**Section 280.70 Prime Farmland Determinations and Findings**

a) All Surface Mines Covered. Every Illinois surface coal mining operation is subject to this Section, unless exempt pursuant to Section 510 (d) (2) of the Federal Act, as applied pursuant to Paragraph (b) below.

b) Exemption

1) This Section shall not apply to mines open for ongoing operations immediately prior to August 3, 1977, to permits issued before August 3, 1977, or to operations under renewals or revisions of such permits. Revisions or renewals of such permits under this Paragraph (b) shall extend to and include only those areas that:

A) were in the area covered by a permit issued, or were in a mining plan approved prior to August 3, 1977; or

B) are contiguous to areas for which a permit was issued or a mining plan approved before August 3, 1977, and which under state law or regulation, or practice, normally would have been considered a renewal or revision of a previously approved mining plan.

2) Persons claiming an exemption under this Paragraph (b) shall have the burden of establishing such exemption. Reliance upon an exemption hereunder shall not excuse a failure to comply with this Section, unless the area and time involved in the exemption relied on are approved in writing by the Authority, by OSM, or by court order in a case in which the Authority or OSM are parties. Nothing in this Section shall excuse compliance with the more stringent parts of 62 Ill. Adm. Code 300.110(d) or other applicable provisions of the Illinois Act. The subsequent granting of an exemption shall not constitute a defense to an enforcement proceeding brought for prior failure to meet the prime farmland requirements.

c) Prime Farmlands. Prime farmlands are those lands defined in 30 CFR 716.7(b), that have been used for the production of cultivated crops, including nurseries, orchards, and other specialty crops, and small grains, for at least five years out of the twenty years preceding the date of determination or, in the case of applications for new mining permits, the date of application. The date of determination shall, in the case of existing mines, be August 3, 1977.

d) Identification of Prime Farmland. Existing operations not exempt under this Paragraph (d) and all applicants for mining permits after August 2, 1977, not exempt pursuant to Paragraph (b), must have on file with the Authority soil surveys meeting the requirements of 30 CFR 716.7(c), except as to areas for which an application for negative determination has been made pursuant to 30 CFR 716.7(d). All applicants hereunder shall submit soil surveys required by 30 CFR 716.7(c) or apply for negative determination at the time of application.

e) Negative Determination. The Authority shall make a negative determination upon submittal of a demonstration that any of the situations listed in 30 CFR 716.7(d) exists.

f) Plan for Restoration. All operations in areas not exempt under Paragraph (b) must submit a plan for mining and reclamation of prime farmland within the area under permit, or under a proposed permit, as the case may be. The plan shall include the information required under 30 CFR 716.7(e), and may include any additional information that the submitter believes will be relevant and helpful to the making of a determination by the Authority under 30 CFR 716.7(f)(l)(i). Prior to making its determination, the Authority will consult with the Soil Conservation Service, pursuant 30 CFR 716.7(f)(2). In the case of applications covering areas of surface mines as to which no public hearing has been held under Section 5(f) of the Illinois Act, the Authority shall consult with and receive comments from the Interagency Review Committee and local County Board under Section 17(f)(3) of the Illinois Act. All non-exempt existing mines must have the plan required under this subparagraph currently on file with the Authority at the time of application for all other mines. Prime farmland determinations shall have priority over other determination requests except emergency situations. The Regulatory Authority will make a finding within 45 days of receipt of a prime farmland determination request unless for good cause the Authority finds that it must extend the time for its finding.