

FEDERAL REGISTER: 45 FR 36903 (May 30, 1980)

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 800-809, Subchapter J
Performance Bonding

Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 91 Stat. 45.

REASON FOR INCLUDING THIS ENTRY: The Office of Surface Mining (OSM) of the Department of the Interior believes this rulemaking is important because it addresses significant problems and adds flexibility to regulations which, through the petition process, were said to be overly restrictive and in need of amendment.

SUMMARY:

STATEMENT OF THE PROBLEM

OSM has proposed amendments to its permanent program regulations for performance bonding of the reclamation of surface coal mines. OSM issued these regulations to implement Sections 509 and 519 of the Surface Mining Control and Reclamation Act of 1977, which require OSM to develop a regulatory program that requires a surface coal operator disturbing the land overlying a coal seam to post a bond in an amount sufficient to repay the regulatory authority for conducting the reclamation necessary to restore the land to its original condition, if the operator fails or is unable to perform the reclamation itself.

The bonding regulations provided various ways of assuring that funds would be available if forfeiture occurred. These included a financial commitment by a third party (a surety); offering collateral, such as cash, certificates of deposit, or letters of credit; and self-bonding (an attachment of real and personal property holdings by which, upon liquidation, funds would be made available). These alternative provisions contained specific criteria for acceptance which, upon issuance on March 13, 1980, and by review by coal companies, the surety industry, and mining regulatory agencies, were found to contain standards that were said to be unnecessarily stringent, inflexible, and in need of modification.

Under these regulations, which would not become effective until 1981, coal operators claimed it would be impossible to obtain bonding, and as a result, permits would not be issued to authorize surface coal production. The surety industry, which would be responsible for bonds issued for years to come, was said to be unable to evaluate the risks in guaranteeing reclamation performance as required by the regulations.

Mining operators unable to provide a performance bond would be prevented from mining coal, because issuance of the mine permit is contingent on bond being posted. If bonds are not available, a large segment of the mining industry may be unable to conduct business lawfully. Unless changes are made in the current performance bond requirements, the coal industry may be prevented from opening new mines and repermitting existing coal mines. If these amendments are not made, most of the small operators and many of the medium-sized operations probably will not be able to secure surety bonds.

Through public hearings and meetings with interested parties, OSM has developed amendments to the original regulations which address the main areas of concern. Several changes are proposed in response to the petition for rule-making filed with OSM and supported by the mining and bonding industries. Other changes proposed are a result of comments received during the public comment process

ALTERNATIVES UNDER CONSIDERATION

OSM, in considering alternatives to the original regulations, has developed additional methods by which to bond, modified the language of the regulations to increase flexibility, provided adaptation to regional conditions, and addressed many of the issues in the petition.

The proposed regulations make changes in the following areas: cumulative bonding (a method for minimizing the amount of bond through contemporaneous reclamation practices); long-term vs. short-term bonding (recognition of the difficulty in obtaining a long-term commitment from a surety company); allowable conservation practices (those reclamation practices not extending the period necessary to ensure successful revegetation); a grace period for operators losing bond through no fault of their own; simplifying the bond release provisions; allowing a surety company to perform the reclamation under forfeiture instead of paying the total amount; and use of forfeited bonds on the permit area covered.

These proposals clarify the regulations and should ease the difficulties in obtaining bonds that are currently imposed.

SUMMARY OF BENEFITS

Sectors Affected: The coal-mining industry; the surety industry; coal-related industries, such as manufacturing of mining machinery; and users of coal, including electric, gas, and sanitary services.

The changes instituted through this rulemaking will benefit all coal mines in the United States by increasing the availability of bonds and bonding methods due to OSM allowing acceptance of more types of collateral and recognizing the differences in long-term vs. short-term mining operations.

Many coal-related industries, such as equipment producers, and transportation systems, and users of coal, including public utilities, may also benefit through the continued and expanded production of coal.

SUMMARY OF COSTS

Sectors Affected: The coal industry; and consumers.

OSM cannot determine the costs at this time.

Related Regulations and Actions

Portions of Subchapter J -- Suspended by OSM.

Portions of Subchapter J -- Remanded by Litigation.

Active Government Collaboration

OSM has developed these proposed regulations without collaboration. Upon development of final rules, Federal agencies such as the Environmental Protection Agency and the Departments of Energy and Agriculture, will be requested to concur before final issuance. Each State in which coal is produced must submit a regulatory program as required by the Act, including regulatory standards for bonding which are at least as stringent as the Federal requirements. In those States not complying with this mandate, coal mining and reclamation will be under a Federal regulatory program and will be subject to the sections of the regulations proposed in this rulemaking.

TIMETABLE

Final Rule -- June 1980

Final Rule Effective -- immediately

AVAILABLE DOCUMENTS

These documents are relevant in tracking the development of the rulemaking action:

Petition to amend regulations, 44 FR 28005. May 14, 1979

ANPRM, 44 FR 52098, September 6, 1979

NPRM, 45 FR 6028, January 24, 1980

Final Regulatory Analysis, OSM-RA-1, March 1979

Final Environmental Statement, OSM-EIS-1, January 1979

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program, 44 FR 15110-15125, 15385-15393, March 13, 1979

Transcripts of public hearings held June 5, 1979, and February 13, 1980

Comments received during comment period on the petition May 14, 1979 to June 15, 1979

Surface Mining Control and Reclamation Act of 1977. P.L. 95-87, 91 Stat. 445, August 3, 1977

Documents can be examined at OSM Headquarters, U.S. Department of the Interior, South Building, Room 153, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; (202) 343-4728

AGENCY CONTACT

Russell F. Price, P.E., Division of Technical Service, Office of Surface Mining, 1951 Constitution Avenue N.W., Washington, D.C. 20240, (202) 343-4022