

FEDERAL REGISTER: 45 FR 43437 (June 27, 1980)

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 800, 801, 805, 806, 807, and 808

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Performance Bonding

ACTION: Reopening for public comment.

SUMMARY: OSM is reopening for five (5) days the public comment period on proposed amendments to permanent program bonding regulations to afford the public an opportunity to comment upon information received from the U.S. Department of Agriculture, Forest Service.

DATE: All comments must be received on or before 5:00 p.m. on July 2, 1980, to become part of the administrative record.

PUBLIC MEETINGS: Representatives of OSM will be available to meet between June 27, 1980 and July 2, 1980, at the request of the public, State and Federal representatives, and industry organizations to receive their advice and recommendations concerning the content of this notice. Persons wishing to meet with an OSM representative in any of the OSM regional offices or Washington office should contact Mr. R. Price (202/343-4022) to arrange an appointment.

ADDRESS: The copies of the proposed amendments of January 24, 1980, and comments received may be viewed or acquired during normal business hours at -- OSM Headquarters. Department of the Interior, South Bldg., Room 153, 1951 Constitution Avenue NW., Washington, D.C. 20240.

Written comments on this issue must be delivered to the above address above by 5:00 p.m. on July 2, 1980.

FOR FURTHER INFORMATION CONTACT: Russell Price, P.E., Division of Technical Services, OSM, Department of the Interior, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION:

OSM published rulemaking January 24, 1980 (45 FR 6028), proposing amendments to Subchapter J, performance bonding regulations. During the 60-day comment period which followed and ended March 24, 1980, a comment was received from the U.S. Department of Agriculture (USDA) providing for institutions and agencies conducting research in reclamation techniques to accept the responsibility for the success of the revegetation. Dr. David R. Maneval, Assistant Director, Technical Services and Research, OSM, in a meeting with USDA on April 16, 1980, discussed this issue and prepared a synopsis of the discussion dated April 22, 1980.

Therefore, it is the intent of this notice to reopen the public-comment period to insert the discussion paper into the administrative record and allow public comment on this issue. The following USDA Forest Service comment was received during the comment period:

"We at the Forest Service have reviewed the proposed amendments to the permanent regulatory program (30 CFR Chapter VII, Subchapter J) as outlined in the Federal Register, Vol. 45, No. 17, dated January 24, 1980. In the existing or proposed rules we find no specific reference to reclamation research areas.

"We believe a continued effort in reclamation research and demonstration is essential to assure the least adverse environmental effects of surface mining while at the same time assuring the most productive uses of mined lands.

"Rarely are reclamation research activities planned for an area at the initiation of the mining permit application stage. Rather, most research areas are selected following reclamation phase I. In order to encourage research in reclamation and to promote cooperation between research organizations and mine operators, we feel that it would be desirable to make some provisions for early release of reclamation performance bonds on specifically delineated areas that are dedicated to reclamation research and/or demonstration of reclamation technology. Seldom will research areas encompass an entire increment of a permitted area. Therefore, a need exists to provide release of performance bonds on entire increments within which research plots are located provided such increments otherwise qualify for release of performance bonds.

"Cooperation in reclamation research will be greatly enhanced if the entire performance bond is released at the time research areas are delineated and responsibility assumed by the research organization.

"These comments are being made under the assumption that the research is being carried out by, or sponsored by, State and/or Federal agencies.

"Following are some specific suggestions for incorporating provisions that we feel are necessary:

1. Section 805.13, paragraph (a) would be worded as set forth below. Additional wording is *underscored* .

(a) Liability under performance [bonds] applicable to a permit shall continue until all reclamation, restoration, and abatement work required of persons who conduct surface coal mining and reclamation operations under requirements of the Act, this chapter, the regulatory program, and the provisions of the permit has been completed, *or responsibility is assumed by Federal or State Agencies or organizations for reclamation research activities or demonstration of reclamation technology*, and the permit terminated by release of the permittee from any further liability in accordance with 30 CFR Part 807.

2. Section 807.12, paragraph (e)(2) would be revised to include subparagraph (vi).

(vi) Responsibility for a designated area is assumed by Federal or State Agencies or organizations or reclamation research activities or demonstrations of reclamation technology."

"These suggested changes may not be sufficient to meet all legal requirements since a change in one Section may require additional wording in other sections."

Following the April 16, 1980, meeting of the USDA, Reclamation Committee, a discussion involved a letter to OSM dated March 20, 1980, commenting on the bonding regulations. Section 805.13 and 807.12. The committee was informed that their letter of comment had been received and had been entered into the Administrative Record, and this comment, as well as other comments from other sources, and also the material received during public hearings, was being reviewed by a team of technical people from OSM. It was noted that there appeared to be concern from the Solicitor's Office regarding their comment that the requested change suggested in the March 20, 1980, memorandum would not be possible unless the "responsibility" mentioned in their letter included actual bonding by the State or Federal Government agency. At least tentatively it having been determined that some irreversible commitment needed to be in hand that the reclamation to a satisfactory performance standard must be assured even in the event that the experimental practice contemplated failed. The members of the Reclam Committee expressed concern that individual Government agencies would not be able to buy bonds and had assumed that the responsibility contemplated would only be a "moral responsibility." They also noted, however, that in many cases State and Federal agencies have physical equipment, bulldozers, graders, etc., and staff that could perform the required reclamation if it were absolutely necessary. Although this may be true, the utilization of equipment and personnel is always conditional upon appropriations by legislative bodies and the availability of staff and equipment could not necessarily be assured in light of the dependency of the agency on an appropriation.

The attendees noted that it may be necessary to suggest alternative language which would say that bonding or an otherwise legal agreement as a bond substitute would be provided to assure that the necessary reclamation was performed. [Page 43438]

The new comment period is necessary to allow comments on the above issue and insertion of the record of the meeting into the administrative record.

This announcement is in keeping with OSM's commitment to public participation as a vital component in fulfilling the purposes of the Surface Mining Control and Reclamation Act of 1977.

STATEMENT OF SIGNIFICANCE AND ENVIRONMENTAL IMPACT

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. The Department of the Interior has determined that amendment of the rules within the scope of this document will not significantly affect the quality of the human environment. Accordingly, this action is not subject to the environmental impact statement requirements of the National Environmental Policy Act.

Dated: June 16, 1980.

Walter N. Heine,

Director, Office of Surface Mining .

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