

FEDERAL REGISTER: 44 FR 56272 (September 28, 1979)

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 701 and 741

Permanent Regulatory Program

ACTION: Proposed OSM amendment to 30 CFR 701.11 and 741.11, concerning schedule for operator compliance with permanent program performance standards on Federal lands.

SUMMARY: OSM seeks public comment on certain proposed amendments to regulation found in 30 CFR 701.11 and 741.11 which would establish the schedule for operator compliance with permanent program performance standards on Federal lands. The proposed amendment would postpone the effective date for operator compliance with the permanent program performance standards on existing operations until after approval of a State program or implementation of a Federal program for a State.

DATES: Comments must be received by October 29, 1979, at the address below by no later than 5 p.m. A public hearing will be held October 18 at 9:00 a.m. Representatives of the Office will be available to meet with interested persons, groups, or organizations, upon request, between September 28, 1979 and October 29, 1979.

ADDRESSES: Written comments must be mailed or hand delivered to: Office of Surface Mining, U.S. Department of the Interior, Room 135, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240. Summaries of public meetings and the transcript of the public hearing will be prepared and made available for public review in Room 135 of the Interior South Building. Public hearing location: Room 269, Old Post Office Building, Denver, Colorado.

FOR FURTHER INFORMATION CONTRACT: Carl Close, Assistant Director, State and Federal Programs, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240 (202) 343-4225.

SUPPLEMENTAL INFORMATION:

On March 13, 1979, OSM published permanent Federal lands program regulations. 30 CFR 701.11 and 741.11(A) of these regulations provide that on and after six months (October 12, 1979) from the effective date of the regulations, each operator having an approved mining plan, or having submitted an approvable new or revised mine plan prior to the effective date of the regulations must comply with the permanent program performance standards in 30 CFR Subchapter K, Subparagraph (a) (1) of Section 741.11 provides the regulatory authority with discretionary authority to extend the compliance period up to 6 additional months when the regulatory authority determines that an existing mine plan requires modification to assure compliance with one or more performance standards. Subparagraph (a) (2) of this section excepts from the six-month compliance date new mine plans or modifications to existing mine plans involving increases in the acreage to be mined. In such cases, the application for approval of the mining plan must comply with the permanent regulations in 30 CFR 741.13 (Permit Applications), 30 CFR 742 (Bonds and Liability Insurance on Federal Lands), and 30 CFR 744 (Performance Standards for Federal Lands).

As expressed in the Preamble to the final rules (44 FR 14976, March 13, 1979), OSM's intent in adopting the provisions of 30 CFR 741.11(a) (1) and (a) (2) was to provide the flexibility to determine the timing of enforcement of specific performance standards for existing mines on a case-by-case basis while maintaining the rapid implementation schedule for new mines as intended by Congress. Section 523(a) of the Act provides that "no later than one year after the date of enactment of this Act, the Secretary shall promulgate and implement a Federal lands program which shall be applicable to all surface coal mining and reclamation operations taking place pursuant to any Federal law on any Federal lands."

Since publication of the final rules, OSM has received several comments, including two identical petitions, alleging that the requirements of 30 CFR 741.11(a) are in conflict with Section 523(c) of the Act. This Section provides that, "Any State with an approved State program may elect to enter into a cooperative agreement with the Secretary * * * in accordance with the provisions of this Act. States with cooperative agreements existing on the date of enactment of this Act, may elect to continue regulation on Federal lands within the State, prior to approval by the Secretary of their State program * * * provided that such existing cooperative agreement is modified to fully comply with the *initial regulatory procedures* set forth in Section 502 of this Act" (Emphasis added).

The petitioners suggest that OSM's interpretation of Section 523(c) of the Act, requiring implementation of the Federal lands program by October 12, 1979, is incorrect for two reasons: (1) it ignores the exemption quoted above for States with cooperative agreements; and (2) assuming Congress meant the Federal lands program to apply in States with cooperative agreements as of August 3, 1978, OSM missed that date by 14 months. The petitioners further contend that Section 523(a) of the Act provides that on Federal lands in a State with an approved permanent program, the Federal lands program, shall, at a minimum, include the requirements of the approved State program. This indicates, according to the petitioners, that Congress anticipated that the States would have the opportunity to submit and have a State program approved prior to implementation of a Federal lands program, and this opportunity has not been afforded to the States. Based on this rationale, the petitioners proposed that 30 CFR 741.11 be amended "to provide that in States where surface mining operations on Federal lands are being regulated by a state regulatory authority under an interim regulatory program approved pursuant to 30 U.S.C. 1252 and a cooperative agreement pursuant to 30 U.S.C. 1273(C) and where the State has submitted a permanent program pursuant to 30 CFR Subchapter C, surface coal mining operations must comply with 30 CFR Subchapter K within 8 months of the Secretary's approval of the permanent state program, or within 2 months of the Secretary's final disapproval of the state's permanent program under 30 U.S.C. 1253".

After a thorough review of Section 523 of the Act and the arguments offered by the petitioners on the final rule adopted March 13, 1979, the OSM has concluded that the petitions have sufficient merit to justify proceeding with proposed rulemaking. In granting the petitions, however, the OSM is requesting public comments on a proposed rule which is slightly different from that proposed by the petitioners. The OSM proposed rule would postpone for existing mines required operator compliance with the permanent program performance standards until after approval of a State program or implementation of a Federal program for a State. The new schedule would apply in all States and only to operations having mining plans approved or approvable in accordance with 30 CFR Part 211 prior to April 12, 1979, the effective date of the regulations. If this schedule is adopted all mine plans for new coal mining operations and major extensions of existing mines submitted to the regulatory authority and not approvable pursuant to 30 CFR 211 by April 12, 1979, would be required to comply with the requirements of 30 CFR 741.13, 30 CFR Part 742 and 30 CFR Part 744. Excepted from processing under the permanent regulations would be those mine plans that have been pending in the Department since before March 13, 1979 and that are sufficiently close to decision that to return them to the applicant for revision in accordance with Subchapter D would be inequitable and administratively wasteful. [Page 56273]

The OSM believes that postponing the effective date for compliance with the permanent performance standards for existing operations in all States would be desirable, because it would provide evenhanded treatment for operators of existing mines; there would be no comparative economic advantage resulting from the regulations. The proposed amendments also would establish a single timetable which would be easier to administer and it provides less opportunity for confusion. It further assures application of the same standards and procedures for existing mine operations on commingled lands.

OSM does not proposed to amend the schedule for new mine plans and major extensions of existing coal mines now pending before the Department, with the exceptions noted above. Under the March 13, 1979, regulations such operations have been required to comply with the permanent program requirements, and the Office believes that changing the schedule for these operations would be unfair to those operators who have properly submitted mine plans under the permanent program requirements. The Office believes that it would be in the best interest of the operators submitting new mine plans to assure that such plans comply with the permanent program requirements, particularly those submitted for review and approval near the effective date of an approved State program or implementation of a Federal program. Otherwise the regulatory authority would, within a relatively short time span, require the operator to resubmit the mine plan to assure compliance with the permanent Federal lands program requirements. Modification and resubmission of a mine plan could be costly and time-consuming for the operator and the regulatory authority and would delay development of needed coal mines.

OSM further believes that the existing schedule for compliance with the permanent program performance standards for new or expanded mining operations will assure the early protection for Federal lands intended by Congress, and will be consistent with the traditional concept that the Secretary of the Interior, as trustee of the public lands, is responsible for taking all necessary actions to assure that authorized activities taking place on Federal lands are conducted in a manner which will prevent unwarranted injury or destruction of the natural resources and be in the public interest. Finally, the early compliance requirement for these operations also sets an example for the States in developing and subsequent administration and enforcement of State programs.

OSM recognizes that early implementation of compliance with the permanent performance standards on existing operations would also provide early protection of the Federal lands. However, as discussed previously it is felt that other constraints require that the proposed change be made with respect to existing operations.

OSM's proposed amendment affects Sections 701.11 and 741.11 as follows:

1. 30 CFR 701.11 *Applicability*, is a general statement of applicability of the performance standards, and mirrors the existing requirements of Section 741.11. This Section would therefore, be revised to reflect accurately the proposed amendment to the latter Section which would postpone operator compliance for existing mines, with the permanent program performance standards. Conforming amendments are proposed for paragraphs (b), (c), (d) and (e).
2. CFR 741.11 has been restructured and rewritten. As amended, proposed Paragraph 741.11(a) would incorporate the provisions of existing Sections 741.11(a) (2) and 741.11(c). The effect of this change is to eliminate the requirement that operators having an approved mining plan under 30 CFR 211 comply with the permanent performance standards in Subchapter K on and after October 12, 1979. Such operators will continue to be required to comply with the initial performance standards in 30 CFR 211. Paragraph 741.11(b) of the existing rules would remain unchanged. Paragraph 741.11(d) would be renumbered (c), and the reference to "Paragraph (c)" would be revised to read (a). Finally, existing Paragraph (e) would be redesignated.

PUBLIC COMMENT PERIOD

The comment period on the proposed amended rule will extend until October 29, 1979. All written comments must be received at the address given above by 5 p.m., on October 29, 1979. Comments received after that hour will not be considered or included in the administrative record for this proposed rulemaking. The OSM 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 proposed rulemaking.

PUBLIC MEETINGS

Representatives of the Office will be available to meet between September 28, 1979, and October 29, 1979, at the request of members of the public, State representatives, industry officials, environmental groups or other organizations to receive their advice and recommendations concerning the proposed amendment. Persons, groups or organizations wishing to meet with OSM representatives during this time period may request to meet with OSM officials at the Washington offices and at the Kansas City and the Denver regional offices of OSM. Advance notice of such meetings will be posted and the meetings will be open to the public. OSM officials 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. Persons to contact to schedule meetings are as follows:

Washington - (202) 343-4225, Carl Close

Kansas City - (816) 374-5162, Raymond Lowrie

Denver - (303) 837-5421, Donald Crane

Addresses of the regional offices are as follows:

OSM Region IV, 818 Grand Avenue, Scaritt Building, Kansas City, MO 64106

OSM Region V, Post Office Building, 1832 Stout Street, Denver, CO 80205

Summaries of public meetings will be prepared and made available for public review at the office at which the meetings were held and in Room 135 of the Interior South Building, as previously noted.

PUBLIC HEARING

A public hearing will be held October 18, 1979, at 9:00 a.m., Room 269 of the Old Post Office, Denver, Colorado. Persons wishing to testify at the hearing should contact David Walker at the Office of Surface Mining, Region V, Post Office Building, Room 270, 1823 Stout Street, Denver, Colorado 80202 (Phone (303) 837-5966) prior to the hearing date.

Individual testimony at this hearing will be limited to 15 minutes. The hearing will be transcribed. Filing of a written statement at the time of giving oral testimony would be helpful and facilitate the job of the hearing reporter. Submission of written statements to the persons identified above for this hearing, in advance of the hearing date whenever possible, would greatly assist Office officials who will attend the hearing. Advance submissions will give these officials an opportunity to consider appropriate questions which could be asked to clarify or elicit more specific information from the person testifying. The record will remain open for the receipt of additional written comments until October 29, 1979. The public hearing will continue on the day 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 hearing will end 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 unless they are present in the audience at the time all scheduled speakers have been heard.

A transcript of the hearing will be prepared and made available for public review in Room 135 of the Interior South Building and at the Kansas City and Denver regional offices of OSM, as previously noted.

PUBLIC COMMENTS

Written comments should be as specific as possible. The OSM will appreciate any and all comments, but those most useful and likely to influence decisions on these proposed rules will be those which include references to source material including legislative history 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 rule will discuss consideration of comments received on the proposed rule.

OTHER INFORMATION: Pursuant to 43 CFR Part 14, the Department of the Interior has determined that amending 30 CFR 701.11 and 741.11 to postpone the schedule for operator compliance with the permanent program performance standards for existing operations until after approval of a State program or implementation of a Federal program for a State is not a significant action and will not require a regulatory analysis. The proposed rule will not have a major and national or region wide impact on State or local governments. The initial regulatory program performance standards and existing State laws will remain in effect and will provide a level of protection for the public health and safety and the environment comparable to that on non-Federal lands.

Additionally, the amended rule will not impose major new recordkeeping or reporting requirements on individuals, businesses, organizations, or State or local governments. New information will not be required.

The proposed amendment does not constitute a major Federal action for which an environmental impact statement is required by Section 102(2) (C) of the National Environmental Policy Act of 1969. The proposed rules are a part of the implementation of the Federal lands program. A special exemption is provided by Section 702(d) of the Act which specifies that " * * * and implementation of the Federal lands programs * * * shall not constitute a major action within the meaning of Section 102(2) (C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332)."

Finally, the proposed amended rules would not have a major impact on other programs of the Department, other Federal agencies or the allocation of Federal funds nor would they have a substantial effect on the entire economy or on an individual region, industry, or level of government. Postponing the compliance date will not affect the Department's coal management program leasing schedule nor will it involve a reallocation of agency funding. The proposed new schedule will not increase the cost of administration. Coal operators may benefit from reduced mining costs until after implementation of the permanent regulatory program. Such benefits, however, are thought to be of minor consequence and will be temporary in nature.

Dated: September 24, 1979.

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

1. Accordingly, it is proposed to amend 30 CFR 701.11(c) - (e) to read as follows:

SECTION 701.11 - APPLICABILITY.

* * *

(b) Any person conducting surface coal mining and reclamation operations on Federal lands approved pursuant to 30 CFR Part 211 must apply for a new permit pursuant to 30 CFR Subchapter D within two months and obtain approval on or before eight months from the date of approval of a State program or implementation of a Federal program. However, under conditions specified in 30 CFR 741.11(c), a person may continue such operations after eight months from the date of approval of a State program or implementation of a Federal program.

(c) On and after April 12, 1979, no person may start surface coal mining and reclamation operations on Federal lands or initiate a major extension of a previously approved surface coal mining and reclamation operation without having obtained a permit pursuant to 30 CFR Subchapter D, except that mine plans approvable on April 12, 1979 under 30 CFR Part 211 may be approved pursuant to those regulations.

(d) The requirements of Subchapter K of this Chapter shall be effective and shall apply to each surface coal mining and reclamation operation which is required to obtain a permit under the Act, on the earliest date upon which the Act and this Chapter require a permit to be obtained, except as provided in Paragraph (e) of this Section.

(e) (1) Each structure used in connection with or to facilitate a coal exploration or surface coal mining and reclamation operation shall comply with the performance standards and the design requirements of Subchapter K of this Chapter, except

that –

(i) An existing structure which meets the performance standards of Subchapter K of this Chapter but does not meet the design requirements of Subchapter K of this Chapter may be exempted from meeting those design requirements by the regulatory authority. The regulatory authority may grant this exemption only as part of the permit application process after obtaining the information required by 30 CFR 780.12 or 784.12 and after making the findings required in 30 CFR 786.21;

(ii) If the performance standard of Subchapter B of this Chapter is at least as stringent as the comparable performance standard of Subchapter K of this Chapter, an existing structure which meets the performance standards of Subchapter B of this Chapter may be exempted by the regulatory authority from meeting the design requirements of Subchapter K of this Chapter. The regulatory authority may grant this exemption only as part of the permit application process after obtaining the information required by 30 CFR 780.12 or 784.12 and after making the findings required in 30 CFR 786.21;

(iii) An existing structure which meets a performance standard of Subchapter B of this Chapter which is less stringent than the comparable performance standards of Subchapter K of this Chapter or which does not meet a performance standard of Subchapter K of this Chapter for which there was no equivalent performance standard in Subchapter B of this Chapter shall be modified or reconstructed to meet the design standard of Subchapter K of this Chapter pursuant to a compliance plan approved by the regulatory authority only as part of the permit application as required in 30 CFR 780.12 or 784.12 and according to the findings required by 30 CFR 786.21;[Page 56275]

(iv) An existing structure which does not meet the performance standards of Subchapter B of this Chapter and which the applicant proposes to use in connection with or to facilitate the coal exploration or surface coal mining and reclamation operation shall be modified or reconstructed to meet the design standards of Subchapter K prior to issuance of the permit.

(2) The exemptions provided in Paragraph (e) (1) (i) and (e) (1) (ii) shall not apply to:

(i) The requirements for existing and new waste piles used either temporarily or permanently as dams or embankments; and

(ii) The requirements to restore the approximate original contour of the land.

* * *

2. It is proposed to amend 30 CFR 741.11 (a), (c) and (d) to read as follows:

SECTION 741.11 - GENERAL OBLIGATIONS.

(a) (1) On and after April 12, 1979, no person may start surface coal mining and reclamation operations on Federal lands or initiate a major extension of a previously approved surface coal mining and reclamation operation, without having obtained a permit pursuant to this Subchapter, except that mine plans approvable on April 12, 1979, under 30 CFR Part 211 may be approved pursuant to those regulations;

(2) Not later than two months after the effective date of a State program or a Federal program for a State and regardless of litigation contesting the promulgation of this Subchapter, each person who expects to continue conducting surface coal mining and reclamation operations on Federal lands after the expiration of eight months from such effective date, which operations had been approved previously pursuant to 30 CFR Part 211, shall file a complete application for a permit for such operations as required in this Subchapter, and

(3) Except as provided in Paragraph (c) of this section, on or after eight months from the effective date of a State program or a Federal program for a State, no person shall continue to conduct a surface coal mining and reclamation operation on Federal lands previously approved under 30 CFR Part 211, unless that person has first obtained a valid permit issued by the Director under the Act and this Subchapter.

* * *

(c) A person who conducts surface coal mining and reclamation operations, under a mining plan approved by the Secretary in accordance with the Act and 30 CFR 211, may conduct those operations beyond the period prescribed in paragraph (a) (3) of this section, if all of the following conditions are present:

(1) Timely and complete application for a permit to conduct those operations under this Part has been made to the Regional Director, in accordance with the provisions of the Act and the Part;

(2) The Director has not yet rendered a final decision with respect to the permit application pursuant to 30 CFR 741.21(a) (4) or (5); and

(3) Those operations are conducted in compliance with all terms and conditions of the approved mining plan and the requirements of the Act, 30 CFR 211, and Subchapter K, State laws and regulations applicable through an approved cooperative agreement, and the requirements of the applicable lease or license.

(d) After the issuance of a new permit under this Section, the permittee shall conduct surface coal mining and reclamation operations in accordance with all requirements of the permit, in addition to all requirements of the lease, license, and all applicable State and Federal regulations.

[FR Doc. 79-30254 Filed 9-27-79; 8:45 am, 12:21 pm, 3:17 pm]
BILLING CODE 4310-05-M