

FEDERAL REGISTER: 43 FR 41662 (September 18, 1978)

DEPARTMENT OF THE INTERIOR

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

30 CFR Chapter VII

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program

ACTION: Proposed rules.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement is seeking comments on these proposed rules which would implement a nationwide permanent program for the regulation of surface and underground mining operations by the States and the Federal Government as required by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). These proposed rules are intended to strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy.

DATES: Comments must be received at the addresses below on or before November 17, 1978, by no later than 5 p.m.

For public hearing dates see Supplementary Information.

ADDRESSES: Written comments must be mailed to: Office of Surface Mining, U.S. Department of the Interior, P.O. Box 7267, Benjamin Franklin Station, Washington, D.C. 20044; or be hand delivered to, and all comments will be available for inspection at: Office of Surface Mining, Room 120, U.S. Department of the Interior, South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240.

For addresses for public hearings see Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Ron Drake, Special Assistant to the Director, Office of Surface Mining, Department of the Interior, Washington, D.C. 20240; 202 343 5371.

SUPPLEMENTARY INFORMATION:

In this document the Office publishes proposed rules to implement the permanent regulatory program under SMCRA. A detailed preamble accompanies the proposed rules to explain the rationale and supporting source material for them, alternatives considered by the agency in developing the proposed rules and changes which have been made since preproposed draft regulations were made available to the public on July 3 and July 21, 1978. Changes reflected in this proposed rulemaking have been made in response to further analysis of source material by the Office, including technical literature, expert evaluation and legislative history of the Act, and in response to public comment received on the preproposed draft rules. The Office is particularly grateful to those who took the time and effort to review the preproposed draft rules and submit comments to the Office. The Office has benefitted from those comments. This preamble to the proposed rules highlights some changes which have been made in response to public comment. Other changes will be evident from the content of the proposed rules themselves.

In connection with this rulemaking, the Office has been preparing an environmental impact statement and a regulatory analysis. The availability of drafts of both these documents is being announced through separate Federal Register notices. The Office has considered the material, including source material cited, in the draft environmental impact statement and draft regulatory analysis for purposes of reaching decisions on the content of the proposed regulations. The content of the final environmental impact statement and final regulatory analysis will be carefully considered by officials of the Office and the Department of the Interior before decisions are made on the content of the final regulations. Within the limits of legal constraints, the Office intends to work as closely as possible with the States, interested groups and organizations, and the public at large during the comment period on these proposed rules. The Office believes strongly the States must take the lead in applying the requirements of the Act and regulations to the coal mining industry. For this reason, the Office is particularly interested in working with the States during the proposed rulemaking comment period to obtain their advice and recommendations concerning how the regulations can best provide for State implementation of this program.

PUBLIC COMMENT PERIOD

The comment period on the proposed rules will extend until November 17, 1978. All written comments must be received at the addresses given above by 5 p.m. on November 17, 1978. Comments received after that hour will not be considered or included in the administrative record for this rulemaking. The Office cannot insure that written comments received or delivered during the comment period to any other locations than specified above will be considered and included in the administrative record for this rulemaking.

AVAILABILITY OF COPIES

Copies of the proposed regulations, draft environmental impact statement and draft regulatory analysis are available for inspection and copies may be obtained at the following offices:

OSM Headquarters, Department of the Interior, Room 120, 1951 Constitution Avenue NW., Washington, D.C. 20240, 202 343 4728.

OSM Region I, First Floor; Thomas Hill Building, 950 Kanawha Boulevard, East Charleston, W.Va. 25301, 304 342 8125. I25OSM Region II, 530 Gay Street SW., Suite 500, Knoxville, Tenn. 37902, 615 637 8060.

OSM Region III, Federal Building, U.S. Courthouse, 46 East Ohio Street, Indianapolis, Ind. 46204, 317 269 2609.

OSM Region IV, 601 East 12th Street, Room 1768, Kansas City, Mo. 64116, 816 374 5162.

OSM Region V, Post Office Building, 1832 Stout Street, Denver, Colo. 80205, 303 837 5511.

PUBLIC HEARINGS

Public hearings on the regulations and regulatory analysis will begin on October 24, 1978, and continue through October 27, 1978, as needed to hear all those who wish to testify. The hearings will be held at the following locations and will begin at 9:30 a.m. local time at each location.

Washington – Department of the Interior Auditorium, 18th and C Streets NW., Washington, D.C. 20240.

Knoxville – TVA West Towers Auditorium, 400 Commerce Avenue, Knoxville, Tenn.

Charleston – Charleston Civic Center, Lee and Reynolds Streets, Charleston, W. Va.

Indianapolis - Indiana World War Memorial Auditorium, 431 North Moridian Street, Indianapolis, Ind.

Kansas City – Holiday Inn (Worlds of Fun), 7333 Parvin Road, Kansas City, Mo.

Denver – Room 269, Post Office Building, 1823 Stout Street, Denver, Colo.

Persons wishing to testify at the public hearings on the proposed regulations should contract the appropriate person listed below under public meetings.

Individual testimony at these hearings will be limited to 15 minutes. The hearings will be transcribed. Filing of a written statement at the time of giving oral testimony would be helpful and facilitate the job of the court reporter. Submission of written statements to the persons identified above for these hearings, in advance of the hearing date whenever possible, would greatly assist Office officials who will attend the hearings. Advance submissions will give these officials an opportunity to consider appropriate questions which could be asked to clarify or illicit more specific information from the person testifying. The record will remain open for receipt of additional written comments until November 17, 1978, for the proposed regulations and draft regulatory analysis.

The public hearings will continue on the days identified above until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and wish to do so will be heard at the end of scheduled speakers. The hearings will end on each day after all people scheduled to testify and persons present in the audience who wish to speak have been heard. Persons not scheduled to testify, but wishing to do so, assume the risk of having the public hearing adjourned on any given day unless they are present in the audience at the time all scheduled speakers have been heard.

PUBLIC MEETINGS

Representatives of the Office will be available to meet between September 18, 1978 and November 17, 1978 at the request of members of the public, State representatives, industry officials, labor representatives, and environmental organizations to receive their advice and recommendations concerning the content of the proposed regulations.

Persons wishing to meet with representatives of OSM during this time period may request to meet with Office officials at the Washington office or any of the five regional offices. Persons to contact to schedule such meetings are as follows:

Knoxville - (615) 637 8060, Ed Yates.
Charleston - (304) 342 8125, Jill Bowen.
Indianapolis - (317) 269 2609, Peggy Hinkle.
Kansas City - (816) 374 5162, Raymond Lowrie.
Denver - (303) 837 5421, Donald Crane.
Washington - (202) 343 4953, Pat Foulk.

OSM will be available for such meetings between 9 a.m. and noon and 1 p.m. and 4 p.m., local time, Monday through Friday, excluding holidays, at these locations.

PUBLIC COMMENTS

Written and oral comments should be as specific as possible. The Office will appreciate any and all comments, but those most useful and likely to influence decisions on these regulations will be those which include references to source material including legislative history, technical data and research, and other material which provides a basis for any given recommendation. An explanation of the rationale for each recommendation should also be given. The preamble to the final regulations will reflect consideration of comments received on the proposed rules and draft regulatory analysis.

GAO REVIEW

The Office is considered an independent Federal regulatory agency for purposes of 44 U.S.C. Sections 3502 and 3512 (30 U.S.C. Section 1211(e)). As a result, all of its regulations which impose recordkeeping and reporting requirements on members of the public, as defined by GAO regulations, must be submitted to GAO for clearance (4 CFR Part 10). To assist the Office and GAO in analyzing the recordkeeping and reporting burdens and possible duplication created by these proposed rules, the public is specifically requested to consider sections of the regulations listed below. The Office has identified those sections as imposing recordkeeping and reporting requirements, which, if included in final regulations, must be submitted to GAO for their clearance. Specific comments concerning these recordkeeping and reporting requirements, including cost estimates and man-hour requirements, as well as whether other Federal agency recordkeeping or reporting requirements are being duplicated, would greatly assist the Office in determining whether the requirements should be modified.

The Parts, Sections and Subsections of the proposed rules which the Office has identified as imposing recordkeeping or reporting requirements are listed as follows:

Subchapter A: Sections 700.12, 700.13, 707.11(b);

Subchapter C: Sections 730.4(a) (b), 731.11, 731.12(a), 731.13, 731.14, 732.14, 732.17(b), 732.17(d);

Subchapter D: Sections 741.11(a), 741.12(b) (c), 742.11, 742.12, 744.12(c), 744.12(e)(3), 745.11, 745.16(a), 745.17, 745.18(c);

Subchapter F: Sections 760.4(b), 760.4(f), 761.5(a), 764.4(a), 764.13, 769.11 to 769.15;

Subchapter G: Sections 770.4, 771.19, 771.21, 771.23, 771.27, 776.3, 776.11, 776.12, 778.4, 778.12 to 778.21;
Parts 779, 780, 782, 783, 784, 785, 787;
Sections 789.12, 790.12, 791.12, 792.12;

Subchapter J: Sections 800.11(a), 800.12(a), 805.14(b), 806.11, 806.14(a), 807.11, 809.12;

Subchapter K: Sections 811.4(a), 815.4, 815.12(a), 815.12(h) (i), 815.13, 816.46(c), 816.46(v), 816.50(d), 816.52, 816.53(a), 816.62, 816.64, 816.67, 816.68, 816.71(j), 816.82(a)(4), 816.82(b), 816.87(a), 816.91(d), 816.95(d), 816.97(b), 816.99, 816.117(b), 816.131, 816.133(c), 817.46(c), 817.46(v), 817.49(a), 817.52, 817.53(a), 817.62, 817.68, 817.71(j), 817.82(a)(4), 817.87(a), 817.91(d), 817.95(d), 817.97(b), 817.99, 817.117(b), 817.122, 817.123, 817.125, 817.131(b), 817.133(c), 818.12(a), 821.13(a), 822.14, 825.12(d), 826.12(b), 826.13, 828.12(b), 840.14, 842.12(a), 842.14, 842.15, 843.16(a);

Subchapter M: Sections 850.3(c), 851.11(a) (c), 851.13, 851.14(d)(ii), 851.15(a).

INTRODUCTION TO PROPOSED RULES

As noted in prior Federal Register notices announcing the availability of preproposed draft regulations, the Office has sought to provide early and meaningful public participation in the development of regulations for the permanent regulatory program. The procedures followed have been consistent with the emphasis placed on public participation in SMCRA and Executive Order 12044. Comments which have not been fully evaluated, and comments received after August 18, 1978, on the preproposed draft rules, will be considered in the context of the public comment period on the proposed rules.

One area of concern to the Office has been the manner in which geological, climatological, hydrological, and other regional variations which might support alternative approaches to achieving the performance standards in the Act and regulations can be accommodated in the State program application and approval process. The preproposed draft regulations provided that the States could submit a petition pursuant to Section 201(g) of the Act demonstrating the basis for including within their State program a regulatory provision departing from specific Federal regulatory requirements while, nevertheless, achieving the same regulatory result. The Office felt that such a process would focus specific attention on requests from the States for variations in their State programs from that required in the Federal regulations.

Comments received on the preproposed draft suggested that the procedures in the draft do not recognize regional variations which would justify different requirements in individual State programs from those contained in the Federal regulations. The purpose of the section 201(g) procedure was not clear to reviewers. The relationship of the procedure to State program variations was not clear. Based on these comments, the procedures for recognizing regional variations in State programs have been changed for purposes of this proposed rulemaking.

Section 731.13 of these proposed rules now provides that States may include in their State program applications, requests for approval of regional variations for substantive and procedural requirements in their State programs. The application would have to provide a rationale and supporting data which would justify a departure from the Federal regulations. Consideration of the request would occur in the context of the Federal rulemaking for decision on the State program application. The State program application requesting departures from the Federal regulations would have to demonstrate that the requested departure is no less stringent than that included in the Federal regulations. The Office believes that this approach provides an easier procedural mechanism and maintains the visibility of any State requests for departures from the Federal regulations. Comments on this approach from the States and others would be helpful. {41664}

The proposed rules being published today provide for a full 60-day comment period. Inability to have commented on all or portions of the preproposed draft regulations will not prejudice a person's ability to influence specific provisions in the final regulations by commenting on them during the proposed rulemaking comment period. Significant changes were made by the Office in the final interim regulations published December 13, 1977, based upon comments received during the public comment period on those rules during the fall of 1977. The Office will be equally receptive to comments received during this rulemaking process which provide sound justification for changes in the final rules.

The Office anticipates that requests will be made for extension of the 60-day comment period on the proposed rules. Although the Office is sympathetic, we are compelled by the statutory deadlines and the approaching State legislative sessions in the winter and spring of 1979 to proceed on this schedule as expeditiously as possible. Congress established very tight schedules for implementing the initial and permanent regulatory programs, recognizing that a regulatory program establishing national minimum requirements should not be delayed any longer, as it would be under typical Federal Government rulemaking of this magnitude. The Office has no choice but to act as promptly as it can to fulfill the congressional intent that this program be implemented promptly.

Public comments received on the preproposed draft regulations urged a reorganization of at least two aspects of that draft. Many commenters suggested that all definitions be consolidated and located in one part of the regulations. These commenters reason that having them in one location would be far easier for reference purposes than having them interspersed throughout the various parts of the regulations.

In response to this comment, the proposed rules show a shift in this direction. Part 701 of the regulations, which basically is an introduction to the permanent regulatory program, contains in the proposed regulations most of the definitions which apply to the permanent program. Part 701, however, does not contain all the definitions used in Chapter VII of this Title. Part 700 contains definitions of terms which are used throughout all of the Chapter VII regulations. These include such common words as "Director", "coal", "Act", and other terms that are not unique to the permanent regulatory program. Part 710 of Chapter VII, which was promulgated on December 13, 1977, contains those definitions which apply to operations during the initial regulatory program. Interspersed throughout the remaining Parts of Chapter VII will be definitions of terms which are used in a specific sense in those respective Parts. In most cases they have been left in those specific Parts for purposes of definition because elsewhere in the regulations their meaning will be more general and reflect commonly understood usage.

Other comments were received concerning the organization of Part 816 which covers performance standards for surface mines under the permanent program. In the preproposed draft regulations this Part was organized in a logical mining sequence. On the other hand, Part 817 in the preproposed draft regulations was organized in a topical format. Comments received suggest that the topical format is more useful to the public and, consequently, Part 816 has been reorganized in this format.

GENERAL PURPOSE

The proposed rules are intended to fulfill, when promulgated as final, a congressional mandate that the Secretary promulgate regulations covering a permanent regulatory procedure for surface coal mining and reclamation operations performance standards and establish procedures and requirements for the preparation, submission and approval of State programs or in the alternative development and implementation of Federal programs. The permanent regulatory program is the second and final stage of the phased implementation contemplated by Congress and incorporated in SMCRA. Under the Act and these regulations, States are intended to take the lead in regulating surface coal mining and reclamation operations within their borders. The success of the permanent regulatory program depends upon the willingness and ability of States with coal production to assume this responsibility.

The permanent regulatory program applies in Subchapter K the Act's 25 performance standards in Section 515 to surface coal mining and reclamation operations. Under the interim program, only seven performance standards are applicable to surface coal mining and reclamation operations. The full complement of performance standards will begin to apply to surface coal mining and reclamation operations upon receiving a permit issued under a State or Federal program or, for Federal lands, a Federal lands program. This means that for non-Federal and non-Indian lands, the performance standard should be applicable to surface coal mining and reclamation operations no later than February 3, 1981. This stems from the fact that by June 3, 1980, a Federal program will be implemented in a State if a State program has not been approved. The Act provides that eight months following the implementation of the Federal program or approval of a State program, no surface coal mining and reclamation operations shall be conducted without a new permit issued under either of those programs. If state programs are approved before June 3, 1980, or a Federal program is implemented before that date, the application of the full set of performance standards to surface coal mining and reclamation operations would occur at an earlier date.

ORGANIZATION

The regulations being proposed at this time are intended to implement the requirements of the Act consistent with its purposes as stated in Section 102, its legislative history and relevant judicial interpretations. The material is organized into subchapters which comprise major portions of Chapter VII of this Title.

Existing Part 700 which is in Subchapter A would be amended by these proposed regulations to include appropriate references to the permanent regulatory program. Part 701 is new and being added to serve as a general guide to the permanent regulatory program. Part 707 in Subchapter A provides regulations implementing a limited exemption from the Act for the extraction of coal which is incidental to Government financed highway or other construction.

Subchapter B of Chapter VII comprises the initial regulatory program and the Parts which were published on December 13, 1977.

Subchapter C describes the process by which States may apply for and obtain approval of regulatory programs. It also includes measures by which a Federal program would be implemented in a State which has not obtained or maintained an approved State program. The grant regulations authorizing distribution of money to the States for development, administration, and enforcement of State programs which were promulgated on December 13, 1977, are included in this Subchapter. {41665}

The application of the permanent regulatory program on Federal lands is covered by Subchapter D. The Act calls for promulgation of a Federal lands program which at a minimum, incorporates all the requirements of the Act. In contrast to the State program or Federal program, the Federal lands program becomes effective upon the effective date of the final regulations. Thus, application of the full set of performance standards will apply to surface coal mining and reclamation operations on Federal lands in advance of their application to these operations on non-Federal and non-Indian lands.

The Act provides mechanisms for determining that certain lands may be unsuitable for all or certain types of surface coal mining and reclamation operations by designating them unsuitable for coal mining. Such designations may also be terminated under applicable procedures. These provisions of the Act are implemented through regulations in Subchapter F.

A fundamental difference between the interim and permanent regulatory programs, in addition to that mentioned previously for performance standards, is reflected in Subchapter G. This Subchapter includes all of the requirements for permit applications and approvals to conduct surface coal mining and reclamation operations. The application process applies to surface mining activities, underground mining activities, and special categories of coal mining. Certain procedures are also established for coal exploration, although a formal permit is not required. As part of the two-stage process for phasing in the requirements of SMCRA, Congress determined that during the initial regulatory program States could apply the interim performance standards under their existing State permitting procedures. This, however, is not the case for the permanent regulatory program and the Office expects that significant revisions in State permitting programs will issue from this permanent program.

Inspection and enforcement procedures are an integral and important factor in the success of the regulatory program. The requirements and procedures for inspections and enforcement and the requirements for civil penalties that may follow are covered in Subchapter L. Distinctions are drawn between the inspection and enforcement provisions under State programs and Federal programs.

Subchapter M reflects and implements the congressional determination that persons engaging in or directly responsible for blasting or use of explosives in surface coal mining operations should receive adequate training and be certified for that purpose only after suitable examination. The regulations in this Subchapter call upon the states to take the lead in training, examination and certification of blasters.

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REGULATION DRAFTERS {41799}

The proposed permanent program regulations have been drafted by a large professional staff in the Office of Surface Mining and on detail from other Federal agencies. Preparation of the regulations has been under the responsibility of Paul Reeves, Acting Deputy Director. Assistant Directors in OSM have been responsible for the preparation and content of particular subchapters:

Dave Maneval, Assistant Director, Technical Services and Research – Subchapter A: Part 707, and Subchapters G, J, K, and M.

Carl Close, Acting Assistant Director, State and Federal Programs – Subchapters C, D, and F.

Dick Hall, Assistant Director, Inspection and Enforcement – Subchapter L.

Paul Reeves, Acting Deputy Director – Subchapter A.

Attorneys in the Division of Surface Mining, Office of the Solicitor, have participated in the review and drafting of the

proposed rules under the supervision of William M. Eichbaum, Associate Solicitor and Peter B. Kelsey, Assistant Solicitor for Regulatory Programs.

Dated: September 12, 1978.

Joan M. Davenport, Assistant Secretary, Energy and Minerals.

In consideration of the foregoing it is proposed to:

(1) Recodify 30 CFR, Chapter VII into Subchapters as follows:

- (a) Subchapter A – General, containing existing Parts 700, 701, 705, 706, and 707,
- (b) Subchapter B – Initial Program Regulations, containing existing Parts 710, 715, 716, 717, 718, 720, 721, 722, 723, 725,
- (c) Subchapter C – Permanent Regulatory Programs in States,
- (d) Subchapter D – Regulatory Program for Federal Lands,
- (e) Subchapter F – Areas Unsuitable for Mining,
- (f) Subchapter G – Permits for Surface Coal Mining Operations,
- (g) Subchapter J – Performance Bonds for Surface Coal Mining Operations,
- (h) Subchapter K – Permanent Program Environmental Performance Standards,
- (i) Subchapter L – Permanent Program Inspection and Enforcement Procedures,
- (j) Subchapter M – Certification and Training of Blasters,
- (k) Subchapter P – Protection of Employees,
- (l) Subchapter R – Abandoned Mine Land Reclamation, and
- (m) Subchapter S – Mining and Mineral Research Institutes.

(2) Redesignate:

- (a) 30 CFR, Chapter VII, Part 830 as Subchapter P, Part 865,
- (b) 30 CFR, Chapter VII, Part 837 as Part 870 within Subchapter R,
- (c) 30 CFR, Chapter VII, Part 740 as Part 735 within Subchapter C,

(3) Revise 30 CFR Part 700 to read as stated below, and I11(4) Amend 30 CFR, Chapter VII to add:

- (i) Subchapter A, Parts 701 and 707;
- (ii) Subchapter C, Parts 730, 731, 732, 733, and 736;
- (iii) Subchapter D, Parts 740, 741, 742, 743, 744, and 745;
- (iv) Subchapter F, Parts 760, 761, 762, 764, 765, and 769;
- (v) Subchapter G, Parts 770, 771, 776, 778, 779, 780, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, and 792;

(vi) Subchapter J, Parts 800, 805, 806, 807, 808, and 809;

(vii) Subchapter K, Parts 810, 811, 812, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, and 828;

(viii) Subchapter L, Parts 840, 842, 843, and 845; and

(ix) Subchapter M, Parts 850 and 851.

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