

FEDERAL REGISTER: 43 FR 17835 (April 26, 1978)

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 715

Permanent Regulatory Program for Surface Coal Mining and Reclamation Operations

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of Surface Mining Enforcement and Reclamation Enforcement (OSM) intends to develop the rules for the permanent regulatory program for surface coal mining and reclamation operations, as required by Section 501(b) of the Surface Mining Control and Reclamation Act of 1977 (Pub.L. No. 95-87, 91 Stat. 445, 30 U.S.C. 1201 et seq.). Notice is hereby given that these regulations are being developed in accordance with the outline set forth below.

DATES: An informal public meeting will be held at 9 a.m. on May 9, 1978, in Washington, D.C. Written comments should be received on or before May 15, 1978.

ADDRESSES: The public meeting will be held at the Main Auditorium, Civil Service Commission, 19th and E Streets NW., Washington, D.C. All written comments should be sent to Ronald Drake, Office of Surface Mining, Department of Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Ronald Drake, Office of Surface Mining, Department of Interior, Washington, D.C. 20240, telephone, 202-343-4237.

SUPPLEMENTARY INFORMATION:

The public meeting will discuss the following outline of the rules for the permanent regulatory programs. All interested individuals, representatives of organizations and public officials are invited to attend. Those who wish to speak at the meeting are requested to contact Ronald Drake on or before May 5, 1978, in order to be scheduled on the program. Scheduled speakers will be given priority, but all those who attend the meeting will have an opportunity to speak. The meeting will continue, if necessary, on May 10, 1978, at the same time and place, to accommodate all those who wish to be heard. Although the meeting will be informal, oral statements will be limited to 15 minutes. Personnel from OSM will be present to respond to questions. OSM would prefer written statements which will be made a part of the record. All comments, statements and recommendations will be considered in drafting proposed regulations. Once developed, the draft regulations will be published in the FEDERAL REGISTER as proposed rules, allowing opportunity for further comment before final regulations are adopted. Resolution of conflicting public comments and/or rejection of comments on policy or legal grounds are the continuing responsibility of the Secretary of the Interior.

The following outline of the proposed rules for the permanent regulatory program encompasses rules that OSM intends to develop for the following aspects of the permanent program: (1) Permanent performance standards for surface coal mining and reclamation; (2) Standards and procedures for preparing, submitting and approving state programs; (3) Procedures for implementing a Federal program for a State; (4) Standards for Federal inspections and enforcement during the permanent regulatory program; (5) Procedures and standards for applications for, and approvals of, surface mining and reclamation permits as well as application requirements for coal exploration permits; and (6) Provisions for certification and training of blasters. The outline below is a tentative draft of the format for each of these elements of the permanent program.

I. PERFORMANCE STANDARDS FOR SURFACE MINING

OSM proposes that the performance standards requirements in the permanent regulatory program be set forth in a manner which follows a logical mining sequence, i.e., the requirements relating to general obligations, site preparation, mining operations, monitoring of environmental protection measures, reclamation, cessation of operations and, finally, post-mining responsibilities.

A. GENERAL OBLIGATIONS

1. Maximum use of resources.
2. Restoration, including to highest and best use of land.
3. Contemporaneous reclamation.
4. Protection of fish and wildlife.
5. Revegetation responsibility.
6. Responsibility for off-site areas, including avoiding adverse effects on water quality and quantity and air quality through assessment of probable cumulative impact of all anticipated mining in the surrounding area.
7. Permit requirement.
 - (a) No person shall engage in mining without a permit.
 - (b) Protection of site and associated areas during activities conducted for preparation of permit applications and reclamation plans.
8. Requirements for environmental protection.
 - (a) Air quality.
 - (b) Water quality and quantity.
 - (c) Scenic values.
 - (d) Other health and safety standards. [Page 17836]
 - (e) Consistency with local physical, environmental, and climatological conditions.

B. COAL EXPLORATION OPERATIONS

1. Coal exploration procedures.
2. Site preparation.
3. Exploration operation standards.
4. Reclamation.
5. Maintenance.
6. Cessation of operations.

C. SITE PREPARATION

1. Signs and markers.
2. Access roads.
3. Drilling for blasting.
4. Support facilities.
 - (a) Pipelines.
 - (b) Powerlines.
 - (c) Facilities.
 - (d) Pollution incident prevention and control facilities and plans.
5. Hydrologic Controls.
 - (a) Diversions.
 - (b) Sediment ponds and other treatment facilities.
 - (c) Dams and impoundments.
6. Air Resources Controls.
 - (a) Fugitive emissions.
 - (b) Stack emissions.
 - (c) Mobile source emissions.
7. Premining Topsoil and Overburden Handling.
 - (a) Installation control measures.
 - (b) Clearing and grubbing.
 - (c) Stabilizing areas around temporary facilities.
8. Protection of Fish and Wildlife values.
9. Waste, Refuse and Other Residuals - Recycling, Recovery and Disposal Facilities.
10. Installation of environmental Impact Monitoring Systems.
 - (a) Air resources and noise.
 - (b) Blasting.
 - (c) Water resources:
 - (i) Ground water; and
 - (ii) Surface waters.

- (d) Soils:
 - (i) Stability; and
 - (ii) Soil productivity.
 - (f) Vegetation resources:
 - (i) On-site; and
 - (ii) Reference area.
 - (g) Aquatic life and wildlife.
 - (h) Record-keeping and reporting systems.
11. Education and training for site personnel in environmental protection requirements.

D. MINING OPERATIONS

1. Temporary diversions of water.
2. Topsoil handling.
3. Blasting.
4. Disposal of excess spoil.
 - (a) Disposal of first cut material.
 - (b) Disposal in valley or head-of-hollow fills.
 - (c) Disposal in area other than valley or head-of-hollow fills.
5. Coal removal.
 - (a) Maximize recovery of coal resource.
 - (b) Protect the strata below the coal seam as required.
6. Waste, refuse and other residuals handling, transport, storage and disposal.
7. Protection of hydrologic balance.
 - (a) Sediment ponds and other treatment facilities - operation and maintenance.
 - (b) Stabilization of surface areas.
 - (c) Maintenance and protection of boreholes and well seals and plugs.
 - (d) Protection of re-charge capacity of mine area.
 - (e) Protecting surface water channels.
8. Protection of underground mining.
9. Road utilization and maintenance.
10. Protection against slides and other damage, including retention of undisturbed natural barrier beginning at elevation of lowest seam to be mined.
11. Protection of air resources.
 - (a) Stationary sources - operational and maintenance:
 - (i) Stack emissions controls; and
 - (ii) Fugitive emissions controls.
 - (b) Mobile sources.
12. Noise controls (other than blasting).
13. Operation and maintenance of environmental impact monitoring systems.
14. Operation and maintenance of facilities and equipment.
 - (a) Dams and impoundments.
 - (b) Waste, refuse disposal areas.
 - (c) Preparation plants.
 - (d) Signs and markers.
 - (e) Explosives and toxic materials handling and storage.
 - (f) Pollution incident prevention and control equipment.
 - (g) Operating equipment maintenance.
15. Education and training of site personnel in environmental protection requirements.

E. RECLAMATION

1. Immediately after coal removal.
 - (a) Backfilling and compacting covering of highwall.
 - (b) Cover toxic, acid forming and other material.
 - (c) Handling waste material:
 - (i) Burial of waste material:
 - (a) processing wastes, tailings and mine wastes; and
 - (ii) burial of waste materials from mine workings or excavations.

2. Rough grading of spoil.
 - (a) Immediately prior to first planting season:
 - (i) Final grading of spoil; and
 - (ii) Topsoil - redistribution.
 - (b) First planting season:
 - (i) Revegetation; and
 - (ii) Standards for measuring success of revegetations.
3. Restoration to suitable land use(s).
 - (a) Site use.
 - (b) Compatibility with surrounding areas.
4. Regrading.
5. Stabilization and protection of all surface areas.
6. Protection of hydrologic balance.
 - (a) Permanent diversions of water-maintenance.
 - (b) Continuing operation and maintenance of sediment ponds and other treatment facilities.
 - (c) Seals and maintenance for boreholes and wells.
 - (d) Restoration or recharge capacity of mined area.
 - (e) Reclamation and maintenance of surface water encroachments.
 - (f) Reclamation and maintenance of dams and impoundments.
 - (g) Reclamation and maintenance of waste and refuse piles.
7. Protection of air resources - maintenance, operation and removal of control systems.
8. Roads-reclamation and maintenance.
9. Protection against slides and other damage.
10. Removal of signs, markers and equipment.
11. Operation, maintenance and removal of environmental impact monitoring systems.
12. Operation, maintenance and removal of pollution incident prevention control systems.
13. Education, training and testing of reclamation personnel.

F. CESSATION OF OPERATIONS

1. Temporary suspension.
2. Completion of operations and permanent abandonment.

G. SPECIAL CATEGORIES

1. Augering.
2. Anthracite mining.
3. Alaskan coal mining.
4. Alluvial valley floors.
5. Prime farmlands.
6. Mountain-top removal.
7. Special bituminous coal mines.
8. Steep slope mining.
9. Surface mining concurrent with underground mining.

II. UNDERGROUND MINING

OSM intends to develop permanent environmental protection standards for the surface impacts of underground mining, according to the same process as for surface mining, accounting for the distinct differences between the two methods of mining. Therefore, the outline set forth above for Part 715 will also generally apply to Part 716. In addition, certain other matters related solely to underground mining will be covered, as outlined below.

A. GENERAL OBLIGATIONS

1. Prevention of subsidence, maximization of mine stability and maintenance of value of reasonable foreseeable use of surface lands:
 - (i) Technological and economic feasibility;
 - (ii) Planned subsidence; and
 - (iii) Standard methods of room and pillar mining.

2. Utilization and development of best available, environmentally sound underground coal extraction technologies.
3. Prevention of fire hazards and other dangers to off-site areas.

B. SITE PREPARATION

1. Measures and monitoring methods to preclude migration of combustible gases.
2. Drift mine installations in acid-bearing or iron-bearing coal seams:
 - (i) Identification of seams; and
 - (ii) Preclusion of gravity discharges of water.
3. Integration of site preparation with sealing requirements.

C. MINING OPERATION

1. Subsidence controls.
2. Concurrent sealing of openings not needed.
3. Concurrent disposal of mine wastes, processing water, tailing, and other wastes into mine workings or excavations.
4. Stabilization and prevention of water pollution from waste piles.
5. Maintenance and operation of refuse piles, dams and impoundments.
6. Maintenance and operation of combustible gas migration-prevention controls.
7. Protection of surface stability from imminent dangers.

D. RECLAMATION

1. Prevention of subsidence and monitoring uses of land affected.
2. Sealing of openings, maintenance and monitoring of same.
3. Disposal of mine and processing wastes, tailings and other wastes into mine workings or excavations.
4. Stabilization, revegetation and prevention of water pollution from waste piles.
5. Maintenance and operation of refuse piles and dams and impoundments.[Page 17837]
6. Operation, maintenance and monitoring of combustible gases migration - prevention control.

III. REGULATIONS FOR CERTIFICATION AND TRAINING OF BLASTERS

A. GENERAL PROVISIONS

1. Scope of requirements.
2. Applicability to surface coal mine blasters.
3. Certification responsibility.
 - (a) Regulatory agency.
 - (b) Persons engaged in blasting.

B. QUALIFICATION OF APPLICANTS

1. Personal requirements.
2. Training and knowledge required.
3. Blasting course.
 - (a) Explosives technology/selection.
 - (b) Initiation and priming systems.
 - (c) Blasting accessories.
 - (d) Other agency regulations.
 - (e) Blast round design.
 - (f) External blast effects.
 - (g) Blasting safety.

C. EXAMINATION

1. Testing procedure.
2. Application and fees for certificate.
3. Forfeiture provision.

D. CERTIFICATION

1. Notification of tests results.

2. Length of certification period.
3. Cause for revocation of certification.
4. Protection and exhibit of certificate.

E. RECERTIFICATION

1. Time interval for recertification.
2. Refusal of regulatory agency to recertify.
3. Requalification after lapse of certification.

F. RESTRICTION

1. No assignment and non delegation.
2. Supervisory responsibilities.
3. Adherence to rules and regulations.

G. LEARNER'S PERMIT

IV. STATE PROGRAMS

- A. Responsibilities.
- B. Eligibility.
- C. Submission of proposed State program.
- D. Review and approval procedures.
- E. Approval criteria.
- F. Maintenance of approved programs.
- G. Withdrawal of approval.

V. FEDERAL PROGRAMS FOR A STATE

- A. Responsibilities.
- B. Powers of the Director/Secretary.
- C. Criteria for promulgating and implementing Federal programs.
- D. Procedures for promulgating and implementing Federal programs.
- E. Permits: 1. Review of State permits; 2. Validity of Federal permits.
- F. Permit requirements.
- G. Bonding.
- H. Environmental assessments and EIS's.
- I. Approval and issuance of permits.
- J. Inspection.
- K. Enforcement.
- L. Penalties.
- M. Preemption of State law.
- N. Permit coordination.

VI. PERMITS, RECLAMATION PLANS, COAL EXPLORATION REGULATION PROCEDURES, BONDS AND INSURANCE

A. PERMITS - GENERAL.

1. Scope.
2. Purpose.
3. Applicability:
 - (a) Coordination with interim regulatory program.
 - (b) Coordination with approval/disapproval of State programs and institution of Federal programs.
 - (c) State permanent programs.
 - (d) Federal permanent programs in non-Federal lands.
 - (e) Federal lands programs.

- (f) Indian lands programs.
- (g) Exceptions.
- 4. Responsibilities:
 - (a) Federal agency.
 - (b) State agencies.
 - (c) Private parties - surface coal mining and reclamation operators.
- 5. Coordination with permits required under other environmental laws.

B. PRE-APPLICATION PROCEDURES FOR PERMITS

- 1. Pre-application contacts to regulatory authorities.
- 2. Pre-application determinations by regulatory authorities.
- 3. Coordination with permit authorities under other environmental laws.

C. PERMIT APPLICATIONS

- 1. Application filing deadlines.
 - (a) General.
 - (b) Federal substitution for State programs.
 - (c) Renewals to same operator.
 - (d) Renewals to successors in interest.
- 2. Fees.
 - (a) Determinations of amount.
 - (b) Extended payments.
- 3. Copies required.
- 4. Contents of Applications.
 - (a) Identification of interested parties.
 - (b) Applicant entity information.
 - (c) Prior permits, other prior Federal environmental regulatory actions, and current status.
 - (d) Proposed newspaper advertisement.
 - (e) Description of mining processes and sequential schedule of operations.
 - (f) Maps and plans.
 - (g) Hydrologic information:
 - (i) General requirements;
 - (ii) Availability of information; and
 - (iii) Small operator procedures.
 - (h) Climatological, air resources, and fish and wildlife and scenic values data.
 - (i) Cross-section maps and plans.
 - (j) Test boring or core samplings:
 - (i) General requirements;
 - (ii) Waivers; and
 - (iii) Small operator procedures.
 - (k) Prime farmlands soil surveys.
 - (l) Public access to information regarding coal seams, test borings, core samplings or soil surveys:
 - (i) General; and
 - (ii) Confidentiality procedures.
 - (m) Reclamation plans;
 - (i) Level of detail;
 - (ii) Area mining plan and contiguous land interests;
 - (iii) Pre-mining uses;
 - (iv) Postmining uses;
 - (v) Plans for compliance with environmental protection standards, reclamation requirements, air and water quality standards and health and safety standards;
 - (vi) Maximization of recovery of coal;
 - (vii) Timetable for reclamation;
 - (viii) Consistency with local physical, climatological and environmental conditions;
 - (ix) Text borings, location of ground and surface waters, chemical properties of minerals and of overburden; and
 - (x) Description of measures for protection of water and air quality, water quantity and alternative procedures for protecting rights of water users.

- (n) Insurance certificates.
- (o) Blasting plans.
- (p) Public availability of application materials.
- 5. Permit application processing.
 - (a) Initial reviews - determinations of completeness and accuracy.
 - (b) Public notice:
 - (i) Permit applicant duties;
 - (ii) Regulatory authority duties; and
 - (iii) Contents of notice.
 - (c) Review of objections and comments by interested parties.
 - (d) Criteria for approval/disapproval.
 - (e) Informal conferences:
 - (i) Notice;
 - (ii) Conference requirements;
 - (iii) Waivers; and
 - (iv) Coordination with hearings held under Mineral lands Leasing Act and other environmental laws.
 - (f) Bond or alternative filing requirements.

D. PERMIT ISSUANCE AND DENIALS

- 1. Contents of Permits.
 - (a) Form and conditions.
 - (b) Public availability.
- 2. Duration of Permits.
 - (a) General 5-year limit, with exceptions:
 - (i) Longer term for necessary financing; and
 - (ii) Successor-in-interest.
 - (b) General 3-year limit to start mining operations, with allowance for extensions:
 - (i) General extensions by regulatory authority;
 - (ii) Applicability of Federal Mineral Leasing Act; and
 - (iii) Synthetic fuel facility or major electrical generating facility.
- 3. Notice of final action by regulatory authority.
 - (a) Form and contents.
 - (b) Parties to be notified.
- 4. Adjudicatory Hearings.
 - (a) Deadline for requesting.
 - (b) Procedural requirements.
 - (c) Temporary relief.
 - (d) Deadlines for decision.
 - (e) Judicial review.
- 5. Coordination with permits required under other environmental laws.

E. CHANGES TO PERMITS

- 1. Renewals.
- 2. Revisions and modifications.
- 3. Transfers and assignments.
- 4. Coordination with action taken pursuant to other environmental laws.

F. COAL EXPLORATION REQUIREMENTS

- 1. General.
- 2. Scope.
- 3. Purpose.
- 4. Applicability:
- 5. Definitions.
- 6. Regulations.
 - (a) Notice of intention to explore: (i) Deadlines; (ii) Contents of notice; and (iii) Review of notices.
 - (b) Environmental protection performance standards and reclamation requirements.
- 7. Public Availability of information.

8. Penalties.
9. Federal lands.

G. PERFORMANCE BONDS AND INSURANCE REQUIREMENTS

1. General.
2. Scope.
3. Applicability.
4. Definition [Page 17838]
5. Filing Requirements.
 - (a) Deadlines.
 - (b) Forms and accompanying information.
6. Bond Standards.
 - (a) Payees.
 - (b) Condition of faithful performance.
 - (c) Scope:
 - (i) initial term of permit; and
 - (ii) Succeeding terms of permits.
 - (d) Amounts:
 - (i) Reclamation requirements;
 - (ii) Procedure for determination;
 - (iii) Standards for determination in excess of Minimum \$1 0,000 amount;
 - (iv) Adjustments subsequent to permit issuance.
 - (e) Duration.
7. Execution and Suretyship.
 - (a) Separate corporate suretyship.
 - (b) Operator suretyship:
 - (i) Suitable agent for service of process;
 - (ii) History of financial solvency and continuous operation;
 - (iii) Cash on securities.
 - (A) Determination of amount.
 - (B) Maintenance on deposit.
 - (C) Alternate system to bonding program.
8. Bond Release.
 - (a) Release application:
 - (i) Content of application.
 - (A) Newspaper advertisements.
 - (B) Letters to adjoining property owners and governmental authorities.
 - (C) Other information:
 - (ii) Processing and review of release application.
 - (A) Inspection and evaluation by regulatory authority.
 - (B) Completeness and accuracy of application.
 - (b) Criteria for release:
 - (i) General obligation to perform reclamation in compliance with requirements of Act, regulations, and permit;
 - (ii) Initial reclamation activities completion; and
 - (iii) Establishment of revegetation and retention of amount to insure continued revegetation:
 - (A) General time requirement of 5-years after last year of augmented seeding, fertilizing, irrigation and other work needed, Exceptions.
 - (1) Arid areas - 10 years.
 - (2) Long-term intensive agricultural postmining use.
 - (B) Provision for reduction of suspended solid discharges.
 - (C) Provisions for return of prime farm lands soil productivity to equivalent levels of yield.
 - (D) Provision for long-time maintenance of impoundments.
 - (iv) Completion of all reclamation responsibilities.
 - (c) Objection to Release and Hearings:
 - (i) Processing written objections;
 - (ii) Informal conferences; and

- (iii) Hearings.
 - (A) Deadlines for requesting.
 - (B) Procedural requirements.
 - (C) Deadlines for decision.
 - (d) Final Decisions on Release Applications:
 - (i) Deadlines for decision:
 - (ii) Contents of notice of decisions; and
 - (iv) Parties to be notified.
 - 9. Federal Lease Bonds.
 - 10. Liability Insurance.
 - (a) Separate insurance policy:
 - (i) Carrier requirements;
 - (ii) Amounts to compensate for personal injury or property damage protection; and
 - (iii) Duration of coverage.
 - (b) Operator self-insurance equivalency.

VII. INSPECTION AND ENFORCEMENT

A. FEDERAL INSPECTIONS

1. Extent.
2. Right of Entry.
3. Inspection based on citizen request.
4. Procedures for complete inspections.
5. Referral to State Regulatory Authority.
6. Failure to give notice and lack of reasonable belief.

B. ENFORCEMENT PROCEDURES

1. Scope.
2. Imminent Hazards.
3. Non-imminent hazard violations.
4. Failure to abate.
5. Service to notice.
6. Review at minesite of cessation orders.
7. Pattern of violations.
8. Inability of comply.

C. CIVIL PENALTIES

1. Scope.
2. Objective.
3. When assessment made.
4. When to assess after a notice of violation.
5. Determination of amount of penalty.
6. Assessment of separate violation for each day.
7. Waiver of use of formula to determine civil penalty.
8. Procedures for assessment of civil penalties.
9. Procedures for conference.
10. Request for hearing.
11. Availability of records.

D. MONITORING OF STATE INSPECTION AND ENFORCEMENT ACTIVITY

E. CRITERIA FOR APPROVAL OF INSPECTION AND ENFORCEMENT PROGRAMS

Dated: April 24, 1978.

WALTER N. HEINE,
 Director, Office of Surface Mining Reclamation and Enforcement.

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