

FEDERAL REGISTER: 45 FR 48129 (July 18, 1980)

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 715, 816 and 817

Disposal of Excess Spoils and Durable Rock Fills; Notice of Opening of Comment Period

ACTION: Comment period on final interpretive rule for 30 CFR 715.15(d), 816.74 and 817.74.

SUMMARY: This notice announces a public comment period on an interpretive rule published on April 16, 1980, to clarify the regulations providing for alternative methods of disposal of hard rock spoil.

DATE: Written comments must be received by 5 p.m. on or before August 18, 1980.

ADDRESS: Written comments should be submitted to: Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 153, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

Copies of all correspondence, minutes and documents noted below are available for review and copying during normal business hours at: Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 153, 1951 Constitution Avenue, NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Raymond E. Aufmuth, Physical Scientist, Technical Services Division, 1951 Constitution Avenue, NW., Washington, D.C. 20240. Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior. Telephone: (202) 343-4264.

SUPPLEMENTARY INFORMATION:

On April 16, 1980, the Department of the Interior published an interpretive rule clarifying the regulations providing for alternative methods for the disposal of hard rock spoil. 45 FR 25998 (1980). The April 16, 1980, rule interpreted regulations published on March 13, 1979, 44 FR 15311-15463 and on May 25, 1979, 44 FR 30610-34. In particular, the April 16, 1980, regulation interpreted the term "rock" and "hard rock" spoil. In addition, it stated that the slake durability and slake index tests identified in 30 CFR 715.15(d) were to be used not only at the time the rock was removed from the in-place strata, but also at the point of placement of the spoil into the fill. Finally, the interpretive rule clarified the Secretary's retained authority to enforce the performance standards in 30 CFR 715.15(d) even after a State permit had been granted allowing the alternate disposal method.

The rule published on April 16, 1980, was not intended to establish any new substantive requirements or do any more than explain the Office of Surface Mining's interpretation of previously published rules. See, for example, Falcon Coal Meeting Minutes, January 7, 1980; Sequence of Events, Falcon Coal Company (undated); Letter to Gene Brandenburg, Department of Natural Resources, State of Kentucky from David Short, Regional Director, OSM (March 5, 1980). The Department's regulations allow interpretive rules of this kind to be published without comment. 43 CFR 14.5(c)(2). The Department's regulations state that in deciding whether to allow public comment on an interpretive rule, the agency should consider the impact on State and local governments, whether the rule is complex or pervasive, whether the rule changes an existing interpretation, and whether there is practical difficulty of compliance with the new rule. The Department, using these rules, had decided not to request public comment on this rule for the following reasons.

First, the rule would have no impact on State or local governments, since it was merely restating an existing requirement. In addition, the rule required no action of State and local governments and explicitly stated "this rule does not directly affect the validity of permits issued prior to its operation." 45 FR 26000. Second, the Department determined that the effect of the rule was not complex or pervasive. The rule defines terms which have a commonly accepted engineering meaning such as rock and hard rock spoil, and were well based in the literature used to promulgate the original rule. Third, the rule did not change an existing interpretation. The standards expressed in the interpretive rule were those which OSM believed were included in the original rule and which had been expressed to companies in enforcement cases. At no time had OSM enunciated a different position. Fourth, because there was no change in the existing OSM position, there should have been little practical difficulty of compliance with the new rule.

Despite this analysis, the Department of the Interior has received comments from the American Mining Congress/National Coal Association joint Committee which challenge both the rule, and the procedures used to implement the rule. In an exchange of correspondence beginning with a May 27, 1980, letter from the Joint Committee, the Office of Surface Mining and the Joint Committee discussed the possibility of deferring the effective date of the rule pending public comment. After consideration of the Joint Committee's position, OSM declined to suspend the effective date of the rule. (Letter from Walter Heine, Director, OSM, to the Joint Committee, June 12, 1980). It did so primarily because it had not received any technical information which showed that the interpretive rule was improper, or that it was inconsistent with the literature published at the time the substantive regulation was adopted. {48130}

The correspondence does reflect, however, a concern on the part of the Joint AMC/NCA Committee with the procedures used to promulgate the rule and its continued desire to have an opportunity to have formal public comment on the rule. As previously explained in this notice, OSM does not believe that public comment on this rule was legally required. In keeping with its general commitment to seeking public involvement to the fullest possible, OSM has nonetheless decided to hold a formal public comment period on the interpretive rule. The purpose of this comment period is to allow expanded discussions between concerned members of the public and OSM concerning the interpretive regulation. At the close of the public comment period, OSM will decide whether to suspend the interpretive rule, keep the interpretive rule in its current form, or change or propose in some way changes to the substantive rule issued in 1979. The interpretive rule remains in effect until further notice and compliance with the rule is required in the interim. This notice should not be construed, in any way, to be a weakening of OSM's belief that the interpretive rule was properly issued both procedurally and substantively.

The Office of Surface Mining specifically desires the comments of those companies who are directly affected by the interpretive rule. It is particularly interested in determining whether the interpretive rule is perceived as causing operational difficulties, or posing other problems which would unnecessarily reduce productivity or increase costs.

The Department of 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 Interior has also determined that opening the interpretive rule for comment does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969.

Dated: July 11, 1980.

Carl. C. Close, Assistant Director, Office of Surface Mining, State and Federal Programs .

[FR Doc. 80-21328 Filed 7-17-80; 8:45 am]
BILLING CODE 4310-05-M 339