence, is changed in the final rule to extend the authorization to limit coal extraction to aquifers or bodies of water that serve as a significant source for any public water supply system. Thus, the protection afforded aquifers and bodies of water, except for the specified impoundments or bodies of water, is now found in the second sentence of the paragraph. The explicit authority to prohibit mining has been removed because authority to limit the extent of coal extraction provides the necessary protection. The showing required for mining under perennial streams in proposed paragraph (d)(3) is removed in the final rule. The special protection afforded perennial streams is now limited to the power of the regulatory authority to suspend operations under paragraph (f) where an imminent danger is presented. This additional protection for streams is also unnecessary in light of the other rules implementing hydrologic-balance protection under Sections 510(b)(3) and 516(b)(9) of the Act.

Some commenters contended that proposed paragraph (d) cannot be founded on Sections 516(b)(1) and 516(c) of the Act and is in conflict with the Act. Several commenters asserted that OSM lacks authority to create areas where mining is prohibited for the purpose of subsidence control. Also, a number of commenters objected to OSM's attempt to create areas where mining may be prohibited for the purpose of subsidence control and contended that the proposed paragraph was unreasonable, impossible, and unworkable. One commenter stated that the prohibition of mining in certain areas infringes upon the right of private ownership of property and suggested that this paragraph be deleted.

OSM disagrees. Section 817.121(d) does have a statutory basis, as noted above. The rule does not prohibit mining, it merely requires an advance showing or other measures to ensure that the potential for subsidence will be minimized and that material damage will not occur.

SECTION 817.121(e)

Proposed paragraph (e) would have required the operator to remedy any subsidence-caused material damage and authorized the regulatory authority to suspend operations in order to modify the subsidence control plan when damage occurs. It is based on the statutory authority of Sections 516 (b) and (c).

The paragraph is modified in the final rule on the basis of the comments received and the intent not to repeat the requirements of Section 817.121(c). Rather than directing that remedial measures be undertaken once damage has occurred and specifically stating that steps be taken to prevent further damage, the final rule authorizes the regulatory authority to suspend mining under or adjacent to the features and facilities protected under paragraph (d) until the subsidence control plan is modified to prevent further material damage. Because the operator has to comply with his or her subsidence control plan, by implication the necessary steps will be taken.

One commenter suggested that "in the area of mining" be added immediately after "If such damage occurs, the regulatory authority may suspend further mining." The suggestion was made to clarify that the suspension of mining is only for the specific area where subsidence is causing material damage.

On the basis of this comment, the phrase "under or adjacent to such features or facilities" is added to the sentence after the provision for the suspension of operations. Thus, the regulatory authority may not suspend mining operations unless they are under or adjacent to the features and facilities listed in paragraph (d).

Another commenter contended that proposed Section 817.121(e) was beyond the statutory authority and is impractical. The paragraph is modified to remove the directive to undertake remedial measures once material damage affects the features and facilities listed in paragraph (d). The operator's responsibility for remedial measures is found in paragraph (c) and need not be repeated. The final rule is now tied to modification of the plan. It imposes the realistic obligation of plan modification. There is a need to modify the plan because it was based on a determination that mining under or adjacent to the specially protected features and facilities would not cause material damage.

Several commenters stated that the provisions of this paragraph present several legal and practical problems because the operator could be subject to summary suspension of mining until his or her subsidence control plan is modified.

A suspension of mining is justified by the need to prevent further material damage to important surface features. The approval of a permit, including the subsidence control plan, is premised upon a finding that no material damage will occur to the specified features or facilities. If such damage has occurred, then that finding is no longer correct. Modification of the subsidence control plan is thus necessary for the permit to remain valid. In these situations, the practical problems of the operator are outweighed by the need to protect the particular facilities.

SECTION 817.121(f)

Paragraph (f) requires the regulatory authority to suspend operations when an imminent danger is presented to inhabitants of urbanized areas, cities, towns, and communities and areas adjacent to industrial or commercial buildings, major impoundments, or perennial streams. It directly implements Section 516(c) of the Act.

No comments on the paragraph were received. It is promulgated as proposed.

SECTION 817.121(g)

Proposed Section 817.121(g) would have required the operator to submit a detailed subsidence control plan to provide the regulatory authority with information to evaluate the operator's estimate of the extent of expected subsidence and to determine whether the operator's plan is in compliance with the performance standards. As indicated above, OSM received numerous comments objecting to the detailed subsidence control plan.

The final rule deletes the requirement for a detailed subsidence control plan. Rather, it incorporates many of the aspects of the detailed plan in the requirement for a single subsidence control plan to be submitted with the permit application. As discussed earlier in this preamble, other aspects of the detailed subsidence control plan applicable to the evaluation of compliance with the performance standards have been included in the performance standard requirements of final Section 817.121(g). Under this section, an operator is required to demonstrate compliance with the performance standards by submission of a detailed plan of the underground workings under a schedule approved by the regulatory authority. The detailed plan must include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the regulatory authority.

The final rule reflects a recognition of the difficulty in inspecting underground workings from the surface. It is important that the regulatory authority be provided information on the underground activities by the operator so that compliance with the performance standards can be evaluated and documentation provided of compliance with the technology-based requirements of the subsidence control plan. This revised requirement also recognizes that the plan for underground mining necessarily progresses on the basis of the best information existing at any point as the mining proceeds. Information gathered underground on roof- and floor-rock conditions, safety hazards, and other features of the underground mine necessarily require a high degree of flexibility in development of the detailed plan for mining underground. Typically, this plan is revised on a near-daily basis as mining proceeds. The final rule recognizes this situation.

On the other hand, the subsidence control plan, submitted with the permit application, provides information on the underground areas where specific types of control technologies will be used, but does not require extensive information on the details of the underground workings. Submittal of such information can properly be delayed until the details of the mining operation are known more precisely. Thus, the final rule requires the submission of such information as a performance standard requirement while still providing the regulatory authority with the information necessary to evaluate a permit application, to monitor the impacts of mining on the surface, and to ensure compliance with the other performance standards.

The final rule also clearly provides that, upon request of the operator, information provided with the detailed plan may be held as confidential in accordance with the requirements of 30 CFR 773.13(d). The reference to Section 773.13(d) is based on the expected revision to that section published in Volume III of OSM's "Final Environmental Impact Statement OSM-EIS-1: Supplement." If that provision is not revised, a conforming technical amendment to this rule will be issued.

SECTION 817.122

Final Section 817.122 provides for notice to persons who may be affected by subsidence. The statutory authority for the provision is found in Sections 513 and 516 of the Act. The proposed rule would have required notification to surface owners and occupants above the "area of expected subsidence" at least 6 months prior to mining. Due to comments received, the final rule is changed. A provision is added allowing for regulatory authority approval of less than 6 months advance notice. The term "area of expected subsidence" is not adopted. The final rule continues to apply the requirement of the previous rule that owners and occupants above "underground workings" be provided notice.

Some commenters argued that there is no need to inform surface owners of the possibility that subsidence will occur in situations where the operator will be adopting measures to prevent subsidence. OSM has not accepted this recommended change. The notice informs owners and occupants that subsidence "could" occur, not that it will occur.

Many commenters opposed the use of the term "area of expected subsidence" because the technology used to predict subsidence is not sufficiently developed for reasonable reliance. One commenter questioned if the phrase "area of expected subsidence" is used, then what would be the requirement for public notice for the area of unexpected subsidence. One commenter expressed concern about the term "expected subsidence" for fear that it would be subject to different interpretation and suggested that the term "planned subsidence" be used instead. This commenter also contended that this section should not apply to mine operators who plan to use methods approved by the regulatory authority to support the surface.

The phrase "area of expected subsidence" is not being adopted in this final rule and also is not being adopted in the final definition of "affected area" as was proposed. The notice requirement adopted will enable the operator to determine with certainty those persons who must receive notice, yet will be broad enough to inform potentially affected persons. The notice is to enable surface owners to take steps to protect their property.

Some commenters questioned OSM's authority on this section, and many commenters contended that public notice is unnecessary, burdensome and, in some circumstances, impossible. Some of these commenters advocated that the permit approval process would provide the public with sufficient information and notice. Also, they asserted that the operator's common-law duty to obtain subsidence rights or not to cause subsidence will assume that all surface owners are either notified or protected.

The notice requirement has been retained as a performance standard in the rules. Notice is considered appropriate because of the material damage that subsidence can cause. As mentioned above, the permit approval process is recognized as affording a degree of notice, but because of the seriousness of the damage that subsidence can cause, a direct notice is considered necessary to actually inform surface owners.

One commenter believed that all occupants above the underground workings should be notified. Another commenter indicated that this section would not apply to his State (Montana) because the mining activity would not be permitted until all owners of property over the area to be mined have signed over control of the property to the operator.

Previous Section 817.122 required notice to all persons residing on or owning property above the underground workings and adjacent areas. The final rule limits the notice requirement to the area above the underground workings. The term "adjacent areas" is not included because surface owners in potentially affected areas will be aware of mining when surface protection measures are taken in the vicinity.

One commenter suggested that the public notice should be a two-tiered approach, with notice to all the owners above the underground workings and related offsite areas. The first notice would include general information; and the second notice, which would be sent 6 months prior to mining, would include the information in the first notice and other more detailed information. This commenter also suggested that the reference to the subsidence control plan should include both the general and detailed plans. This commenter further expressed the concern that the public notice system does not take into account that an operator may change the mining and/or subsidence control plan well after the notice has been sent.

The rules already provide sufficient notice to surface owners and occupants. The operator must notify the public of the filing of a permit application by placing advertisements in local newspapers. Persons who may be affected by the operation have the opportunity to review the subsidence control plan and to object at that time. The public notice provided for in Section 817.122 is a direct one to individuals and is required to be given in advance of mining. The provision for general and detailed subsidence control plans in the proposed rule has not been adopted. Any significant revision of the subsidence control plan would constitute a permit revision and thus would be subject to public notice and opportunity to comment.

C. CONCURRENT SURFACE AND UNDERGROUND MINING

Section 515(b)(12) of the Act sets the minimum interval between surface and underground mines at 500 feet unless a lesser interval is approved jointly by the agencies responsible for surface mining regulation and the health and safety of underground miners. Section 515(b)(16) of the Act provides for variance procedures to delay contemporaneous reclamation when surface and underground operations are to be conducted concurrently or sequentially. In 30 CFR Chapter VII, rules implementing these statutory provisions occur in companion sections in the permitting requirements under Part 785 and in the performance standards under Parts 816 and 817. Previously, special performance standards were included under Part 818, which is removed by this final rule.

SECTION 785.18

The final rule maintains most of the provisions and language that were contained in the proposed rule, except that the words "or persons" are added after the words "any person" in final Section 785.18(a). This avoids the implication that combined surface and underground mining activities are necessarily conducted by the same company. Final Section 785.18 contains permitting provisions for variances for delay in contemporaneous reclamation in combined surface and underground mining activities. Proposed Section 785.18 was amended from the previous rule by revising paragraph (a), removing paragraph (b), redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively, and revising the redesignated paragraphs (b)(4), (b)(7), (c)(6), (c)(7), and (c)(9) (ii) and (iii). All of those changes have been adopted in final Section 785.18.

One commenter remarked that proposed Section 785.18 implied that a variance for delay in contemporaneous reclamation for combined surface and underground activities can only be granted at the time of initial application for the surface permit. This commenter suggested that the rule should allow for a variance to be granted at any point in the mining where the operator may reach a decision to combine surface and underground mining to optimize the recovery of the coal resource to the extent that the request is timely and does not unnecessarily delay reclamation prior to approval of the underground operation.

If the operator reaches a decision after the initial application for the permit is filed to utilize a combination of surface and underground mining activities, the operator can file an application for a variance in conjunction with the application for permit revision or a separate permit for underground mining activities. A permit revision or new application can be filed at any time. Consequently, no change in the proposed rule need be made as the result of this comment.

Another commenter suggested that in proposed Section 785.18(a), "(persons)" be added after the word "person" to avoid the assumption that combined surface and underground mining are to be used by the same company. OSM agrees, and the suggestion has been accepted and is incorporated in final Section 785.18(a).

SECTION 816.79

As authorized by Section 515(b)(12) of the Act, final Section 816.79 requires a 500-foot separation in all directions between surface mining activities and underground mine workings. Variances from this distance require special approval. One change from the proposed rule has been made to final Section 816.79(b), as described below.

One commenter remarked that proposed Section 816.79 caused considerable confusion as to its meaning, because it has been the commenter's experience that the Mine Safety and Health Administration (MSHA) does not care to approve surface coal mining operations when only an abandoned underground mine is involved.

A second commenter requested clarification of the requirement in proposed Section 816.108(e) for approval of auger holes in accordance with Section 816.79. Having experienced difficulty in attempting to get MSHA approval for augering near an abandoned underground mine, the commenter asserted that MSHA wanted to be involved in the approval process only where augering near an active underground mine could affect the miners' safety. To eliminate the confusion existing in many States, this commenter recommended that Section 816.79 be revised to provide for two distinct approval methods, one for active mines including MSHA approval and another for abandoned mines eliminating the need for MSHA approval.

Another commenter also asserted that it is extremely difficult to obtain the assistance of mine safety agency personnel in arriving at joint approval of plans for surface mining near underground workings. The reasons indicated by this commenter are that mine safety agencies (1) have limited resources for such "off-budget" activities as those joint approvals, (2) are under no legal mandate to perform the joint investigations and approvals, and (3) are reluctant to take the extra responsibility that could accrue in the event an incident could lead to court action against the agency. This commenter therefore concluded that proposed Section 816.79 imposes an unnecessary hardship upon the operator, who has no control over the actions of the mine safety agency or agencies.

OSM recognizes that operators may have problems when dealing with joint approval by more than one agency on certain operations. Joint approval for combined surface and underground operations, however, is specifically required by Section 515(b)(12) of the Act. OSM has, however, reconsidered the requirements of Section 515(b)(12) and has decided to revise the final rule in response to the comments. Section 515(b)(12)(A) requires joint approval only for "specific underground activities" by the regulatory authority and the agency concerned with the "health and safety of underground miners." For abandoned underground mines, there are no "specific underground activities." Therefore, OSM is accepting the recommendation to require joint approval only when surface mining within 500 feet of "active" underground mines. Approval of the regulatory authority will still be required under this section for both active and abandoned underground mines to show that the proposed activities will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public. In addition, if an abandoned underground mine becomes active, joint approval will then be required.

One commenter remarked that proposed Section 816.79(a) appears to be consistent with the law and difficult to criticize. This commenter, however, indicated that the proposed rule may be redundant with MSHA's regulation at 30 CFR 77.1000 which requires the operator to establish and follow a ground-control plan which must be approved by MSHA prior to any mining activities. This commenter consequently concluded that proposed Section 816.79(a) could be eliminated with no effect upon existing rules or the health and safety of coal miners and that the requirement of the Act would still be met.

This suggestion was not accepted. Section 515(b)(12) of the Act specifically requires a joint decision on the close proximity of surface and active underground mining operations.

One commenter asserted that proposed Section 816.79 does not recognize the fact the District Mining Supervisors of the Minerals Management Service also exercises approval authority for any sequence of mining operations conducted on Federal lands.

Compliance with other Federal, State, and local regulations for mining activities is assumed to be understood by mine operators. Proposed and final Section 785.18(c)(3) also address this point.

Two commenters opposed the total elimination of previous Part 818. They contended that its elimination would remove a number of important standards not found elsewhere in the rules, including (1) several important criteria for determining when and where a variance can be granted, (2) the requirement for a 500-foot coal barrier between surface and underground mining in a single seam, and (3) the requirement for sufficient vertical distance between surface and underground mines. One of the commenters further asserted that the protection provided the public health and safety has not been as adequately addressed in proposed Section 816.79 as it was in previous Part 818.

In response to the above comments, OSM notes that (1) an application for variances for delay in contemporaneous reclamation must identify specific surface areas for which a variance is sought, as required in proposed and final Section 785.18(b)(3); and (2) a permit incorporating a variance may not be issued unless the regulatory authority finds that the permit contains a detailed schedule for compliance with applicable provisions, as indicated in proposed and final Section

785.18(c)(9)(iii). Consequently, OSM has, in fact, addressed the criteria for determining where and when a variance can be granted. As to the comments on the elimination of the requirement on the 500-foot coal barrier between surface and underground mines in a single seam and the requirement of sufficient vertical distance, OSM believes that the language of "no closer than 500 feet to any point" as specified in proposed and final Section 816.79 adequately addresses these criteria. In the preamble to previous Section 816.79, OSM specified that the measurement must be a 500-foot spherical radius; that is, 500 feet in separation in all directions between surface and underground operations. *44 FR 15208-15209*, March 13, 1979. OSM still maintains this interpretation of Section 515(b)(12) of the Act. Finally, it is OSM's belief that the health and safety of the public has been adequately covered in proposed and final Section 816.79 and that the health and safety of mine workers has been adequately addressed in MSHA's rules, such as 30 CFR 77.1000. On the basis of the above discussion, it is concluded that the elimination of previous Part 818 is justified.

SECTIONS 816.100 and 817.100

Final Sections 816.100 and 817.100 implement the requirements of the Act, Section 515(b)(16), that all reclamation efforts must proceed in an environmentally sound manner and as contemporaneously as practicable with the mining operations. The proposed and final rules also make it clear that variances from the contemporaneous reclamation requirements are permissible under Section 515(b(16) of the Act and Section 785.18 of the rules. In final Sections 816.100 and 817.100, OSM has added a sentence to allow the regulatory authority to establish timing and distance schedules that define contemporaneous reclamation. This is done in response to comments on proposed Section 816.101 which address backfilling and grading requirements.

The proposed backfilling and grading rules removed the timing and distance requirements in previous Section 816.101(a) for rough backfilling and grading of contour, open pit, and area surface mining operations. The change was proposed since a detailed timetable for each step in the reclamation plan is required by 30 CFR 780.18(b)(1), and the specific design criteria would more properly be included in a technical handbook *(47 FR 26762,* June 21, 1982).

Most State regulatory authorities supported the deletion of the timing and distance requirements for backfilling and grading since it grants additional flexibility to them. However, they requested authorization to specify these requirements for their State programs. They believed some criteria are necessary to eliminate constant disputes between the regulatory authority and the operator on what constitutes contemporaneous reclamation. Another State wanted flexibility to set requirements which are needed to maintain contemporaneous and quality reclamation. One State believed that national guidance is appropriate with respect to time periods and suggested setting the times based on mining method and technology. The suggested time periods for backfilling and grading various types of mining operations would fall within the scope of contemporaneous reclamation. They also indicated that any standard should have an "escape" clause. The escape clause would allow the regulatory authority to approve different time periods if the mine conditions or other site-specific conditions made it impossible to meet the established standards.

One commenter believed that the rationale given in the preamble to the proposed rules for deleting the time and distance requirements was insufficient. He felt that the timetable in the previous rule was well explained and should not be changed, because one of the chief purposes of the Act is to establish minimum national standards that all operators have to meet. The commenter also stated that specific requirements are necessary as enforcement measures, because under the proposed rules the inspector would be unable to detect violations without review of the permit and that parameters must be established within which compliance can be measures.

Under these final rules, the standards established by the regulatory authority should be as effective as those in the previous rules, which allowed the regulatory authority to grant additional time for backfilling and grading when a need was demonstrated by the operator. Now the regulatory authority can establish a time table, one which is more in keeping with conditions within the State, and can probably reduce the number of waiver requests received from operators.

OSM believes that different State time frames for backfilling will not affect interstate competition, as stated by one commenter. The cost to backfill an area would likely be the same whether it is accomplished early or late in the mining process.

III. PROCEDURAL MATTERS

Executive Order 12291 and the Regulatory Flexibility Act

Executive Order 12291

The Department of the Interior (DOI) has examined these rules according to the criteria of Executive Order 12291 (February 17, 1981). OSM has determined that these are not major rules and do not require a regulatory impact analysis because they will impose only minor costs on the coal industry and coal consumers.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, *5 U.S.C 601* et seq., that these rules will not have a significant economic impact on a substantial number of small entities. These final rules will allow small coal operators increased flexibility in meeting performance standards and should especially ease the regulatory burden on small coal operators in Appalachia.

National Environmental Policy Act

OSM has analyzed the impact of these final rules in its "Final Environmental Impact Statement OSM-EIS-1: Supplement" (FEIS) according to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) *(42 U.S.C. 4332*(2)(C)). The FEIS is available at 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. These final rules differ from the draft final rules published in Volume III of the FEIS in the following respects:

(1) Section 784.20 has a number of clarifications and editorial changes, including the removal of a sentence in Section 784.20(d)(5) of the draft final rules requiring inclusion in the map of underground workings of the areas where subsidence control measures will be taken. This requirement has been included in final Section 784.24(b). Another such change is a slight rewording of Section 784.20(c). These changes do not affect the FEIS analysis.

(2) Final Section 784.20(f) differs from the corresponding provision described in Volume III of the FEIS in recognizing the distinction in operator responsibility established in Section 817.121(c) between subsidence-related material damage to land and such damage caused to structures or facilities. The effect of this change would fall within the discussion of Section 817.121(c) in the FEIS.

(3) Final Section 817.121(c)(2) differs from the corresponding provision in Volume III of the FEIS by stating specifically that repair of damage includes rehabilitation, restoration, and replacement and that compensation may be accomplished by the purchase of a prepaid noncancellable insurance policy. These features were contained in previous Section 817.124. Their retention in final Section 817.121(c) thus lessens the adverse impacts of draft final Section 817.121(c) as discussed in the FEIS.

(4) Final Section 817.121(d)(3) applies to impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more, rather than just to dams impounding such bodies of water as described in the FEIS. This requirement is similar to the proposed Section 817.121(d) contained in Alternative C of the FEIS and was contained in previous Section 817.126(a) encompassed by Alternative B. The removal of the specific proposed reference to perennial streams is of minor environmental effect because material damage to the hydrologic balance should be considered under Section 817.41. Final Section 817.121(d) broadens the authority of the regulatory authority to prevent subsidence causing material damage from that in draft final Section 817.121(d) of the FEIS by extending it to all of the features or facilities covered by Section 817.121 (d)(1), (d)(2), and (d)(3), rather than just applying to certain aquifers or bodies of water. This final rule will have lesser impacts than the corresponding provision in the FEIS.

(5) The word "further" has been added to final Section 817.121(e). This clarifies the intent of the provision, but does not change its effect.

(6) Final Section 817.122 allows notice to surface owners within 6 months of mining only if approval is obtained from the regulatory authority. Draft final Section 817.122 in the FEIS allowed such notice as soon as practicable before mining, without regulatory authority approval. This change will have no environmental effect.

Thus, to the extent that these final rules differ from the preferred alternative published in Volume III of the FEIS, they fall within the impacts and analysis discussed therein.

Federal Paperwork Reduction Act

The information collection requirements in final Sections 784.20 and 785.18 have been approved by the Office of Management and Budget (OMB) under *44 U.S.C. 3507* and assigned clearance numbers 1029-0039 and 1029-0040. OSM has codified the OMB approvals under final Sections 784.10 and 785.10 *(47 FR 33683,* August 4, 1982).

The information required will be used by the regulatory authority in monitoring and inspecting surface and underground mining activities to insure that they are conducted in a manner which preserves and enhances environmental and other values of the Act. This information required by these rules is mandatory.

Agency Approval

Section 516(a) of the Act requires that, with regard to rules directed toward the surface effects of underground mining, OSM must obtain written concurrence from the head of the department which administers the Federal Mine Safety and Health Act of 1977, the successor to the Federal Coal Mine Health and Safety Act of 1969. OSM has obtained the written concurrence of the Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.

LIST OF SUBJECTS

30 CFR Part 784

Coal mining, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 785

Coal mining, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 816

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

30 CFR Parts 817 and 818

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

Accordingly, Parts 784, 785, 816, 817, and 818 of Title 30, Chapter VII, Subchapters G and K of the Code of Federal Regulations are amended as set forth herein.

Dated: April 15, 1983.
William P. Pendley, Acting Assistant Secretary, Energy and Minerals.

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

1. Section 784.20 is revised to read as follows:

SECTION 784.20 - SUBSIDENCE CONTROL PLAN.

The permit application shall include a survey which shall show whether structures or renewable resource lands exist within the proposed permit area and adjacent area and whether subsidence, if it occurred, could cause material damage or diminution of reasonably foreseeable use of such structures or renewable resource lands. If the survey shows that no such structures or renewable resource lands exist, or no such material damage or diminution could be caused in the event of mine subsidence, and if the regulatory authority agrees with such conclusion, no further information need be provided in the application under this section. In the event the survey shows that such structures or renewable resource lands exist, or that subsidence could cause material damage or diminution of value or foreseeable use of the land, or if the regulatory authority determines that such damage or diminution could occur, the application shall include a subsidence control plan which shall contain the following information:

(a) A description of the method of coal removal, such as longwall mining, room-and-pillar removal, hydraulic mining, or other extraction methods, including the size, sequence, and timing for the development of underground workings.

(b) A map of underground workings which describes the location and extent of areas in which planned-subsidence mining methods will be used and which includes all areas where the measures described in paragraph (d) of this section will be taken to prevent or minimize subsidence and subsidence-related damage.

(c) A description of the physical conditions, such as depth of cover, seam thickness, and lithology, which affect the likelihood or extent of subsidence and subsidence-related damage.

(d) Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage, including, but not limited to --

(1) Backstowing or backfilling of voids;

(2) Leaving support pillars of coal;

(3) Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving the coal in place;

(4) Taking measures on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface; and

(5) Monitoring to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage.

(e) A description of the anticipated effects of planned subsidence, if any.

(f) A description of the measures to be taken in accordance with Section 817.121(c) of this chapter to mitigate or remedy any subsidence-related material damage to, or diminution in value or reasonably foreseeable use of --

(1) The land, or

(2) Structures or facilities to the extent required under State law.

(g) Other information specified by the regulatory authority as necessary to demonstrate that the operation will be conducted in accordance with the performance standards of Section 817.121 of this chapter for subsidence control.

PART 785 -- REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

2. Section 785.18 is revised to read as follows:

SECTION 785.18 - VARIANCES FOR DELAY IN CONTEMPORANEOUS RECLAMATION REQUIREMENT IN COMBINED SURFACE AND UNDERGROUND MINING ACTIVITIES.

(a) Scope. This section shall apply to any person or persons conducting or intending to conduct combined surface and underground mining activities where a variance is requested from the contemporaneous reclamation requirements of Section 816.100 of this chapter.

(b) Application contents for variances. Any person desiring a variance under this section shall file with the regulatory authority complete applications for both the surface mining activities and underground mining activities which are to be combined. The reclamation and operation plans for these permits shall contain appropriate narratives, maps, and plans, which --

(1) Show why the proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the coal;

(2) Show how multiple future disturbances of surface lands or waters will be avoided;

(3) Identify the specific surface areas for which a variance is sought and the sections of the Act, this chapter, and the regulatory program from which a variance is being sought;

(4) Show how the activities will comply with Section 816.79 of this chapter and other applicable requirements of the regulatory program;

(5) Show why the variance sought is necessary for the implementation of the proposed underground mining activities;

(6) Provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of surface mining activities is delayed; and

(7) Show how offsite storage of spoil will be conducted to comply with the requirements of the Act, Sections 816.71-816.74 of this chapter, and the regulatory program.

(c) Issuance of permit. A permit incorporating a variance under this section may be issued by the regulatory authority if it first finds, in writing, upon the basis of a complete application filed in accordance with this section, that --

(1) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining activities;

(2) The proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple future disturbances of surface land or waters;

(3) The applicant has satisfactorily demonstrated that the applications for the surface mining activities and underground mining activities conform to the requirements of the regulatory program and that all other permits necessary for the underground mining activities have been issued by the appropriate authority;

(4) The surface area of surface mining activities proposed for the variance has been shown by the applicant to be necessary for implementing the proposed underground mining activities;

(5) No substantial adverse environmental damage, either onsite or offsite, will result from the delay in completion of reclamation otherwise required by Section 515(b)(16) of the Act, Part 816 of this chapter, and the regulatory program;

(6) The operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of Section 816.79 of this chapter and the regulatory program;

(7) Provisions for offsite storage of spoil will comply with the requirements of Section 515(b)(22) of the Act, Sections 816.71-816.74 of this chapter, and the regulatory program;

(8) Liability under the performance bond required to be filed by the applicant with the regulatory authority pursuant to Subchapter J of this chapter and the regulatory program will be for the duration of the underground mining activities and until all requirements of Subchapter J and the regulatory program have been complied with; and

(9) The permit for the surface mining activities contains specific conditions --

(i) Delineating the particular surface areas for which a variance is authorized;

(ii) Identifying the applicable provisions of Section 515(b) of the Act, Part 816 of this chapter, and the regulatory program; and

(iii) Providing a detailed schedule for compliance with the provisions of this section.

(d) Review of permits containing variances. Variances granted by permits issued under this section shall be reviewed by the regulatory authority no later than 3 years from the dates of issuance of the permit and any permit renewals.

PART 816 -- PERMANENT PROGRAM PERFORMANCE STANDARDS -- SURFACE MINING ACTIVITIES

3. Section 816.79 is revised as follows:

SECTION 816.79 - PROTECTION OF UNDERGROUND MINING.

No surface mining activities shall be conducted closer than 500 feet to any point of either an active or abandoned underground mine, except to the extent that --

(a) The activities result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public; and

(b) The nature, timing, and sequence of the activities that propose to mine closer than 500 feet to an active underground mine are jointly approved by the regulatory authority, the Mine Safety and Health Administration, and the State agency, if any, responsible for the safety of underground mine workers.

4. Section 816.100 is revised to read as follows:

SECTION 816.100 - CONTEMPORANEOUS RECLAMATION.

Reclamation efforts, including but not limited to backfilling, grading, topsoil replacement, and revegetation, on all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities issued under Section 785.18 of this chapter. The regulatory authority may establish schedules that define contemporaneous reclamation.

PART 817 -- PERMANENT PROGRAM PERFORMANCE STANDARDS -- UNDERGROUND MINING ACTIVITIES

5. Section 817.100 is revised to read as follows:

SECTION 817.100 - CONTEMPORANEOUS RECLAMATION.

Reclamation efforts, including but not limited to backfilling, grading, topsoil replacement, and revegetation, on all areas affected by surface impacts incident to an underground coal mine shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities issued under Section 785.18 of this chapter. The regulatory authority may establish schedules that define contemporaneous reclamation.

6. Section 817.121 is revised to read as follows:

SECTION 817.121 - SUBSIDENCE CONTROL.

(a) The operator shall either adopt measures consistent with known technology which prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands; or adopt mining technology which provides for planned subsidence in a predictable and controlled manner. Nothing in this part shall be construed to prohibit the standard method of room-and-pillar mining.

(b) The operator shall comply with all provisions of the approved subsidence control plan prepared pursuant to Section 784.20 of this chapter.

(c) The operator shall --

(1) Correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses which it was capable of supporting before subsidence; and

(2) To the extent required under State law, either correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensate the owner of such structures or facilities in the full amount of the diminution in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement or damaged structures or facilities. Compensation may be accomplished by the purchase prior to mining of a noncancellable premium-prepaid insurance policy.

(d) Underground mining activities shall not be conducted beneath or adjacent to

(1) public buildings and facilities;

(2) churches, schools, and hospitals; or

(3) impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, such features or facilities. If the regulatory authority determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above or to any

aquifer or body of water that serves as a significant water source for any public water supply system, it may limit the percentage of coal extracted under or adjacent thereto.

(e) If subsidence causes material damage to any of the features or facilities covered by paragraph (d) of this section, the regulatory authority may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.

(f) The regulatory authority shall suspend underground mining activities under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

(g) Within a schedule approved by the regulatory authority, the operator shall submit a detailed plan of the underground workings. The detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measure taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the regulatory authority. Upon request of the operator, information submitted with the detailed plan may be held as confidential, in accordance with the requirements of Section 773.13(d) of this chapter.

7. Section 817.122 is revised to read as follow:

SECTION 817.122 - SUBSIDENCE CONTROL: PUBLIC NOTICE.

At least 6 months prior to mining, or within that period if approved by the regulatory authority, the underground mine operator shall mail a notification to all owners and occupants of surface property and structures above the underground workings. The notification shall include, at a minimum, identification of specific areas in which mining will take place, dates that specific areas will be undermined, and the location or locations where the operator's subsidence control plan may be examined.

SECTIONS 817.124 and 817.126 [Removed]

8. Sections 817.124 and 817.126 are removed.

PART 818 -- SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS -- CONCURRENT SURFACE AND UNDERGROUND MINING [REMOVED]

9. Part 818 is removed.

Authority: *30 U.S.C. 1201* et seq.

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