CHAPTER 54
COAL MINING

[Prior to 6/15/88, see Soil Conservation Department, 780—Ch 4]
[Prior to 12/26/90, see Soil Conservation[27] Chs 1 to 49]

PART 1A
COAL MINING—GENERAL

27—40.1(17A,207) Authority and scope. The following sets forth the rules and procedures through which the department of agriculture and land stewardship, division of soil conservation, will implement the regulatory program pursuant to Iowa Code chapter 207 and the federal Surface Mining Control and Reclamation Act of 1977 (SMCRA).

40.1(1) Parts and sections of the federal regulations of the U.S. Office of Surface Mining Reclamation and Enforcement, U.S. Department of Interior, promulgated pursuant to the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), are incorporated by reference as rules of the division as specified in this chapter, with exceptions as indicated. Rules incorporated by reference, as specified in each specific rule, are those from the Code of Federal Regulations (30 CFR), as in effect on July 1, 1992.

40.1(2) The following general word substitutions are made in all incorporated federal regulations except as otherwise indicated:

"Act" refers to Iowa Code chapter 207.

"Administrator" is to be substituted for *"director"*, *"regional director"*, and *"secretary"*.

"Division of soil conservation" is to be substituted for *"department"*, *"the office"*, *"OSM"*, *"OSMRE"*, *"office of surface mining reclamation and enforcement"*, *"regulatory authority"*, *"State regulatory program"*, and *"regulatory program"*.

"These rules" is to be substituted for *"chapter"* and *"subchapter"*.

40.1(3) Delete from 30 CFR 779.25(b), 780.14(c), and 783.25(b) the words "or in any State which authorizes land surveyors to prepare and certify such cross sections, maps and plans, a qualified, registered, professional land surveyor,". Also, replace "," with "or" between "professional engineer" and "professional geologist".

Delete from 30 CFR 780.25(a)(1)(i), 780.25(a)(3)(i), 784.16(a)(1)(i), and 784.16(a)(3)(i) the words "or in any State which authorizes land surveyors to prepare and certify such plans, a qualified, registered, professional land surveyor,". Also, replace "," with "or" between "professional engineer" and "professional geologist".

Delete from 30 CFR 816.46(b)(3) the words "or in any State which authorizes land surveyors to prepare and certify plans in accordance with §780.25(a) of this chapter a qualified, registered, professional land surveyor,".

Delete from 30 CFR 817.46(b)(3) the words "or in any State which authorizes land surveyors to prepare and certify plans in accordance with §784.16(a) of this chapter a qualified, registered, professional land surveyor,".

Delete from 30 CFR 816.151(a) and 817.151(a) the words "or in any State which authorizes land surveyors to certify the construction or reconstruction of primary roads, a qualified, registered, professional land surveyor,".

40.1(4) Delete "or qualified, registered, professional land surveyor" from 30 CFR 816.49(a)(2) and 816.49(a)(10)(ii).

40.1(5) Delete "registered, professional engineer" from 30 CFR Parts 779, 780, 783, 784, 816 and 817, and replace it with "professional engineer, registered with the State of Iowa".

27—40.2(207) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without the invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—40.3(207) General. The following is incorporated by reference: 30 CFR Part 700, as in effect on July 1, 1992, except for 30 CFR 700.1, 700.2, 700.3, 700.4, 700.10 and 700.12. The phrase "section 520 of the Act" is deleted from 30 CFR 700.13(a) and the words "Iowa Code section 207.17" are inserted in lieu thereof.

In lieu of the regulations deleted at 30 CFR 700.12 concerning "Petitions to initiate rule making," rules of the Iowa Department of Agriculture and Land Stewardship at 21 IAC Chapter 3, "Petitions for Rule Making" shall serve as the basis for submitting petitions to initiate rule making.

Definitions for *"Federal lands," "Federal lands program," "Fund," "Indian lands,"* and *"Indian tribe"* are correspondingly deleted from 30 CFR 700.5.

The definition of *"Regulatory program"* is deleted at 30 CFR 700.5 and the following definition is inserted in lieu thereof:

"Regulatory program" means Iowa's approved State program.

Delete from 30 CFR 700.14 the phrase "43 CFR Part 2, which implements the Freedom of Information Act and the Privacy Act" and insert in lieu thereof "Iowa Code chapter 22, the Iowa open records law".

27—40.4(207) Permanent regulatory program and exemption for coal extraction incidental to the extraction of other minerals. The following is incorporated by reference: 30 CFR Part 701 and 30 CFR Part 702, as in effect on July 1, 1992, with the following exceptions:

40.4(1) None of the general word substitutions at rule 27—40.1(207) apply to the definitions of *"Permit," "Permittee,"* and *"State program"* at 30 CFR 701.5.

40.4(2) Delete from 30 CFR 701.5 the definitions *"Agricultural activities or farming," "Alluvial valley floor," "Arid or semiarid area," "Essential hydrologic functions," "Federal program," "Complete federal program," "Partial federal program," "Flood irrigation," "Materially damage the quantity or quality of waters," "Special bituminous coal mines," "Subirrigation," "Undeveloped rangeland,"* and *"Upland areas."*

40.4(3) Delete from the last sentence in the definition of *"Permittee"* in 30 CFR 701.5 the words "section 523 of the Act" and insert the words "Iowa Code section 207.20".

In 30 CFR 701.5(b)(2), delete from the definition of "Significant imminent environmental harm to land, air or water resources" the words "section 521(a)(3) of the Act" and insert the words "Iowa Code section 207.14, subsection 2".

40.4(4) Delete 30 CFR 701.1, 701.3, 701.4, and 701.11(c).

40.4(5) Delete references to "Subchapter B" and "Subchapter K" at 30 CFR 701.11(d) and (e) and substitute in lieu thereof "Part 1B" and "Part 6", respectively.

40.4(6) Delete 30 CFR 702.1 and 702.10.

40.4(7) Delete 30 CFR 702.11(f) and insert in lieu thereof the following:

(f) Administrative review. (1) Any adversely affected person may request administrative review of a determination under paragraph (e) of this section within 30 days of notification of such determination in accordance with Part 9 of these rules.

(2) A petition for administrative review filed under Part 9 of these rules shall not suspend the effect of a determination under paragraph (e) of this section.

40.4(8) Delete 30 CFR 702.17(c)(2) and (3) and insert in lieu thereof the following:

(2) Any adversely affected person may request administrative review of a decision whether to revoke an exemption within 30 days of the notification of such a decision in accordance with the procedures of Part 9 of these rules.

(3) A petition for administrative review filed under Part 9 of these rules shall not suspend the effect of a decision whether to revoke an exemption.

40.4(9) Delete the definition for "Previously mined area" at 30 CFR 701.5 and insert in lieu thereof the following:

"Previously mined area" means the land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of 30 CFR chapter VII.

40.4(10) Add to 30 CFR 701.5 the definition:

"Full water year" means at a minimum, the nine-month period from March through November.

27—40.5(207) Restrictions on financial interests of State employees. The general word substitutions used elsewhere in these rules do not apply to Iowa's incorporation of 30 CFR 705. The following is incorporated by reference: 30 CFR Part 705, as in effect on July 1, 1992, with the following exceptions:

40.5(1) Delete from 30 CFR 705.5 the definition for "State regulatory authority" and insert the following definition in lieu thereof:

"State regulatory authority" means the division of soil conservation, Iowa department of agriculture and land stewardship, or its authorized representative.

40.5(2) Delete 30 CFR 705.1, 705.2, 705.3, 705.4(b), 705.10, and 705.11(e).

27—40.6(207) Exemptions for coal extraction incident to government-financed highway or other constructions. The following is incorporated by reference: 30 CFR Part 707, as in effect on July 1, 1992, with the following exceptions:

40.6(1) Add to 30 CFR 707.11 a paragraph (c) that shall read:

(c) Any person who conducts or intends to conduct such coal extraction must file a letter of intent with the division 60 days prior to surface disturbance.

40.6(2) Delete from 30 CFR 707.12 the words "250 tons" and insert the words "50 tons".

40.6(3) Delete 30 CFR 707.10.

27—40.7(207) Protection of employees. The following is incorporated by reference: 30 CFR Part 865, as in effect on July 1, 1992, with the following exceptions:

40.7(1) Delete the words "Office of Hearings and Appeals" and insert the word "division".

40.7(2) Delete the words "43 CFR Part 4" and insert the words "Iowa Code section 207.14".

27—40.8 to **40.10** Reserved.

PART 1B
COAL MINING—INITIAL PROGRAM

27—40.11(207) Initial regulatory program. The following is incorporated by reference: 30 CFR Part 710, as in effect on July 1, 1992, with the following exceptions:

40.11(1) Reserved.

40.11(2) Delete 30 CFR 710.1, 710.3, 710.4(a), 710.10, 710.11(b) and (c), and 710.12.

40.11(3) Reserved.

27—40.12(207) General performance standards—initial program. The following is incorporated by reference: 30 CFR Part 715, as in effect on July 1, 1992, with the following exceptions:

40.12(1) Delete from 30 CFR 715.11(c) the scale of "1:6000" and insert the scale of "1:2400".

40.12(2) Delete from 30 CFR 715.17(h)(3) the words "in a manner approved by the regulatory authority" and insert the words "monthly, and reported quarterly to the regulatory authority,".

40.12(3) Delete 30 CFR 715.10.

27—40.13(207) Special performance standards—initial program. The following is incorporated by reference: 30 CFR Part 716, as in effect on July 1, 1992, with the following exception:

Delete 30 CFR 716.1(a), subparagraphs (1) through (5), 716.2, 716.3, 716.4, 716.5, 716.6, and 716.10.

27—40.14 to **40.19** Reserved.

PART 2
COAL MINING—AREAS UNSUITABLE

27—40.20 Reserved.

27—40.21(207) Areas designated by an Act of Congress. The following is incorporated by reference: 30 CFR Part 761, as in effect on July 1, 1992, with the following exceptions:

40.21(1) None of the general word substitutions in rule 27—40.1(207) apply to the definition of "Valid existing rights" at 30 CFR 761.5.

40.21(2) Delete from the definition of "Surface operations and impacts incident to an underground coal mine" in 30 CFR 761.5 the words "section 701(28) of the Act" and insert the words "Iowa Code section 207.2, subsection 14".

40.21(3) None of the general word substitutions in rule 27—40.1(207) apply to 30 CFR 761.11(b).

40.21(4) Delete from 30 CFR 761.5(d) under the definition for "Valid existing rights" the words "section 522(e) of the Act" and insert the words "Iowa Code section 207.8".

40.21(5) Delete 30 CFR 761.12(c).

40.21(6) Delete from 30 CFR 761.12(g) the words "section 522(e) of the Act" and insert the words "Iowa Code section 207.8".

40.21(7) None of the general word substitutions for "Act" and "secretary" at rule 27—40.1(207) apply to 30 CFR 761.3.

27—40.22(207) Criteria for designating areas as unsuitable for surface coal mining operations. The following is incorporated by reference: 30 CFR Part 762, as in effect on July 1, 1992, with the following exceptions:

40.22(1) The general word substitutions in rule 27—40.1(207) do not apply to 30 CFR 762.12(b) or 762.13(a).

40.22(2) Delete from 30 CFR 762.14 the words "section 522 of the Act" and insert the words "Iowa Code section 207.8".

27—40.23(207) State procedures for designating areas unsuitable for surface coal mining operations. The following is incorporated by reference: 30 CFR Part 764, as in effect on July 1, 1992, with the following exceptions:

40.23(1) Delete 30 CFR 764.10.

40.23(2) Delete from 30 CFR 764.13(b)(1)(v) the words "sections 522(a)(2) and (3) of the Act" and insert the words "Iowa Code section 207.8, subsection 1".

40.23(3) Delete from 30 CFR 764.19(c) the words "section 526(e) of the Act" and insert the words "Iowa Code section 207.8, subsection 4, and Iowa Code section 17A.19".

27—40.24 to **40.29** Reserved.

PART 3
COAL MINING—PERMITS FOR OPERATIONS AND EXPLORATION

27—40.30(207) Requirements for coal exploration. The following is incorporated by reference: 30 CFR Part 772, as in effect on July 1, 1992, with the following exceptions:

40.30(1) Delete from 30 CFR 772.11 the words "250 tons" and insert the words "50 tons".

40.30(2) Delete 30 CFR 772.11(b)(3) and insert the following:

(3) A precise description and map at a scale of 1:24,000 or larger of the exploration area showing the lease limits and identifying lessor(s);

40.30(3) Add a new paragraph (6) to 30 CFR 772.11(b) to read as follows:

(6) If the surface is owned by a person other than the person who intends to explore, a description of the basis upon which the person who will explore claims the right to enter such area for the purpose of conducting exploration and reclamation.

40.30(4) Delete from 30 CFR 772.12 the words "250 tons" and insert the words "50 tons".

27—40.31(207) Requirements for permits and permit processing. The following is incorporated by reference: 30 CFR Part 773, as in effect on July 1, 1992, with the following exceptions:

40.31(1) Delete the second sentence of 30 CFR 773.11(a).

40.31(2) Add at the end of the last sentence of 30 CFR 773.13(a)(1)(ii) the words "and the scale of the map", and the following paragraph:

"The legal description shall include popular township, county, township, range, section, and the United States Geological Survey map identification by property owners. Section lines shall be marked and the sections shall be identified on the map. The total acreage of the proposed permit area shall be given to the nearest acre."

40.31(3) Delete from 30 CFR 773.15(a)(1) the words "a reasonable time set by the regulatory authority" and insert the words "90 days following the completion of the adequacy review".

40.31(4) Delete 30 CFR 773.10, 773.11(c) and (d).

40.31(5) Delete from 30 CFR 773.11(b)(2) the words "section 502 of the Act" and insert the words "Iowa Code section 207.4".

40.31(6) Delete from 30 CFR 773.13(a)(3)(ii) the words "section 503(a)(6) or 504(h) of the Act" and insert the words "Iowa Code section 207.5".

40.31(7) Delete the first sentence from 30 CFR 773.13(c)(2)(iv).

40.31(8) Delete from 30 CFR 773.13(d)(3)(ii) the words "section 508 of the Act" and insert the words "Iowa Code section 22.7, subsection 6".

40.31(9) The general word substitution for "Act" at rule 27—40.1(207) does not apply to 30 CFR 773.15(b).

40.31(10) The general word substitution for "secretary" at rule 27—40.1(207) does not apply to 30 CFR 773.17(d).

40.31(11) The general word substitution for "OSM" at rule 27—40.1(207) does not apply to 30 CFR 773.19(b)(3).

40.31(12) Add the following paragraph (h) to 30 CFR 773.17:

(h) Shall ensure and contain specific conditions requiring that, as a condition of the permit, the permittee shall not, except as permitted by law, willfully resist, prevent, impede, or interfere with the division or any of its agents in the performance of their duties.

40.31(13) Delete from 30 CFR 773.13(b)(1) the words "a reasonable time established by the regulatory authority" and insert the words "60 days of the notification".

40.31(14) Rescinded IAB 8/14/96, effective 10/1/96.

40.31(15) Delete 773.21(c) and insert in lieu thereof the following:

(c) Right to appeal. The permittee may file an appeal for administrative review of the notice of proposed suspension or rescission under Part 9 of these rules.

27—40.32(207) Revision or amendment; renewal; and transfer, assignment, or sale of permit rights. The following is incorporated by reference: 30 CFR Part 774, as in effect on July 1, 1992, with the following exceptions:

40.32(1) 30 CFR 774.11(b) and (c) are deleted.

40.32(2) 30 CFR 774.13 is deleted, with the exception that the notice, public participation, and notice of decision requirements of 30 CFR 773.13, 773.19(b), and 778.21 shall apply to all revisions.

These rules utilize the term "revision" to describe a change to a permit that constitutes a significant departure from the approved permit and the term "amendment" to describe a change that does not constitute a significant departure. A significant departure shall be any change in permit area, mining method or reclamation procedure, which would, in the opinion of the division, significantly change the

effect that mining operations would have on persons impacted by the permitted operation, on cultural resources, or on the environment.

40.32(3) Permit revisions and amendments.

a. During the term of a permit, the permittee may submit an application to the division for revision or amendment of the permit.

(1) A revision or amendment is required for any changes in the approved permit. All information related to approved revisions or amendments shall be updated in all public copies of the permit.

(2) When a permit is reviewed at any time, including midterm review, the division may, by order, require revision or amendment of the approved permit to ensure compliance with the Act and these rules. Any order of the division requiring revision or amendment of permits shall be based upon written findings, and the order shall be subject to the provisions for administrative and judicial review of Part 9 of this chapter.

(3) A revision or amendment shall be obtained in order to continue operation after the cancellation or material reduction of the liability insurance policy, capability of self-insurance, performance bond, or other equivalent guarantee upon which the approved permit was issued.

(4) A revision or amendment shall also be obtained as otherwise required under the Act or these rules.

b. An application for a permit revision will be approved or disapproved within 90 days following a determination of completeness for the revision application by the division. An application for an amendment will be approved or disapproved within 60 days of submittal of the application to the division.

c. Any application for an amendment or a revision under these rules shall, at a minimum, be subject to the requirements of Part 9 of these rules and must provide replacement documentation fully describing changes to be made in the same detail as required in the original permit.

d. Criteria for approval. No application for a permit revision or amendment shall be approved unless the application demonstrates and the division finds that the reclamation as required by the Act and the regulatory program can be accomplished, that the application complies with all requirements of the Act and the regulatory program, and any applicable requirements of written findings for the permit have also been met.

e. Extensions to permit area.

(1) Any increase in permit area, except for incidental boundary revisions, shall not be approved under this subrule, but shall be treated as a new permit application.

(2) Incidental boundary revisions are considered significant departures and as such shall be treated as revisions. A total of 20 acres of incidental boundary changes will be allowed over the life of a permit with individual increments being subject to approval by the division. Application for an incidental boundary revision shall include demonstration by the applicant that the area for which mining operations are proposed is contiguous to the approved permit.

40.32(4) Delete 30 CFR 774.10 and 774.15(c)(3).

40.32(5) Add at the end of 30 CFR 774.15(a) the sentence "Renewal is not required if the division determines that the phase II bond was released over the entire permit area before the expiration of the permit term."

40.32(6) Delete from 30 CFR 774.15(b)(2)(i) the word "and" in the third line, and add at the end the words "and current status of the mine plan, other details and the time table—if different from the one previously approved—of the remaining phases of the operation and reclamation plans."

40.32(7) The general word substitution for "OSM" at rule 27—40.1(207) does not apply to 30 CFR 774.17(e)(1).

27—40.33(207) General content requirements for permit applications. The following is incorporated by reference: 30 CFR Part 777, as in effect on July 1, 1992, with the following exceptions:

40.33(1) Delete 30 CFR 777.11(a)(3) and insert the following:

(3) Be filed in three copies with the format addressed by subrule and subject title.

40.33(2) Delete from 30 CFR 777.14(a) the scale of "1:6000" and insert the scale of "1:2400". Also delete the words "be in a scale determined by the regulatory authority, but in no event" and insert in lieu thereof "shall have a scale no".

40.33(3) Delete 30 CFR 777.17 and insert in lieu thereof the following:

777.17 Permit fees.

An application for a surface coal mining and reclamation permit shall be submitted to the division and accompanied by the appropriate fee. All checks shall be made payable to the Treasurer of the State of Iowa.

(1) New permits require a fee of $15 per acre to be permitted with a minimum fee of $100.

(2) Permit revisions within present permit boundaries require a fee of $2 per acre for the total permit area with a minimum of $40. Permit revisions which include additional area require the revision fee plus $5 per acre for the additional area, with a minimum of $40.

(3) Permit renewals require a fee of $100.

(4) Transfer, assignment, or sale by the permit holder requires a fee of $50.

40.33(4) Delete 30 CFR 777.10.

27—40.34(207) Permit application—minimum requirements for legal, financial, compliance, and related information. The following is incorporated by reference: 30 CFR Part 778, as in effect on July 1, 1992, with the following exceptions:

40.34(1) Amend 30 CFR Part 778 by adding the following section:

778.23 Identification of other licenses and permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

1. Type of permit or license;
2. Name and address of issuing authority;
3. Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses;
4. If a decision has been made, the date of approval or disapproval by each issuing authority; and
5. Date of expiration of permits.

40.34(2) Delete 30 CFR 778.10.

40.34(3) The general word substitution for "Act" at rule 27—40.1(207) does not apply to 30 CFR 778.14(c).

27—40.35(207) Surface mining permit applications—minimum requirements for information on environmental resources. The following is incorporated by reference: 30 CFR Part 779, as in effect on July 1, 1992, except as modified by subrule 40.1(3) and with the following exceptions:

40.35(1) Delete from 30 CFR 779.19(a) the words "if required by the regulatory authority, contain a map" and insert the words "contain a map at a scale of 1:2400 or larger".

40.35(2) Delete from 30 CFR 779.19(b) the words "When a map or aerial photograph is required, sufficient adjacent areas shall be included" and insert the words "A map at a scale of 1:2400 or larger or an aerial photo shall include sufficient adjacent areas".

40.35(3) Delete from 30 CFR 779.22(a)(1) the words "A map" and insert the words "A map at a scale of 1:2400 or larger or an aerial photo".

40.35(4) Amend the first sentence of 30 CFR 779.25(a) to read: "The permit application shall include cross sections at a vertical exaggeration of 1:10, maps at a scale of 1:2400 or larger and plans showing—"

40.35(5) Add to 30 CFR 779.25(a)(1) the words "and a survey coordinate net".

40.35(6) Amend 30 CFR 779.25, cross sections, maps and plans, by adding the following paragraphs:

(c) Drill logs must contain the following:

(1) Must have survey coordinates (northing and easting) relating them to the map grid in the permit application.

(2) Must show surface elevation.

(3) Must be detailed enough to show all changes in material encountered in both consolidated and unconsolidated overburden.

40.35(7) Delete 30 CFR 779.1 and 779.10.

40.35(8) Reserved.

40.35(9) Delete from 30 CFR 779.18(a) the words "When requested by the regulatory authority".

40.35(10) Add a new paragraph (c) to 30 CFR 779.18 as follows:

(c) Location of the rain gauges nearest to the permit area, preferably in the same watershed as the permit itself, shall be marked on a map, and these shall be described in the text as well, along with the period of available record at these gauges.

40.35(11) Add a new paragraph (d) to 30 CFR 779.18 as follows:

(d) A brief description shall be provided about the impact of the climatological factors on operation and reclamation plans, specifically what part of the year would be more conducive than others to various mining and reclamation operations.

40.35(12) Delete from 30 CFR 779.24(g) the words "defined by the regulatory authority" and add at the end the words "Hydrologic area is the area that consists of the permit area and the adjacent area."

40.35(13) Insert the words "and its identification" between the words "road" and "located" in 30 CFR 779.24(h).

40.35(14) Insert at the beginning of 30 CFR 779.24(l) the words "Section lines and section identification, and any".

27—40.36(207) Surface mining permit applications—minimum requirements for reclamation and operation plan. The following is incorporated by reference: 30 CFR Part 780, as in effect on July 1, 1992, except as modified by subrules 40.1(3) and 40.1(5) and with the following exceptions and clarifications:

40.36(1) Delete 30 CFR 780.1 and 780.10.

40.36(2) The general word substitutions at rule 27—40.1(207) do not apply at 30 CFR 780.21(a).

40.36(3) The determination of probable hydrologic consequence (PHC) made pursuant to these rules as part of a permit application shall address all proposed mining activities associated with the permit area for which authorization is sought as opposed to addressing only those activities expected to occur during the term of the permit.

40.36(4) Delete from 30 CFR 780.12 references to "Subchapter B" and "Subchapter K" and replace with "Part 1B" and "Part 6", respectively.

40.36(5) Insert at the end of 30 CFR 780.21(a) the sentence "The methodology for measurement of the quantity of both surface water and groundwater shall also be described."

40.36(6) Delete from 30 CFR 780.21(d) the words "may be required by the regulatory authority" and insert the words "is required".

40.36(7) Delete from 30 CFR 780.21(i) and (j) the word "approved" and insert the word "proposed".

27—40.37(207) Underground mining permit applications—minimum requirements for information on environmental resources. The following is incorporated by reference: 30 CFR Part 783, as in effect on July 1, 1992, except as modified by subrules 40.1(3) and 40.1(5) and with the following exceptions:

40.37(1) Delete from 30 CFR 783.18(a) the words "When requested by the regulatory authority,".

40.37(2) Delete 30 CFR 783.21(a)(1) and insert the following:

(1) A map, at the scale of 1:2400 or larger, delineating different soils;

40.37(3) Amend the first sentence in 30 CFR 783.24 to read: "The permit application shall include maps at a scale of 1:2400 or larger showing:"

40.37(4) Amend the first sentence in 30 CFR 783.25(a) to read: "The application shall include cross sections at a vertical exaggeration of 10:11:10, maps at a scale of 1:2400, and plans showing—"

40.37(5) Delete 30 CFR 783.1 and 783.10.
40.37(6) Reserved.

27—40.38(207) Underground mining permit applications—minimum requirements for reclamation and operation plan. The following is incorporated by reference: 30 CFR Part 784, as in effect on July 1, 1992, except as modified by subrules 40.1(3) and 40.1(5) and with the following exceptions and clarifications:

40.38(1) Delete from 30 CFR 784.14(d) the words "information may be required" and insert the words "information is required".

40.38(2) Delete from 30 CFR 784.20(d) the words "if any".

40.38(3) Delete from 30 CFR 784.20(f) the words "if any".

40.38(4) Amend the first sentence of 30 CFR 784.23 to read: "Each application shall contain maps at a scale of 1:2400 or larger and plans as follows:."

40.38(5) Delete 30 CFR 784.1 and 784.10.

40.38(6) The general word substitutions at rule 27—40.1(207) do not apply to 30 CFR Part 784.14(a).

40.38(7) Delete from 30 CFR 784.13(a) the words "sections 515 and 516 of the Act" and insert the words "Iowa Code sections 207.7 and 207.19".

40.38(8) The determination of probable hydrologic consequence (PHC) made pursuant to these rules as part of a permit application shall address all proposed mining activities associated with the permit area for which authorization is sought as opposed to addressing only those activities expected to occur during the term of the permit.

27—40.39(207) Requirements for permits for special categories of mining. The following is incorporated by reference: 30 CFR Part 785, as in effect on July 1, 1992, with the following exceptions:

40.39(1) Delete 30 CFR 785.10, 785.11, 785.12, 785.14, 785.15, 785.16, 785.17(d)(1), (2), and (3), 785.19, and 785.22.

40.39(2) The general word substitutions for "director" and "department" at rule 27—40.1(207) do not apply at 30 CFR 785.13.

40.39(3) None of the general word substitutions at rule 27—40.1(207) apply at 30 CFR 785.17(c)(1)(i) and (d).

40.39(4) Delete paragraphs (d) and (e) from 30 CFR 785.21 and insert in lieu thereof a new paragraph (d) as follows:

(d) Coal preparation plants are required to obtain permanent program permits under the Iowa regulatory program after April 10, 1981, as approved by the U.S. Office of Surface Mining.

40.39(5) Delete from 30 CFR 785.18(c)(5) the words "section 515(b)(16) of the Act" and insert the words "Iowa Code section 207.7".

40.39(6) Delete from 30 CFR 785.18(c)(7) the words "section 515(b)(22) of the Act" and insert the words "Iowa Code section 207.7".

40.39(7) Delete from 30 CFR 785.18(c)(9) the words "section 515(b) of the Act" and insert the words "Iowa Code section 207.7".

40.39(8) Add the following clarifying sentence to 30 CFR 785.21(a): "An off-site processing plant operated in connection with the mine but off the mine site will be regulated without regard to its proximity to the mine."

PART 4
COAL MINING—SMALL OPERATOR ASSISTANCE

27—40.40 Reserved.

27—40.41(207) Permanent regulatory program—small operator assistance program. The following is adopted by reference: 30 CFR Part 795, as in effect on July 1, 1992, with the following exceptions:

40.41(1) Delete 30 CFR 795.4, 795.5 and 795.6(b).

40.41(2) Delete from 30 CFR 795.1 the words "section 507(c) of the Act" and insert the words "Iowa Code section 207.4, subsection 1, paragraph *"d"*."

27—40.42 to **40.49** Reserved.

PART 5
COAL MINING—BONDING AND INSURANCE

27—40.50 Reserved.

27—40.51(207) Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs. The following is incorporated by reference: 30 CFR Part 800, as in effect on July 1, 1992, with the following exceptions:

40.51(1) Add to 30 CFR 800.40(c) a paragraph (4) that shall read as follows:

(4) The maximum liability under performance bonds applicable to a permit which may be released at any time prior to the release of all acreage from the permit area shall be calculated by multiplying the ratio between the acreage on which a reclamation phase has been completed and the total acreage in the permit area, times the total liability under performance bonds applicable to a permit, times 0.6 if reclamation phase I has been completed, or 0.25 if reclamation phase II has been completed.

Acreage may be released from the permit area only after reclamation phase III has been completed. The maximum performance bond liability applicable to a permit which may be released at any time prior to the completion of reclamation phase III on the entire permit area shall be calculated by multiplying the ratio between the acreage on which reclamation phase III has been completed and the total acreage in the permit area, times the total liability under performance bonds applicable to a permit, times 0.15.

40.51(2) Delete from 30 CFR 800.60(a) the words "authorized to do business in the United States" and insert the words "authorized to do business in the State of Iowa".

40.51(3) Delete 30 CFR 800.10, 800.11(e), and 800.70.

40.51(4) Delete from 30 CFR 800.40(a)(1) the words "established in the regulatory program or".

40.51(5) Delete from 30 CFR 800.40(c)(2) the words "sections 515 and 515(b)(10) of the Act" and insert the words "Iowa Code section 207.7". Delete also from 30 CFR 800.40(c)(2) the words "performed pursuant to section 507(b)(16) of the Act" and insert the words "information included in the permit application and obtained from the official soil survey for the county in which the permit is located,".

40.51(6) Delete from 30 CFR 800.40(h) the words "section 513(b) of the Act" and insert the words "Iowa Code section 207.5".

40.51(7) An application for bond release shall not be considered filed until a written determination of completeness for the bond release application has been provided to the applicant by the division. The division will make a determination of completeness for the bond release application within 30 days following receipt of such application.

27—40.52 to **40.59** Reserved.

PART 6
COAL MINING—PERMANENT PROGRAM PERFORMANCE STANDARDS

27—40.60 Reserved.

27—40.61(207) Permanent program performance standards—general provisions. The following is incorporated by reference: 30 CFR Part 810, as in effect on July 1, 1992, with the following exceptions:

40.61(1) Delete 30 CFR 810.3 and 30 CFR 810.4(a).

40.61(2) Delete 30 CFR 810.4(b) and substitute in lieu thereof the following:

(b) The division shall ensure that performance standards and design requirements are implemented and enforced under the Iowa program.

40.61(3) Delete 30 CFR 810.4(c) and substitute in lieu thereof the following:

(c) Each person conducting coal exploration or surface coal mining and reclamation operations is responsible for complying with the performance standards and design requirements of the approved Iowa program.

40.61(4) Delete the phrase "Parts 818 through 828" at 30 CFR 810.11 and substitute in lieu thereof "Parts 819, 823, 827, and 828".

27—40.62(207) Permanent program performance standards—coal exploration. The following is incorporated by reference: 30 CFR Part 815, as in effect on July 1, 1992.

27—40.63(207) Permanent program performance standards—surface mining activities. The following is incorporated by reference: 30 CFR Part 816, as in effect on July 1, 1992, except as modified by subrules 40.1(3), 40.1(4), and 40.1(5) and with the following exceptions:

40.63(1) Delete 30 CFR 816.61(c)(1) and insert the following:

(c) Blasters. (1) All blasting operations shall be conducted under the direction of a blaster certified by the division.

40.63(2) Delete 30 CFR 816.101. For "Backfilling and grading: Time and distance requirements," the following shall apply:

a. Except as provided in paragraph *"b"* of this subrule, rough backfilling and grading for surface mining activities shall be completed within 180 days following coal removal, and not more than four spoil ridges behind the pit being worked, the spoil from the active pit constituting the first ridge.

b. The division may extend the time allowed for rough backfilling and grading for the entire permit area or for a specified portion of the permit area if the permittee demonstrates in accordance with 27 IAC 40.36 / 30 CFR 780.18(b)"3" of these rules that additional time is necessary.

40.63(3) Add to 30 CFR 816.131(b) the sentence "The notice shall state a specific date when operations will resume."

40.63(4) Add to 30 CFR 816.131 a paragraph (c) that shall read as follows:

(c) The period of temporary cessation shall be a period of two years after which cessation will become permanent cessation and subject to the conditions of 30 CFR 816.132. The applicant may request one 12-month extension of the two-year time period. Approval of the extension request shall be at the discretion of the division administrator.

40.63(5) Delete 30 CFR 816.10.

40.63(6) Revegetation: Standards for success. Reserved.

40.63(7) Reserved.

40.63(8) Reserved.

40.63(9) Add at the end of 30 CFR 816.49(a)(10)(i) the sentence "Yearly inspection of the impoundments shall be done in the second quarter of each calendar year, and the inspection report shall be submitted to the division with the second quarter water monitoring report."

40.63(10) Reserved.

40.63(11) Reserved.

40.63(12) Delete 30 CFR 816.89 and insert in lieu thereof the following:

816.89 Disposal of noncoal mine wastes.

(a) Noncoal mine wastes including, but not limited to, grease, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities shall be placed and stored in a controlled manner in a landfill permitted by the Iowa department of natural resources

(DNR) pursuant to 561 IAC 101, 102, and 103. Lubricants, paints, and flammable liquids may not be buried in the State of Iowa but, along with other toxic wastes, must be disposed of in the legally prescribed manner. Iowa law prohibits final disposal of noncoal wastes within the permit area.

Pending final disposal at a permitted DNR facility, noncoal mine waste shall be placed and stored in a controlled manner in a designated portion of the permit area so as to ensure that leachate and surface runoff do not degrade surface or groundwater, that fires are prevented and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

Noncoal mine waste shall at no time be deposited in a refuse pile or impounding structure.

No excavation for or storage of noncoal mine waste shall be located within eight feet of any coal outcrop or coal storage area.

(b) Final disposal of noncoal mine wastes shall be in a designated, State-approved solid waste disposal site permitted by the Iowa department of natural resources pursuant to 561 IAC 101, 102, and 103.

(c) Notwithstanding any other provision in this chapter, any noncoal mine waste defined as "hazardous" under section 3001 of the Resource Conservation and Recovery Act (RCRA) (Public Law 94-580 as amended) and 40 CFR Part 261 shall be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations.

27—40.64(207) Permanent program performance standards—underground mining activities. The following is incorporated by reference: 30 CFR Part 817, as in effect on July 1, 1992, except as modified by subrules 40.1(3), 40.1(4), and 40.1(5) and with the following exceptions:

40.64(1) Reserved.

40.64(2) Delete 30 CFR 817.10 and 817.107.

40.64(3) Delete 30 CFR 817.61(c)(1) and insert the following:

(c) Blasters (1) All blasting operations shall be conducted under the direction of a blaster certified by the division.

40.64(4) Revegetation: Standards for success. Reserved.

40.64(5) Add to 30 CFR 817.131 a paragraph (c) that shall read as follows:

(c) The period of temporary cessation shall be a period of two years after which cessation will become permanent cessation and subject to the conditions of 30 CFR 817.132. The applicant may request one 12-month extension of the two-year time period. Approval of the extension request shall be at the discretion of the division administrator.

40.64(6) Delete from 30 CFR 817.121(c)(2) the phrase "To the extent required under applicable provisions of State law,".

40.64(7) Reserved.

40.64(8) Reserved.

27—40.65(207) Special permanent program performance standards—auger mining. The following is incorporated by reference: 30 CFR Part 819, as in effect on July 1, 1992.

27—40.66(207) Special permanent program performance standards—operations on prime farmland. The following is incorporated by reference: 30 CFR Part 823, as in effect on July 1, 1992, except for 30 CFR 823.11(a) which is deleted.

27—40.67(207) Permanent program performance standards—coal preparation plants not located within the permit area of a mine. The following is incorporated by reference: 30 CFR Part 827, as in effect on July 1, 1992, except for the following:

40.67(1) Delete 30 CFR 827.1.

40.67(2) Delete 30 CFR 827.13(a) and insert the following:

(a) Persons operating or who have operated coal preparation plants after April 10, 1981, shall comply with the applicable interim or permanent program performance standards for the Iowa program.

40.67(3) Proximity shall not be the decisive factor in deciding to regulate an off-site processing plant.

27—40.68 and **40.69** Reserved.

PART 7
COAL MINING—INSPECTION AND ENFORCEMENT

27—40.70 Reserved.

27—40.71(207) State regulatory authority—inspection and enforcement. The following is incorporated by reference: 30 CFR Part 840, as in effect on July 1, 1992, with the following exceptions:

40.71(1) Delete 30 CFR 840.1, 840.10, and 840.13.

40.71(2) The general word substitution for "director" does not apply in 30 CFR 840.14.

40.71(3) Delete from 30 CFR 840.11(d)(2) the words "section 521(a)(2) of the Act" and insert the words "Iowa Code section 207.14".

40.71(4) Delete from 30 CFR 840.11(g)(3)(ii) the words "section 518(e), 518(f), 521(a)(4) or 521(c) of the Act" and insert the words "Iowa Code subsections 207.15(6), 207.15(7), 207.14(3) and 207.14(8)", respectively.

40.71(5) Delete from 30 CFR 840.15 the words "43 CFR Part 4" and insert the words "Iowa Code section 207.14".

27—40.72(207) Inspections and monitoring.

40.72(1) *Requests for inspections.*

a. A person may request an inspection under Iowa Code section 207.13 by furnishing to an authorized representative of the administrator a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation exists. The statement shall set forth a phone number and address where the person can be contacted.

b. The identity of any person supplying information to the division relating to a possible violation or imminent danger or harm shall remain confidential with the division, if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under Iowa Code section 22.7, subsection 18.

c. If an inspection is conducted as a result of information provided to the division by a person as described in paragraph *"a"* of this subrule, the person shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the administrator during the inspection. Such person has a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which the person supplied information but only if in the presence of and under the control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

d. Within 10 days of the inspection or, if there is no inspection, within 15 days of receipt of the person's written statement, the division shall send the person the following:

(1) If an inspection was made, a description of the enforcement action taken, which may consist of copies of the inspection report and all notices of violation and cessation orders issued as a result of the inspection, or an explanation of why no enforcement action was taken;

(2) If no inspection was conducted, an explanation of the reason why; and

(3) An explanation of the person's right, if any, to informal review of the action or inaction of the division under subrule 40.72(3).

e. The division shall give copies of all materials in paragraph *"d,"* subparagraphs (1) and (2), of this subrule, within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the person supplying information shall be removed unless disclosure of the person's identity is permitted under paragraph *"b"* of this subrule.

40.72(2) *Review of adequacy and completeness of inspections.* Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration operation may notify the administrator or designee in writing of any alleged failure on the part of the division to make adequate and complete or periodic State inspections. The notification shall include sufficient information to create a reasonable belief that these rules are not being complied with and to demonstrate that the person is or may be adversely affected. The administrator or designee shall within 15 days of receipt of the notification determine whether adequate and complete or periodic inspections have been made. The administrator or designee shall furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

40.72(3) *Review of decision not to inspect or enforce.*

a. Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may ask the administrator or designee to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for inspection under subrule 40.72(1). The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

b. The administrator or designee shall conduct the review and inform the person, in writing, of the results of the review within 30 days of receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the person who is or may be adversely affected shall not be disclosed unless confidentiality has been waived or disclosure is required under Iowa Code section 22.7, subsection 18.

c. Informal review shall not affect any right to formal review under Iowa Code section 207.14 or to a citizen's suit under Iowa Code section 207.17.

d. Any determination made under paragraph *"b"* of this subrule shall constitute a decision of the division within the meaning of Iowa Code section 207.14 and shall contain a right of appeal to the division in accordance with Iowa Code section 207.14.

27—40.73(207) Enforcement.

40.73(1) *Definitions.* As used in this Part 7, the following terms have the specified meanings:

"Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of the permit or any requirement of Iowa Code chapter 207 due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit of Iowa Code chapter 207 due to indifference, lack of diligence, or lack of reasonable care.

"Willful violation" means an act or omission which violates Iowa Code chapter 207, these rules or any permit condition required by Iowa Code chapter 207 or these rules, committed by a person who intends the result which actually occurs.

40.73(2) *Cessation orders.*

a. Cessation orders following State inspections:

(1) An authorized representative of the administrator shall immediately order a cessation of surface coal mining and reclamation operations or of the relevant portion thereof, if the representative finds, on the basis of any State inspection, any condition or practice, or any violation of Iowa Code chapter 207, these rules or any condition of an exploration approval or permit imposed under any such program, Iowa Code chapter 207 or these rules which:

- Creates an imminent danger to the health or safety of the public; or
- Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(2) Surface coal mining and reclamation operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected

to cause significant, imminent environmental harm to land, air or water resources, unless such operations:

- Are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations; or
- Were conducted lawfully without a permit under the interim regulatory program because no permit has been required for such operations by the division.

(3) If the cessation ordered under paragraph *"a,"* subparagraph (1), of this subrule will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the administrator shall impose affirmative obligations on the permittee to abate the imminent danger or significant environmental harm. The order shall specify the time by which abatement shall be accomplished.

b. Cessation orders following expiration of abatement period:

(1) When a notice of violation has been issued under 40.73(3)*"a"* and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative, the authorized representative of the administrator shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the portion relevant to the violation.

(2) A cessation order issued under this paragraph *"b"* shall require the permittee to take all steps the authorized representative of the administrator deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

c. A cessation order issued under paragraphs *"a"* or *"b"* of this subrule shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

(1) The nature of the condition, practice or violation;

(2) The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;

(3) The time established for abatement if appropriate; and

(4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

The order shall remain in effect until the condition, practice or violation resulting in the issuance of the cessation order has been abated or until vacated, modified or terminated in writing by an authorized representative of the administrator, or until the order expires pursuant to Iowa Code section 207.14(6) and subrule 40.73(6).

d. Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

e. An authorized representative of the administrator may modify, terminate or vacate a cessation order for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee.

f. An authorized representative of the administrator shall terminate a cessation order by written notice to the permittee when the representative determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of the division to assess civil penalties for those violations under rule 27—40.74(207).

g. Within 60 days after the issuance of a cessation order, the division shall notify in writing any person who has been identified under 27—40.31(207), 30 CFR 773.17(i), and 27—40.34(207), 30 CFR 778.13(c) and (d), as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

40.73(3) *Notices of violation.*

a. An authorized representative of the administrator shall issue a notice of violation if, on the basis of a State inspection carried out during the enforcement of a State program, the representative finds a violation of Iowa Code chapter 207, these rules, or any condition of a permit or an exploration approval imposed under such program, Iowa Code chapter 207, or these rules, which does not create an imminent danger or harm for which a cessation order must be issued under subrule 40.73(2).

b. A notice of violation shall be in writing signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

(1) The nature of the violation;

(2) The remedial action required, which may include interim steps;

(3) A reasonable time for abatement, which may include time for accomplishment of interim steps; and

(4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

c. An authorized representative of the administrator may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in paragraph *"f"* of this subrule. An extended abatement date pursuant to this subrule shall not be granted when the permittee's failure to abate within 90 days has been caused by lack of diligence or intentional delay by the permittee in completing the remedial action required.

d. If the permittee fails to meet the time set for abatement the authorized representative shall issue a cessation order under 40.73(2)*"b."*

If the permittee fails to meet the time set for accomplishment of any interim step, the authorized representative may issue a cessation order under 40.73(2)*"b."*

e. An authorized representative of the administrator shall terminate a notice of violation by written notice to the permittee when it is determined that all violations listed in the notice of violation have been abated. Termination shall not affect the right of the division to assess civil penalties for those violations under rule 27—40.74 (207).

f. Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

(2) Where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which the permittee has no other effective legal remedy;

(3) Where the permittee cannot abate within 90 days due to a labor strike;

(4) Where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or

(5) Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

g. Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

h. If any of the conditions in paragraph *"f"* of this subrule exist, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the administrator or designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that the permittee is entitled to an extension under the provisions of 40.73(3)*"c"* and *"f."* In determining whether or not to grant an abatement period exceeding 90 days, the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file the reasons for granting or denying the request. The authorized representative's immediate supervisor shall review this document before con-

curring in or disapproving the extended abatement date and shall promptly and fully document the reasons for concurrence or disapproval in the file.

i. Any determination made under paragraph *"h"* of this subrule shall contain a right of appeal to the division in accordance with Iowa Code section 207.14.

j. No extension granted under paragraph *"h"* of this subrule may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of paragraph *"h"* of this subrule.

40.73(4) *Suspension or revocation of permits.*

a. Order for show cause:

(1) The administrator shall issue an order to a permittee requiring the permittee to show cause why the permit and right to mine under Iowa Code chapter 207 should not be suspended or revoked, if the administrator determines that a pattern of violations of any requirements of Iowa Code chapter 207, these rules, or any permit condition required by Iowa Code chapter 207 exists or has existed, and that the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

(2) The administrator may determine that a pattern of violations exists or has existed, based upon two or more State inspections of the permit area within any 12-month period, after considering the circumstances, including:

- The number of violations, cited on more than one occasion, of the same or related requirements of Iowa Code chapter 207, these rules, or the permit;
- The number of violations, cited on more than one occasion, of different requirements of Iowa Code chapter 207, these rules, or the permit; and
- The extent to which the violations were isolated departures from lawful conduct.

(3) The administrator shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of Iowa Code chapter 207, these rules, or the permit during three or more State inspections of the permit area within any 12-month period. If, after such review, the administrator determines that a pattern of violations exists or has existed, the administrator shall issue an order to show cause as provided in paragraph *"a,"* subparagraph (1), of this subrule.

b. If the permittee files an answer to the show cause order and requests a hearing under Iowa Code section 207.14, a public hearing shall be provided. The division shall give 30 days' written notice of the date, time and place of the hearing to the permittee, and any intervenor. Upon receipt of the notice, the administrator shall publish it, if practicable, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations and shall post it in the division.

c. Within 60 days after the hearing, and within the time limits set forth in Iowa Code section 207.14, the division shall issue a written determination as to whether a pattern of violations exists and, if appropriate, an order. If the division revokes or suspends the permit and the permittee's right to mine under Iowa Code chapter 207, the permittee shall immediately cease surface coal mining operations on the permit area and shall:

(1) If the permit and the right to mine under Iowa Code chapter 207 are revoked, complete reclamation within the time specified in the order; or

(2) If the permit and the right to mine under Iowa Code chapter 207 are suspended, complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

d. Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the administrator shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this subrule, and shall issue an order to show cause as appropriate pursuant to rule 27—40.74(207).

40.73(5) *Service of notices of violation, cessation orders, and show cause orders.*

a. A notice of violation, cessation order, or show cause order shall be served on the person to whom it is directed or the person's designated agent promptly after issuance as follows:

(1) By tendering a copy at the coal exploration or surface coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to paragraph *"a,"* subparagraph (1), of this subrule, service may be made by sending a copy of the notice or order by certified mail or by hand to the permittee or designated agent. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

b. Designation by any person of an agent for service of notices and orders shall be made in writing to the division.

c. The division may furnish copies of notices and orders to any person having an interest in the coal exploration, surface coal mining and reclamation operation, or the permit area.

40.73(6) *Informal public hearing.*

a. Except as provided in paragraphs *"b"* and *"c"* of this subrule, a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing has been held within that time. The purpose of the hearing is to provide the division with information needed to decide whether or not to extend the cessation of mining. The hearing shall be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the division and the person to whom the notice or order was issued. The division office shall be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the division. Expiration of a notice or order shall not affect the division's right to assess civil penalties with respect to the period during which the notice or order was in effect. No hearing will be required where the condition, practice, or violation in question has been abated or the hearing has been waived. For purposes of this subrule only, "mining" includes (1) extracting coal from the earth or from coal waste piles and transporting it within or from the permit area, and (2) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than at a mine site.

b. A notice of violation or cessation order shall not expire as provided in paragraph *"a"* of this subrule if the informal public hearing has been waived, or if, with the consent of the person to whom the notice or order was issued, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of this subrule:

(1) The informal public hearing will be deemed waived if the person to whom the notice or order was issued:

- Is informed, by written notice served in the manner provided in paragraph *"b,"* subparagraph (2), of this subrule, that the person will be deemed to have waived an informal public hearing unless one is requested within 30 days after service of the notice; and
- Fails to request an informal public hearing within that time.

(2) The written notice referred to in subrule 40.73(6)*"b"*(1) shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than five days after the notice or order is served on such person.

(3) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if a request is received on or after the twenty-first day after service of the notice or order. The extension of time shall be equal to the number of days elapsed after the twenty-first day.

c. The division shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(1) The person to whom the notice or order was issued; and

(2) Any person who filed a report which led to that notice or order.

d. The division shall also post notice of the hearing in the division and, where practicable, publish it in a newspaper of general circulation in the area of the mine.

e. Iowa Code chapter 17A regarding requirements for formal adjudicatory hearings shall not govern informal public hearings. An informal public hearing shall be conducted by a representative of the division, who may accept oral or written arguments and any other relevant information from any person attending.

f. Within five days after the close of the informal public hearing, the division shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to:

(1) The person to whom the notice or order was issued; and

(2) Any person who filed a report which led to the notice or order.

g. The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under Iowa Code section 207.14 or 207.15.

h. The person conducting the hearing for the division shall determine whether or not the mine site should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the mine site will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or of the required remedial action.

40.73(7) *Formal review of citations.*

a. A person issued a notice of violation or cessation order under subrule 40.73(2) or 40.73(3), or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of that action by filing an application for review and request for hearing under Iowa Code section 207.14 within 30 days after receiving notice of the action.

b. The filing of an application for review and request for a hearing under this subrule shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

40.73(8) *Inability to comply.*

a. No cessation order or notice of violation issued under this Part 7 may be vacated because of inability to comply.

b. Inability to comply may not be considered in determining whether a pattern of violations exists.

c. Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under rule 27—40.74(207) and of the duration of the suspension of a permit under 40.73(4)*"c."*

40.73(9) *Compliance conference.*

a. A permittee may request an on-site compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of Iowa Code section 207.13.

b. The division may accept or refuse any request to conduct a compliance conference under paragraph *"a"* of this subrule. Where the division accepts such a request, reasonable notice of the scheduled date and time of the compliance conference shall be given to the permittee.

c. The authorized representative at any compliance conference shall review such proposed conditions and practices as the permittee may request in order to determine whether any such condition or practice may become a violation of any requirement of Iowa Code chapter 207 or any applicable permit or exploration approval.

d. Neither the holding of a compliance conference under this subrule nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the division or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such conference; or

(2) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

27—40.74(207) Civil penalties. The following is incorporated by reference: 30 CFR Part 845, as in effect on July 1, 1992, with the following exceptions:

40.74(1) Delete from 30 CFR 845.13(b)(1) the words "One point shall be assigned for each past violation contained in a notice of violation" and insert the words "One point shall be assigned for each past notice of violation of a similar nature".

40.74(2) Delete 30 CFR 845.1.

40.74(3) Delete from 30 CFR 845.2 the words "section 518 of the Act" and insert the words "Iowa Code section 207.15".

Delete from 30 CFR 845.15(b) the words "section 521(a) of the Act" and insert the words "Iowa Code section 207.14".

Delete from 30 CFR 845.15(b)(1)(i) the words "section 525(c) of the Act" and insert the words "Iowa Code section 207.14, subsection 7".

Delete from 30 CFR 845.15(b)(1)(ii) the words "section 526 of the Act" and "section 526(c) of the Act" and insert the words "Iowa Code section 207.15".

Delete from 30 CFR 845.15(b)(2) the words "section 518(e), 518(f), 521(a)(4), or 521(c) of the Act" and insert the words "Iowa Code sections 207.15(6), 207.15(7), 207.14(3) or 207.14(8)", respectively.

Delete from 30 CFR 845.15(b)(1)(i) the words "Office of Hearings and Appeals" and insert the word "division".

40.74(4) Delete from 30 CFR 845.17(c) the phrase "Unless a conference has been requested," and add a new sentence to the end of the paragraph that reads "The reassessment shall be served as a Notice of Assessment."

40.74(5) "Procedures for assessment conference" are created by deleting 30 CFR 845.18 and establishing procedures for the same in this subrule.

a. The division will arrange for an assessment conference to review the Notice of Assessment, upon written request of the person to whom notice or order was issued, if the request is received within 30 days from the date the Notice of Assessment is mailed.

b. The division administrator or the administrator's designee shall hold the assessment conference.

(1) The assessment conference shall be considered an informal proceeding and shall not be governed by Iowa Code chapter 17A, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days of the date the conference request is received or the end of the abatement period, whichever is later. However, failure by the division to hold such a conference within 60 days from the date of the conference request shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

(2) The division shall post notice of the time and place of the conference at least five days prior to the conference. Any person shall have a right to attend and participate in the conference.

(3) The division administrator or the administrator's designee shall consider all relevant information on the violation. Within 30 days after the conference is held, the division shall either:

- Settle the issues, in which case a settlement agreement shall be prepared and signed by the permittee and the division; or
- Affirm, raise, lower, or vacate the penalty.

c. The division shall promptly serve the person assessed with a notice of the agency's action in the manner provided in 30 CFR 845.17(b), and shall provide a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's actions shall be fully documented in the file.

d. Terms of settlement agreement.

(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by the division within 30 days after the date of signing the settlement agreement, the division may enforce the

agreement or rescind it and either affirm, raise, lower, or vacate the penalty within 30 days from the date of the recision.

e. The division may terminate the conference when the administrator or the administrator's designee determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

f. No evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness at a subsequent contested case or judicial proceeding.

40.74(6) Procedures to prepare a Request for a Hearing are created by deleting 30 CFR 845.19 and establishing procedures for the same in this subrule.

a. The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty, or if a conference has been held, the reassessed or affirmed penalty to the division (to be held in escrow as provided for in paragraph *"b"* of this subrule) within 30 days of receipt of the proposed assessment or reassessment or 30 days from the date of service of the division's action, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under subrule 40.73(7).

b. The division shall hold all funds submitted under paragraph *"a"* of this subrule in an interest-bearing escrow fund, pending completion of the administrative and judicial review process, at which time funds shall be disbursed as provided in subrule 40.74(7). Interest shall accrue at the prevailing earnings rate for the fiscal year for the pooled investment fund of the State of Iowa.

40.74(7) Procedures for determining Final Assessment are created by deleting 30 CFR 845.20 and establishing procedures for the same in this subrule.

a. If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in 40.74(6)*"a,"* the Notice of Assessment shall become a final order of the division and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

b. If any party requests judicial review of a final order of the division, the proposed penalty shall continue to be held in escrow until completion of the review.

c. If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this subrule, the division shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund.

d. If the review results in an order increasing the penalty, the person or entity to whom the notice or order was issued shall pay the difference to the division within 15 days after the order is mailed to such person.

40.74(8) Use of civil penalties for reclamation. In accordance with Iowa Code section 207.10(6), the division may expend funds collected from civil penalties to perform reclamation work on sites where the bond has been forfeited and additional funds are needed to complete the reclamation of the site.

27—40.75(207) Individual civil penalties. The following is adopted by reference: 30 CFR Part 846, as in effect on July 1, 1992, with the following exceptions:

40.75(1) Delete 30 CFR 846.1.

40.75(2) Delete the definition for "Violation, failure or refusal" at 30 CFR 846.5 and insert in lieu thereof the following:

"Violation, failure, or refusal" means—

(1) A violation of a condition of an approved permit pursuant to the Iowa program or an enforcement action pursuant to Iowa Code section 207.14, or

(2) A failure or refusal to comply with any order issued under Iowa Code section 207.14 or any order incorporated in a final decision issued by the administrator, except an order incorporated in a decision issued under subrule 40.74(7) or rule 27—40.7(207).

40.75(3) Delete 30 CFR 846.17(b)(1) and insert in lieu thereof:

(1) The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the administrator; or

40.75(4) Delete 30 CFR 846.17(c) and insert in lieu thereof the following:

(c) Service. For purposes of this subrule, service is sufficient if it would satisfy Division III of the Iowa rules of civil procedure for service of an original notice and petition.

27—40.76 to **40.79** Reserved.

PART 8
COAL MINING—BLASTER CERTIFICATION

27—40.80 Reserved.

27—40.81(207) Permanent regulatory program requirements—standards for certification of blasters. The following is incorporated by reference: 30 CFR Part 850, as in effect on July 1, 1992, with the following exceptions:

40.81(1) Amend 30 CFR 850.15 by adding paragraph (f) as follows:

(f) Reciprocal certification.

(1) The division may issue an Iowa blaster certificate to a qualified applicant who holds a valid blaster's certification granted by the Office of Surface Mining Reclamation and Enforcement (OSMRE).

(2) The division may issue an Iowa blaster certificate through reciprocity to a qualified applicant that holds a valid State blaster's certification granted by a State regulatory authority under OSMRE approved blaster certification and regulatory program.

(3) A reciprocal blaster's certification issued in Iowa will expire on the same date as the expiration of the original State's certification. Renewal will be by reexamination.

(4) Blaster's certification from other states will not be honored or recognized in Iowa except by reciprocal issuance as outlined in this rule. Blasters from states without OSMRE approved blaster certification may become certified in Iowa by passing the Iowa certification test.

40.81(2) Delete 30 CFR 850.10.

27—40.82(207) Certification of blasters. The following is incorporated by reference: 30 CFR Part 955, as in effect on July 1, 1992, with the following exceptions:

40.82(1) Delete 30 CFR 955.1 and 955.2.

40.82(2) Delete 30 CFR 955.13(a)(1) and (2).

40.82(3) Delete 30 CFR 955.10.

40.82(4) Delete from 30 CFR 955.5 the definition of "Reciprocity" and delete 30 CFR 955.16.

40.82(5) Delete from 30 CFR 955.17(c) the phrase "to the Department of the Interior Board of Land Appeals under 43 CFR 4.1280 and 4.1286" and insert in lieu thereof the phrase "as a contested case action pursuant to Iowa Code chapter 17A".

27—40.83 to **40.89** Reserved.

PART 9
COAL MINING—CONTESTED CASES AND PUBLIC HEARINGS

27—40.90 Reserved.

27—40.91(17A,207) Procedural rules—contested cases and public hearings. These rules shall govern procedures in contested cases, as defined in Iowa Code section 17A.2(2), and public hearings required to be held pursuant to the provisions of Iowa Code chapter 207.

27—40.92(17A,207) Contested cases. Contested cases include, but are not limited to, the following:

40.92(1) An appeal of a decision to grant or deny a permit pursuant to Iowa Code sections 207.4 and 207.5; approval or failure to approve a transfer pursuant to Iowa Code section 207.12(5); appeal of a decision of the division on an application for coal exploration pursuant to Iowa Code section 207.18.

40.92(2) Permit suspension or revocation proceedings pursuant to Iowa Code sections 207.14(3) and 207.14(4).

40.92(3) Review of a notice or order pursuant to Iowa Code section 207.14(7).

40.92(4) Employee discrimination complaints pursuant to Iowa Code section 207.28.

40.92(5) Suspension or revocation of a mining license pursuant to Iowa Code section 207.3.

40.92(6) Bond forfeiture proceedings pursuant to Iowa Code section 207.14.

40.92(7) Appeal of the determination by the division of the amount of a bond pursuant to Iowa Code section 207.10.

40.92(8) A request to conduct mining in areas where otherwise prohibited by Iowa Code section 207.8 and 30 CFR 761.11, revised July 1, 1992.

40.92(9) A petition requesting designation of an area as unsuitable for mining, or termination of such a designation, pursuant to Iowa Code section 207.8 and rule 27—40.23(207).

40.92(10) Review of a civil penalty pursuant to Iowa Code section 207.15.

27—40.93(17A,207) Commencement of proceeding. A notice of order by the division shall be served as in civil actions, delivered by certified mail, or personally served by a division employee with a signed acknowledgment of receipt being taken from an employee or agent of the permittee. In bond forfeiture, the surety shall also be served.

27—40.94(17A,207) Appeals of division notices and orders.

40.94(1) An appeal of a notice or order for which a contested case hearing is requested shall be mailed or personally delivered to the administrator and:

a. Shall be made in writing and signed by the requesting party or representative;

b. Shall identify the notice or order being appealed;

c. Shall be served in a timely manner as stated in Iowa Code section 207.14;

d. May state other relevant information as desired by the requesting party.

40.94(2) In a bond forfeiture proceeding a copy of the notice of appeal shall be served to the surety.

40.94(3) Upon receipt of an appeal, the administrator shall assign a docket number to the appeal as follows: D.S.C. (coal) (State fiscal year in which received)—(number, being consecutively numbered in each year).

27—40.95(17A,207) Prehearing motions. To the greatest extent possible and not inconsistent with Iowa Code chapters 17A and 207, prehearing motions may be filed and ruled upon in a manner consistent with the Iowa rules of civil procedure. In considering a prehearing motion, the administrative law judge may consider the practicality of receiving evidence or consolidating the motion into the full evidentiary hearing.

27—40.96(17A,207) Issuance of notices of hearing.

40.96(1) A hearing date shall be set upon the request of the division or any party and shall be arranged by the division through the department of inspections and appeals. The department of inspections and appeals shall assign an administrative law judge to the proceeding. The request shall be served to all parties of record.

40.96(2) The administrative law judge shall issue notice of hearing to all parties at least 30 days prior to the date of hearing, unless an earlier date is agreed to by all parties.

40.96(3) The notice of hearing shall conform to Iowa Code section 17A.12(2).

27—40.97(17A,207) Hearing procedures.

40.97(1) An administrative law judge selected pursuant to Iowa Code section 17A.11 shall preside at all contested cases.

40.97(2) Oral proceedings of a contested case shall be recorded by electronic or mechanized means or by certified shorthand reporters.

27—40.98(17A,207) Posthearing procedures.

40.98(1) Within 20 days of the conclusion of the hearing, each party may file with the administrative law judge and all parties of record proposed findings of fact, conclusions of law, a proposed order, or a brief in support of specified findings and conclusion. Said brief shall contain all arguments concerning evidentiary rulings made during hearing or challenges to the jurisdiction of the division to conduct the hearing and order the relief requested by the division or a party of record.

40.98(2) Within 20 days of receipt of proposed findings of fact, conclusions of law, order, or brief, parties may file a brief responding to opposing briefs, and may submit additional proposed findings of fact, conclusions of law, or order.

27—40.99(17A,207) Decision of the administrative law judge, procedure in appeals before the committee, extensions of time, public hearings, and judicial review of the committee decision.

40.99(1) *Decision of the administrative law judge.*

a. Decisions of the administrative law judge shall conform to the provisions of Iowa Code section 17A.16(1).

b. A decision of the administrative law judge is a proposed decision pursuant to Iowa Code section 17A.15(2).

c. An appeal to the committee may be initiated by the division or a party of record by filing with the administrator, and serving on all parties, a written statement captioned "Notice of Appeal to the State Soil Conservation Committee," which shall also state the number of the notice or order involved in the hearing and the docket number assigned by the administrator to the contested case proceeding.

d. Appeal of the decision of the administrative law judge shall be made pursuant to Iowa Code section 17A.15(3). If an application for a rehearing has been filed, appeal to the committee shall be made within 30 days after the issuance of a decision after rehearing, a decision denying a rehearing, or the date on which the rehearing is deemed denied pursuant to Iowa Code section 17A.16(2).

40.99(2) *Procedure in appeals before the committee.*

a. An appeal before the committee shall be conducted according to the provisions of Iowa Code section 17A.15(3).

b. The administrator shall set a date for the committee hearing at least 30 days after receipt of the notice of appeal to the committee.

c. A decision of the committee shall be issued within 60 days of the close of the hearing before them.

40.99(3) *Extensions of time.* The period of time in which an action is required by Part 9 of these rules may be extended for good cause by the administrative law judge or the committee, as appropriate.

40.99(4) *Public hearings.* Public hearings, also referred to as informal conferences, are held by the division to gather information prior to making a decision regarding the approval of a permitting action, issues relating to lands unsuitable for mining, or the extension of cessation of mining.

The administrator or designee shall act as the administrative law judge.

The division will provide notice to the public by publishing in a newspaper of local circulation at least 14 days prior to the hearing the following: purpose of the hearing, the place, date, and time of the hearing.

40.99(5) *Judicial review of committee decision.* Judicial review of a decision of the committee shall be in accordance with Iowa Code chapter 17A. In the case of judicial review of a civil penalty assessment, the petitioner shall post a bond in the district court equal to the amount of the assessed penalty or shall deposit a sum equal in amount to the assessed penalty in an interest-bearing escrow fund approved by the division, as required under Iowa Code section 207.15.

PART 10
COAL MINING—FORMS

Reserved

These rules are intended to implement Iowa Code chapter 207.

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CHAPTERS 41 to 49
Reserved

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