

FEDERAL REGISTER: 45 FR 25990 (April 16, 1980)

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 783, 816, 817

Permanent Regulatory Program

ACTION: Proposed rulemaking.

SUMMARY: Modifications to the permanent regulatory program are proposed to: (1) Narrow the requirements for a geologic description of areas to be affected by surface operations or facilities to only those areas where overburden will be removed down to the level of a coal seam; (2) provide an exemption from the underdrain requirement for coal processing waste banks if the operator can demonstrate that an alternative system will ensure structural integrity of the waste bank and protect water quality; (3) delete the requirement that underground mining operations monitor ground water to determine the recharge capacity of reclaimed lands; and (4) allow underground mines having permit areas of 40 acres or less, in locations with an average annual precipitation of more than 26 inches, to measure revegetation success by using certain specified performance standards as alternatives to the use of reference areas.

DATES: Comments must be received by May 16, 1980, at the address below by not later than 5:00 p.m. A public hearing will be held on May 6, 1980. Representatives of OSM will be available to meet with interested persons between April 16, 1980 and May 16, 1980.

ADDRESSES: Written comments must be mailed or hand delivered to the Office of Surface Mining, U.S. Department of the Interior, Room 153, South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240. Persons wishing to testify at the hearing should contact the person listed below under "For Further Information Contact". A transcript of the public hearing, all written comments received, and summaries of meetings with representatives of OSM will be prepared and made available for public review in Room 153 of the Interior South Building. The public hearing will be held in the Department of the Interior Auditorium, 18th and C Streets, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary Crouter, Program Analyst, Office of the Deputy Director, Office of Surface Mining, U.S. Department of the Interior, South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240; (202) 343-9158.

SUPPLEMENTARY INFORMATION:

These regulations are proposed to amend OSM's permanent program regulations published at 44 FR 15312 *et seq.* (March 13, 1979). The affected regulations, the rationale for the proposed changes, and the proposed rules are set forth below. The basis and purpose for the existing regulations now being proposed for amendment is found at 44 FR 14901-15309 (March 13, 1979). That basis and purpose statement is incorporated herein by reference insofar as it is consistent with these proposed amendments.

30 CFR 783.14(a)(1) -- GEOLOGY DESCRIPTION

Sections 507(b)(14) and 508(a)(12) of the Act require each permit application to contain certain geologic information which will enable the regulatory authority to perform the assessments required by Sections 507(b)(11), 508(a)(12) and 510(b)(3) of the Act. The information provided will also enable the regulatory authority to determine whether the applicant can comply with certain sections of Subchapter K where geological data or subsurface information is needed.

The present regulation requires that applicants for an underground mine permit submit in the permit application a geology description "of the strata down to and including the stratum immediately below any local seam to be mined * * * for those areas to be affected by surface operations or facilities." This description must include a statement of the results of analyses of test borings or core samplings.

The issue has been raised that for underground mining these data requirements may be unnecessary when the surface disturbance contemplated would be minimal and would not extend very far below the surface. Examples would be the construction of a road, building, or other facility. After careful review of the preamble and the permanent regulations, the Secretary proposes to narrow the requirements for the geology description in a permit application for an underground mining operation to only those areas where overburden will be removed down to the level of the coal seam. For those areas where surface operations or facilities will not result in the removal of overburden down to the level of the coal seam to be mined, the

geology description would be required only to the level of the stratum to be disturbed or affected. The Secretary believes this change will be consistent with the requirements of Section 516(a) of the Act to consider the distinct difference between surface mining and underground mining in adopting regulations.

This proposed change does not affect specific requirements in other regulations which call for geotechnical investigation for significant surface operations or facilities although overburden will not be removed down to the level of the coal seam. For example, 30 CFR 784.16(e) requires that results of geotechnical investigations for coal processing waste dams and embankments be included in the reclamation plan. Similarly, 30 CFR 784.24(b) requires a geotechnical analysis for alternative specifications or for steep cut slopes for transportation facilities.

30 CFR 816.83(a)/817.83(a) -- SUBDRAINAGE SYSTEM FOR COAL PROCESSING WASTE BANKS

The present regulation addresses required water control measures to ensure the structural integrity of coal processing waste banks and to prevent degradation of water quality. The Secretary believes that properly constructed subdrainage systems are essential to the stability and environmental soundness of a coal processing waste bank. Consequently, the Secretary chose to require adequately designed subdrainage systems to control the drainage beneath waste banks.

Inadequate consideration of water control measures can cause structural failure of a waste embankment. Increased water levels within a waste bank will adversely affect the physical properties of the waste materials. Water movement through waste piles may also create serious water quality problems such as acid drainage.

After careful review of the regulations, preamble and technical literature, the Secretary has concluded that a subdrainage system, although necessary as a general rule, may not be necessary in all cases. Accordingly, the proposed revision to the regulation would provide an exemption from the subdrainage requirement if the operator can demonstrate to the regulatory authority that a subdrainage system is not required to insure structural integrity and water quality. The operator granted an exemption is still responsible for constructing coal waste banks to assure structural integrity as required by 30 CFR 816.85 and 817.85, and to protect water quality and the public health and safety as required by 30 CFR 816.81-816.83 and 817.81-817.83. [Page 25991]

30 CFR 817.52(a)(1) -- MONITORING RECHARGE CAPACITY

The proposed regulation would eliminate the requirement for underground mine operations to monitor the effects of underground mining activities on the recharge capacity of reclaimed lands. The requirement to monitor the effects of underground mining on ground water would be retained.

In promulgating the permanent regulations, the Secretary did not believe it appropriate to require a performance standard concerning restoration of recharge capacity of aquifers with respect to underground mining. This decision was reflected in the preamble to the proposed regulations (43 FR 41780, September 18, 1978) which stated that because the structural integrity of water bearing formations should not be significantly affected by underground mining, the recharge capacity of water bearing formations should be maintained without any special precautions. The only comment received on this section supported deletion of any performance standard for underground mines on recharge capacity. 44 FR 15267, March 13, 1979.

Accordingly, the Secretary believes there is no justification in requiring monitoring of recharge capacity for underground mines when there is no related performance standard. The proposed change retains the requirement to monitor the effects of underground mining on ground water. Protection of the ground water resource and the overall hydrologic balance is further assured through the stringent monitoring of aquifers, overburden and spoil required by 30 CFR 817.52(a)(2).

30 CFR 817.116 -- REVEGETATION SUCCESS

The proposed rule change would add a provision for the use of fixed standards for determining success of revegetation for underground permit areas of forty (40) acres or less in locations with an average annual precipitation of more than twenty-six (26) inches. The present regulation requires the use of reference areas or technical guidelines to measure revegetation success. The omission in the permanent regulation of a fixed standard was an oversight. The preamble to Sections 817.113 through 817.117 (44 FR 15272) stated that these sections were substantially identical to the corresponding sections of Part 816 which cover surface mining, and Part 816 contains a provision relating to permit areas of 40 acres or less. 30 CFR 816.116(d).

The operator's use of the fixed standards of success in proposed Section 817.116(d) will be contingent on satisfying the permit size and annual precipitation factors cited above, and the approval of the regulatory authority to use the standards of this subsection when determining success of revegetation. It is intended that the final determination of the applicability and use of this standard rests with the regulatory authority.

The proposed regulation is identical to its surface mining counterpart, 30 CFR 816.116(d). The operator will be required to maintain a minimum of seventy (70) percent ground cover for five consecutive years on areas planted to herbaceous species as well as areas planted to herbaceous and woody species. When woody plants are part of the postmining land use, a minimum stocking of four hundred (400) woody plants is proposed per acre. A minimum of six (600) woody plants is proposed for each acre of steep slopes. Success of stocking is to be determined at the end of the five (5) year period of responsibility. The basis for these requirements is discussed in Volume 44, Federal Register, March 13, 1979, pages 15237 and 15239-41. Under this proposal, the regulatory authority may set more stringent stocking and ground cover standards when the more stringent requirements are necessary to control erosion, under specific climatic and soil conditions or to satisfy regional or local recommended reforestation practices.

PUBLIC HEARING

A public hearing will be held on May 6, 1980, in the Department of the Interior Auditorium at 18th and C Streets, N.W., Washington, D.C. The hearing will begin at 9:00 a.m. Individual testimony at the hearing will be limited to 15 minutes. The hearing will be transcribed. Filing of a written statement at the time of given oral testimony would be helpful and facilitate the job of the court reporter. Submission of written statements in advance of the hearing date whenever possible, to the person identified above under "For further information contract" would greatly assist OSM officials who will attend the hearing. Advance submissions will give OSM officials an opportunity to consider appropriate questions which could be asked to clarify or elicit more specific information from the person testifying. The administrative record will remain open for receipt of additional written comments until May 16, 1980.

Persons in the audience who have not been scheduled to speak and wish to do so will be heard after the scheduled speakers. Persons not scheduled to testify, but wishing to do so, assume the risk of having the public hearing adjourned if they are not present when all scheduled speakers conclude.

PUBLIC MEETINGS

Representatives of OSM will be available to meet between (date of application) and (30 days after Publication) 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 the representatives of OSM during this time period may request to meet with OSM officials at the Washington office. OSM will be available for such meetings from 9:00 a.m. to noon and 1:00 p.m. to 4:00 p.m., local time, Monday through Friday, excluding holidays, at this location. Summaries of meetings will be prepared and made promptly available for public review in room 153 of the Interior South Building.

OTHER INFORMATION

Pursuant to 43 CFR Part 14, the Department of the Interior has determined that the proposed rules are not significant and do not require a regulatory analysis. The "Determination of Significance" document prepared by OSM is available for inspection at the address indicated above.

OSM has prepared an environmental assessment on these proposed amendments. That assessment resulted in a finding that the proposed rules will not have a significant impact on the quality of the human environment so as to require the preparation of an environmental impact statement. The environmental assessment is available for inspection at the address indicated above.

The principal authors of these proposed rules are: Arlo Dalrymple, John Mosesso, and Lew McNay, Division of Technical Research; C.Y. Chen and Ray Aufmuth, Division of Technical Services; and Mary Crouter, Office of the Deputy Director.

Dated: April 9, 1980.

David A. Schuenke,

Acting Assistant Secretary, Energy and Minerals.

PROPOSED REGULATIONS

The following regulations in 30 CFR Chapter VII are amended as listed below:[Page 25992]

PART 783 -- UNDERGROUND MINING PERMIT APPLICATIONS -- MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

Section 783.14 is amended by revising the introductory portion of paragraph (a)(1) as follows:

SECTION 783.14 - GEOLOGY DESCRIPTION.

* * *

(1) Geology of all the strata to be disturbed or affected by surface operations or facilities shall be described. The description shall include, at a minimum, the lithologic characteristics and physical and chemical properties of each stratum. For those areas to be affected by surface operations or facilities where removal of the overburden down to the level of the coal seam will occur, the geology of the strata down to and including the stratum immediately below any coal seam to be mined shall be described, including the following data resulting from analyses of test borings, core samplings, or outcrop samples

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PART 816 -- PERMANENT PROGRAM PERFORMANCE STANDARDS -- SURFACE MINING ACTIVITIES

Section 816.83 is amended by revising the introductory text of paragraph (a).

SECTION 816.83 - COAL PROCESSING WASTE BANKS: WATER CONTROL MEASURES.

(a) Unless the operator satisfactorily demonstrates to the regulatory authority that a subdrainage system is not required to ensure the structural integrity of a coal processing waste bank and the protection of the surface and ground water quality in the immediate vicinity of the disposal area, a properly designed subdrainage system shall be provided, which shall

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PART 817 -- PERMANENT PROGRAM PERFORMANCE STANDARDS -- UNDERGROUND MINING ACTIVITIES

SECTION 817.52 [AMENDED]

The following language in Section 817.52(a)(1) is deleted: "on the recharge capacity of reclaimed lands and".

Section 817.83 is amended by revising the introductory text of paragraph (a)

SECTION 817.83 - COAL PROCESSING WASTE BANKS: WATER CONTROL MEASURES.

(a) Unless the operator satisfactorily demonstrates to the regulatory authority that a subdrainage system is not required to ensure the structural integrity of a coal processing waste bank and the protection of the surface and ground water quality in the immediate vicinity of the disposal area, a properly designed subdrainage system shall be provided, which shall

* * *

Section 817.116 is amended by adding a new paragraph (d) to read as follows:

SECTION 817.116 - REVEGETATION: STANDARDS FOR SUCCESS.

* * *

(d) For permit areas 40 acres or less in size, in locations with an average annual precipitation of more than 26 inches, the following performance standards, if approved by the regulatory authority, may be used instead of reference areas to measure success of revegetation on sites that are disturbed. These standards shall be met for a minimum of 5 full consecutive years.

(1) Areas planted only in herbaceous species shall sustain a vegetative ground cover of 70 percent for 5 full consecutive years.

(2) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover of 70 percent for 5 full consecutive years and 400 woody plants per acre after 5 years. On steep slopes, the minimum number of woody plants shall be 600 per acre.

For purposes of this Section, herbaceous species means grasses, legumes, and nonleguminous forbs; woody plants means woody shrubs, trees and vines; and ground cover means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.

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