

FEDERAL REGISTER: 44 FR 36886 (June 22, 1979)

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 715 and 717

Surface Coal Mining and Reclamation Operations; Initial Regulatory Program

ACTION: Final rule.

SUMMARY: These regulations confirm clearance by the General Accounting Office and concurrence by the Administrator, U.S. Environmental Protection Agency of surface mining reclamation and enforcement regulations requiring reporting of water-quality information by operators of surface and underground coal mines during the initial regulatory program of Title V of the Surface Mining Control and Reclamation Act of 1977 ("SMCRA"), Pub. L. 95-87. Modifications have been made to the rules to make reporting time period requirements more consistent with similar requirements of the Environmental Protection Agency and to eliminate the filing of duplicate reports.

EFFECTIVE DATE: June 22, 1979.

ADDRESSES: (1) Assistant Director for Technical Services and Research, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240; (2) Administrative Record Office, Room 135, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240; telephone number: 202-343-4728; and (3) Assistant Director, Regulatory Reports Review, U.S. General Accounting Office, Room 5106, 441 G Street, NW., Washington, D.C. 20548.

FOR FURTHER INFORMATION CONTACT: Lewis McNay, Mining Engineer, Division of Applied Research, Technical Services and Research, Office of Surface Mining, Telephone: (202) 343-2184.

SUPPLEMENTAL INFORMATION:

1. On December 13, 1977, the Secretary of the Interior promulgated regulations at Title 30, Code of Federal Regulations, Chapter VII (42 FR 62639-62716) under Section 501(a) of the SMCRA, 30 U.S.C. 1251, to establish an initial regulatory program for surface coal mining and reclamation operations. A number of those regulations required the collection, submission or retention of information and were, therefore, adopted subject only to review by the General Accounting Office (GAO) pursuant to 44 U.S.C. 3512. See 42 FR 62675 (Dec. 13, 1977). The GAO solicited public comments on these regulations by notice in the Federal Register on December 23, 1977 (42 FR 64436-64438). GAO clearance of most of the regulations was given on February 3, 1978. On February 7, 1978, OSM published final rules for the regulations which had received GAO clearance (43 FR 5001-5002).
2. At that time, OSM noted that GAO clearance had not been obtained for Sections 715.17(b)(1)(v) and 717.17(b)(1)(v) of the initial program regulations. In fact, GAO had raised certain issues regarding those provisions during its review of the OSM rules in January 1978. In response, the Department submitted draft amendatory rules to GAO for conditional approval by letter of February 3, 1978. At the time that GAO clearance of most of the OSM initial program rules was announced in the Federal Register, it was explained that OSM planned to amend Sections 715.17(b)(1)(v) and 717.17(b)(1)(v) in several respects, at GAO's suggestion, with final rules to be published after the receipt of written concurrence of the amended rules by the Administrator, U.S. Environmental Protection Agency, as required by Section 501(a), SMCRA. (42 FR 5001). By letter of March 2, 1978, the Department transmitted the draft amended rules to the Administrator, EPA, requesting his concurrence. On March 13, 1978, the Department advised GAO of its request for EPA concurrence.
3. The Administrator's concurrence was issued by letter of August 9, 1978, subject to certain modifications proposed by the Administrator to the draft amended rules previously transmitted to EPA by the Department on March 2, 1978. Finding that the modifications suggested by the Administrator were acceptable, the Department requested final GAO clearance of the draft amended rules by letter of October 18, 1978. GAO clearance was issued by letter of November 9, 1978. The reporting requirement contained in 30 CFR 715.17(b)(1)(v) was approved under GAO number B-190462 (RO 494). The reporting Requirement of 30 CFR 717.17(b)(1)(v) was approved under GAO number B-190462 (RO 496).

4. Authority for the promulgation of Sections 715.17(b)(1)(v) and 717.17(b)(1)(v) is sections 102, 201(c), 501(a), 515, 516, and 517, SMCRA. The basis and purpose of the rules was explained, in general, in the preamble to the initial program rules as originally published in the Federal Register, on December 13, 1977. (42 FR 62651). The explanation is adopted by reference, subject to the changes in the rules discussed below.

5. As adopted, Section 715.15(b)(1)(v) established one of the five sets of minimum criteria required for surface-water self-monitoring and reporting activities by persons conducting surface coal mining and reclamation operations during the initial regulatory program. Section 717.17(b)(1)(v) provides corresponding criteria applicable to persons conducting underground coal mining and reclamation operations. As a result of review by GAO and concurrence by the Administrator, EPA, several changes have been made in these rules from the versions published in the Federal Register on December 18, 1977.

First, a change has been made in the requirement that a report of all sample measurements of discharges to surface waters generally be made within 60 days of sample collection. The final rule allows for two alternative reporting periods. First, reports are to be made to the regulatory authority by the discharger within 60 days of the end of each 60-day sample collection period. However, as suggested by GAO, a second alternative acceptable method to this requirement has been specified to avoid possible duplication of reporting.

Under the second alternative, a discharger can satisfy self monitoring reporting under the SMCRA through compliance with equivalent time period reporting requirements under the NPDES permit system of the Clean Water Act. Use of the second alternative is conditioned upon the discharges being subject to NPDES requirements which are, in fact, substantially equivalent to the first alternative requirements.

Second, at EPA's suggestion, the first alternative method of reporting has been modified in the final rule to specify that reports be submitted 60 days after the end of each 60-day sample collection period. This was done to allow the discharger sufficient time to have water samples analyzed before routine reports are made.

Also at EPA's suggestion, the final rules have been modified to require that, when sample analyses indicate violations of an NPDES permit effluent limit, then the appropriate EPA violation reporting form will be used by the discharger. The requirements that all violations be reported immediately upon detection to the regulatory authority has, of course, been retained, to insure that appropriate corrective and other enforcement actions are timely taken.

6. As it was announced that these rules would be published in final form soon after receipt of GAO clearance and because their effect is to lessen burdens on dischargers by eliminating duplicative reporting requirements and by making the timing of reports coincide with that required by EPA, they are being made effective upon publication. Copies of all agency correspondence pertaining to the adoption of these rules are available for public inspection at the OSM Administrative Records Office, South Interior Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240; telephone: 202-343-4728.

7. The amendments to these rules have not been processed under 43 CFR 14.1 et seq., because all significant steps in their development were completed prior to January 26, 1979. See 43 CFR 14.1(b)(2) (43 FR 58296). See also 42 FR 62640. Regulation Drafters

Principal authors of these rules were David R. Maneval, Assistant Director, Technical Services and Research, OSM, and David Buente, Office of the Solicitor, Division of Surface Mining.

30 CFR 715.17(b)(1)(v) and 717.17(b)(1)(v) are effective on June 22, 1979.

Dated: June 14, 1979.

Toney Head, Jr., Acting Director, Office of Surface Mining Reclamation and Enforcement. {36887}

In consideration of the foregoing, 30 CFR Chapter VII is amended as follows:

PART 715 -- GENERAL PERFORMANCE STANDARDS

1. In 30 CFR 715.17, paragraph (b)(1)(v) is revised to read as follows:

SECTION 715.17 - PROTECTION OF THE HYDROLOGIC SYSTEM.

(b) * * *

(1) * * *

(v) Within sixty (60) days of the end of each sixty (60) day sample collection period, a report of all samples shall be made to the regulatory authority, unless the discharge for which water monitoring reports are required is subject to regulation by a National Pollution Discharge Elimination System (NPDES) permit issued in compliance with the Clean Water Act of 1977 (33 U.S.C. 1251-1378), (A) which includes equivalent reporting requirements, and (B) which requires filing of the water monitoring report within 90 days or less of sample collection. For such discharges, the reporting requirements of this paragraph may be satisfied by submitting to the regulatory authority on the same time schedule as required by the NPDES permit or within ninety (90) days following sample collection, whichever is earlier, either (1) a copy of the completed reporting form filed to meet the NPDES permit requirements, or (2) a letter identifying the State or Federal government official with whom the reporting form was filed to meet the NPDES permit requirements and the date of filing. In all cases in which analytical results of the sample collections indicate a violation of a permit condition or applicable standard has occurred, the operator shall notify the regulatory authority immediately. Where an NPDES permit effluent limitation requirement has been violated, the permittee should forward a copy of the Discharge Monitoring Report, EPA Form 3320-1, concurrently with notification of the violation.

SECTION 715.20 [AMENDED]

2. The Note following Section 715.20 is revised to read as follows:

Note. -- The reporting and recordkeeping requirements contained in 30 CFR 715.11(c) 715.13(d), 715.15(a)(9), 715.15(b)(1)(v) and 12, 715.17(j)(3), 715.18(b)(2) and (6), 715.19(b), (c), (d) and (e)(4) have been approved by the U.S. General Accounting Office under number B-190462 nRO 494).

PART 717 -- UNDERGROUND MINING GENERAL PERFORMANCE STANDARDS

3. In 30 CFR 717.17, paragraph (b)(1)(v) is revised to read as follows:

SECTION 717.17 - PROTECTION OF THE HYDROLOGIC SYSTEM.

(b) * * *

(1) * * *

(v) Within sixty (60) days of the end of each sixty (60) day sample collection period, a report of all samples shall be made to the regulatory authority, unless the discharge for which water monitoring reports are required is subject to regulation by a National Pollution Discharge Elimination System (NPDES) permit issued in compliance with the Clean Water Act of 1977 (33 U.S.C. 1251-1378), (A) which includes equivalent reporting requirements, and (B) which requires filing of the water monitoring reports within 90 days or less of sample collection.

For such discharges, the reporting requirements of this paragraph may be satisfied by submitting to the regulatory authority on the same time schedule as required by the NPDES permit or within ninety (90) days following sample collection, whichever is earlier, either (1) a copy of the completed reporting form filed to meet the NPDES permit requirements, or (2) a letter identifying the State or Federal government official with whom the reporting form was filed to meet the NPDES permit requirements and the date of filing. In all cases in which analytical results of the sample collections indicate a violation of a permit condition or applicable standard has occurred, the operator shall notify the regulatory

authority immediately. Where an NPDES permit effluent limitation requirement has been violated, the permittee should forward a copy of the Discharge Monitoring Report, EPA Form 3320-1, concurrently with notification of the violation.

SECTION 717.20 [AMENDED]

4. The Note following Section 717.20 is revised to read as follows:

NOTE. -- The reporting requirements contained in 30 CFR 717.18(b)(1)(v), (2), and (6) have been approved by the U.S. General Accounting Office under B-190462 (RO496).

(Section 501(a), Pub. L. 95-87, 91 Stat. 467, 30 U.S.C. 1251)

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