



U. S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
DIRECTIVES SYSTEM

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Transmittal Number:

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Subject: Policy and Procedures for Maintaining Confidentiality of Permit Application Information

Approval:

[Signature]
Title: Director

1. Purpose. This directive establishes policy and procedures concerning the review and handling of information submitted as a part of an application for an exploration permit, a mining permit, permit revision or permit renewal, or an exemption for coal extraction incidental to the extraction of other minerals and designated as confidential in writing by the applicant that may be protected under the applicable confidentiality provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and its implementing regulations. This directive applies to all Office of Surface Mining Reclamation and Enforcement (OSM) employees processing these applications for operations on Indian lands, Federal lands in non-cooperative agreement States, Federal lands where the State has not been delegated full permitting authority pursuant to a cooperative agreement, and in States where OSM has instituted a Federal program.

2. Summary. This directive includes changes to OSM Directive REG-15 dated June 14, 1989 to clarify policy and procedures and to include confidentiality requirements for applications for exemptions from the requirements of SMCRA for coal extraction incidental to the extraction of other minerals pursuant to 30 CFR Part 702.

3. Definitions.

a. Application. The documents and other information filed with the regulatory authority under 30 CFR Chapter VII for the issuance of permits, revisions, renewals, and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations, for coal exploration, or for exemptions from the requirements of SMCRA for coal extraction incidental to the extraction of other minerals.

b. Confidential Information. In the context of this directive --

(1) For mining permits, revisions, and renewals, confidential information is defined as, and limited to, the information that has been clearly identified as confidential by the applicant and submitted separately from the remainder of the application, and pertains only to the analysis of the chemical and physical properties of the coal to be mined, except

information on components of such coal which are potentially toxic in the environment, or is required under section 508 of SMCRA, but is not on public file pursuant to State law.

(2) For exploration permits, confidential information is defined as, and limited to, information concerning trade secrets or privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration, that the applicant has requested in writing be kept confidential.

(3) For applications for exemptions from the requirements of SMCRA for coal extraction incidental to the extraction of other minerals, confidential information is defined as and limited to, information concerning trade secrets or privileged commercial or financial information of the persons intending to conduct extraction of other minerals, that the applicant has requested in writing be kept confidential.

c. Federal Permitting Entity (FPE). The OSM organizational unit with responsibility for receiving and processing applications, i.e., the Western Support Center (WSC) office or the Division of Tennessee Permitting (DTP).

4. Policy/Procedures.

a. Policy. Sections 507(b)(17), 508(a)(12), 508(b) and 512(b) of SMCRA, and 30 CFR 773.13(d), 772.15(b) and (c), and 702.13(b) and (c), establish requirements with respect to the confidentiality of application materials for surface coal mining permits, coal exploration permits and exemptions from the requirements of SMCRA for coal extraction incidental to the extraction of other minerals. In Federal program States and on Indian lands the confidentiality requirements of 508(b) relating to provisions of State law do not apply, because State law is not in effect in a Federal program State.

Information labeled confidential by the applicant shall be reviewed by the FPE for possible withholding from public disclosure. The FPE shall ensure that adequate public notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of information labeled confidential by the applicant. The FPE will, if requested, hold public meetings, informal conferences, or public hearings, as appropriate, concerning the disclosure or non-disclosure of application information labeled confidential. In reaching its decision, the FPE shall consider the established requirements, the oral and written comments of these persons seeking and opposing disclosure of application information labeled confidential.

b. Procedures.

(1) Submission of Application. The FPE provides prospective applicants with an information sheet that outlines how confidential information in an application should be identified, when confidentiality is requested. Prospective applicants are advised that a decision by OSM to release application information labeled confidential by the applicant may delay processing of the permit application and may require public notice and opportunity to comment on the newly released information if the quantity of material disqualified is large or if substantial controversy exists.

Information that the applicant wishes to be kept confidential must be clearly identified by the applicant and submitted in a form separate from the remainder of the application. The FPE should advise the applicant to mark the cover or title page of the application with a statement that alerts the reviewer to the presence of information that the applicant believes is properly treated as confidential and states the specific basis for this belief. In addition, the FPE should also advise the applicant to mark each sheet to which it wishes to restrict access with the words: "Confidential Information pursuant to [30 CFR 773.13(d), 772.15(b), 702.13(b) or State or Federal program equivalent]."

(2) Public Notice. The FPE reviews any information that the applicant has labeled as confidential. The FPE, after determining that the application is administratively complete, notifies the applicant to publish the newspaper advertisement required by 30 CFR 773.13(a)(1) for mining permits, 30 CFR 772.12(c) for exploration permits, or 30 CFR 702.12(i) for exemptions from the requirements of SMCRA for coal extraction incidental to the extraction of other minerals, or the State or Federal program counterparts thereof, and to include a concise statement describing in general terms the nature of the information proposed to be withheld from disclosure and the reason for this request. The advertisement must also inform persons both seeking and opposing disclosure how to express their opinions and to whom. In addition, the information contained in the advertisement is to be placed in all copies of the application on file for public review.

(3) Public Comment. The FPE provides an opportunity for public comment on confidentiality-related matters and handles any comments in a manner consistent with the procedures outlined in 30 CFR 773.13(b) for mining permits, 30 CFR 772.12(c) for exploration permits, 30 CFR 702.11(d) for exemptions from the requirements of SMCRA for coal extraction incidental to the extraction of other minerals, or the applicable State or Federal program counterparts thereof.

(4) Determination of Confidentiality. Prior to completing the first technical review of the application, the FPE makes a determination as to the confidentiality of the application information labeled confidential by the applicant. The FPE should make the determination within 30 days of the last publication of the newspaper advertisement specified under paragraph 4.b.(2) above, unless additional time is necessary to obtain public comment or as a result of unforeseen circumstances. For exemptions from the requirements of SMCRA for coal extraction incidental to the extraction of other minerals, the FPE should make the determination within 90 days after the filing of an administratively complete application unless additional time is necessary as a result of unforeseen circumstances. In reaching the decision, the FPE considers all public comments received. This decision should be reviewed by the appropriate Field Solicitor prior to being made public. The FPE promptly provides the applicant, commenters, and all other interested parties with written notification of the decision and their appeal rights.

Application information labeled confidential by the applicant which the FPE determines to be qualified is not made available for public inspection. Any information labeled confidential by the applicant but subsequently disqualified by the FPE is to be made available for public inspection in accordance with 30 CFR 702.13(a), 772.15(a), or 773.13(a)(2), or the State or Federal counterpart thereof, no sooner than 20 days and no later than 30 days (unless the decision is under appeal) after notice of the disqualification is received by the applicant and other parties. (Verification of receipt of the notice of disqualification may be made by return receipt mail). The applicant, and any other party with an interest that may be adversely affected by the decision, has the right to appeal the decision to the Interior Board of Land Appeals within 20 days of receipt of the notice. If the decision is under appeal, the information is withheld from public inspection pending a final decision on the appeal. If the quantity of material disqualified is large, or if substantial controversy exists, the FPE may reopen the public comment period on the application and may require the applicant to issue an appropriate public notice, to give interested parties an opportunity to comment on the application in light of the newly disclosed information.

(5) File Maintenance. In order to protect the integrity of qualified confidential information, the FPE, and any other OSM unit provided such information by the FPE, is required to maintain such information in locked files in a location separate from other permit application information on file for public review. Access is controlled by the respective heads of the appropriate FPE or other OSM offices maintaining such information. The FPE assures that each application in the public

access files contains a reference to the corresponding confidential file where appropriate.

(6) Transfer of Confidential Information to Other Federal or State Agencies. In order to protect the integrity of qualified confidential information when such information must be provided to other Federal or State agencies, the FPE advises the Federal or State agency that any such information is provided by the FPE solely to ensure cooperative implementation of SMCRA and its implementing regulations and must be held confidential.

To prevent the unauthorized release of information or data designated as proprietary or confidential, the information or data will not be released without the written commitment by the requesting agency to comply with the agreement on the use or disclosure of the information requested. Confidential information on file should be copied for dissemination to other Federal or State agencies, and should be returned to the FPE. It is not the responsibility of the FPE to determine if the receiving agency has adequate facilities to safeguard the information. Appendix 1 is an example of a non-disclosure agreement.

5. Reporting Requirements. None.
6. Effect on Other Documents. This directive supersedes Directive REG-15, Transmittal Number 548, dated June 14, 1989.
7. References. 30 CFR 702.11, 702.12, 702.13, 772.12, 772.15 773.13, and 43 CFR Part 4.
8. Effective Date. This directive is effective upon issuance.
9. Contact. Chief, Branch of Federal and Indian Programs, (FTS) 268-2533.
10. Keywords: Confidentiality, Confidential Information.

Appendix 1

EXAMPLE OF A NON-DISCLOSURE AGREEMENT

Upon request, OSM will provide to a requesting Federal or State agency confidential information relevant to surface coal mining and reclamation operations proposed or approved in a complete permit application. Any such information is provided by OSM solely to ensure cooperative implementation of SMCRA and its implementing regulations and must be held confidential.

The requesting agency agrees to prevent unauthorized release of information and data supplied by OSM and identified as confidential.

In order to protect the integrity of qualified confidential information the requesting agency agrees to maintain such information in locked files in a location separate from other permit application or other information on file for public review. Access shall be controlled by the respective heads of the appropriate offices maintaining such information. OSM assures that each application in the public access files contains a reference to the corresponding confidential file where appropriate.

Use or disclosure of the information described below is restricted under the provisions of [30 CFR 773.13(d)(3) for mining permits; 30 CFR 772.15(b) for exploration permits; 30 CFR 702.13(b) for exemption from coal extraction incidental to the extraction of other minerals; or the State or Federal program counterpart thereof].

Description of requested information: _____

I agree to the above terms and conditions and to safely return the requested information as soon as it is no longer needed.

Requesting Official

Requesting Agency

Date