

**FEDERAL REGISTER: 47 FR 18552 (April 29, 1982)**

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 715, 816, and 817

Surface Coal Mining and Reclamation Operations; Initial and Permanent Regulatory Programs;  
Backfilling and Grading: General Requirements

ACTION: Final rule.

**SUMMARY:** The Office of Surface Mining (OSM) is amending the initial and permanent regulatory programs regulations concerning backfilling and grading. These changes eliminate the specific terrace-width limitation of those sections, to provide increased flexibility in achieving the postmining land use plan without reducing erosion control.

EFFECTIVE DATE: June, 1, 1982.

ADDRESSES: Copies of comments received on the proposed rules may be reviewed at the Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Charles Meyers, Division of Technical Assistance, Office of Surface Mining, Department of the Interior, Washington, D.C. 20240; 202-343-5587.

**SUPPLEMENTARY INFORMATION:**

- I. Background.
- II. Discussion of Comments and Rules Adopted.
- III. Procedural Matters.

**I. BACKGROUND.**

On December 13, 1977, and March 23, 1979, OSM promulgated initial and permanent program rules, respectively, implementing the Surface Mining Control and Reclamation Act of 1977 (U.S.C. 1201 et seq.; the Act). Included in Section 715.14(b)(2)(i) of the initial program and Sections 816.102(b)(1) and 817.102(b)(1) of the permanent program were backfilling and grading requirements that limited the width of individual terraces to 20 feet. On August 5, 1981 (*46 FR 39854*), OSM proposed changes in this terrace-width requirement, to provide increased flexibility in achieving the postmining land use plan without reducing erosion control. The proposed changes imposed no width limitation on terraces and allowed any width adequate to ensure the safety, stability, and erosion control necessary to achieve the postmining land use plan.

A public hearing on the proposed changes was scheduled for August 13, 1981; however, no one requested a hearing and it was not held. Four written comments were received during the comment period, which closed on September 4, 1981.

**II. DISCUSSION OF COMMENTS AND RULES ADOPTED.**

Three commenters stated that they supported the proposed changes to remove the 20-foot maximum terrace-width limitation. These commenters stated that they believed that greater erosion control would be achieved and that significant adverse environmental impact should not occur as a result of the revised rules.

One commenter supported the existing 20-foot maximum terrace-width and identified two objections to the proposed rules. First, the commenters stated that the primary purpose of the 20-foot maximum was to control erosion and that 20-foot terraces are standard engineering practice. OSM believes that while 20-foot terraces may provide appropriate landforms and erosion control for some land uses, the 20-foot maximum severely restricts the choice of potential uses appropriate for many reclaimed sites. OSM also has not identified anything in the technical literature to indicate that a 20-foot width for all conditions will either prevent erosion or ensure stability. In addition, and as noted in the preamble to

the proposed rules, 20-feet is a minimum and not a maximum width for stable, controlled terraces. Regardless of the terrace constructed, the operator must still comply with other performance standards which also ensure stability and erosion control. OSM rejected this comment and made no change in the proposed rules.

Second, this commenter stated that, without design criteria, uncertainty in enforcement would result in determining whether a particular terrace meets acceptable engineering practices. While a single design standard applied uniformly to hundreds of sites may make an inspectors's job more routine, flexibility in meeting performance standards and in achieving appropriate postmining land uses is eliminated. OSM believes that inspectors will be able to judge the stability and erosion-control aspects of a site without reference to a mandatory 20-foot maximum terrace width.

Further, this commenter provided alternative comments in the event that OSM should decide to adopt the proposed rules. These comments were that other engineering procedures (such as a 1.3 static safety factor, compaction, and water control measures) must also be required if flexible width terraces are to be safe and practical. The proposed rules clearly stated that flexible-width terraces must be constructed so as to ensure safety, stability, and erosion control, (*46 FR 39855*). This language (retained in the final rules), together with other rules implementing the performance standards of Section 515 of the Act, accomplishes the result suggested by this commenter.

Finally, this commenter suggested that professional engineers be required to certify terraces. Flexible width terraces which are part of postmining land uses permitted under Sections 515(c) and 515(e) of the Act would be designed or designed and certified by professional engineers. However, there is no general requirement in the Act that all terraces in all permitted operations be so certified. Accordingly, OSM declines to require such action by regulation, and no change was made in the proposed rules.

Accordingly, OSM is adopting the change in Parts 715, 816, and 817 to eliminate the 20 foot maximum width limitation for terraces and to allow any terrace width adequate to ensure the safety, stability, and erosion control necessary to implement the postmining land-use plan.

### **III. PROCEDURAL MATTERS**

Determination Under Executive Order 12291, The Regulatory Flexibility Act, and the National Environmental Policy Act

The Department of the Interior (DOI) has examined these rules according to the criteria of Executive Order 12291 (February 17, 1981). OSM has determined that these are not major rules and do not require a regulatory impact analysis because they would impose only minor costs on the coal industry and coal consumers. In addition, the rules emphasize the use of performance standards instead of design criteria, which would allow operators to utilize the most cost-effective means of achieving the performance standards.

The DOI has also determined, pursuant to the Regulatory Flexibility Act, *5 U.S.C. 601* et seq., that these rules will not have a significant economic impact on a substantial number of small entities. The rules will allow small coal operators increased flexibility in meeting performance standards and should especially ease the regulatory burden on small coal operators in Appalachia.

OSM has prepared a final environmental assessment (EA) on this rule that reaches a conclusion that this rule should not significantly affect the quality of the human environment. The final EA is on file in the OSM Administrative Record Office at the address listed in the "Addresses" section of the preamble. OSM is in the process of preparing a cumulative EA on this rulemaking and related rulemaking under Pub. L. 95-87 to determine the cumulative effects on the environment, if any.

#### **LIST OF SUBJECTS IN**

30 CFR Part 715

Environmental protection, Surface mining, Underground mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, 30 CFR Parts 715, 816, and 817 are amended as set forth herein.

Dated: April 22, 1982.

Daniel N. Miller, Jr., Assistant Secretary, Energy and Minerals.

(Pub. L. 95-87, 30 U.S.C. 1201, et seq.)

**PART 715 -- GENERAL PERFORMANCE STANDARDS**

1. In Section 715.14, paragraph (b)(2)(i) is revised to read as follows:

**SECTION 715.14 - BACKFILLING AND GRADING.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) Where specialized grading, foundation conditions, or roads are required for the approved postmining land use, the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land use plan.

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

2. In Section 816.102, paragraph (b)(1) is revised to read as follows:

**SECTION 816.102 - BACKFILLING AND GRADING: GENERAL GRADING REQUIREMENTS.**

\* \* \* \* \*

(b) \* \* \*

(1) Where specialized grading, foundation conditions, or roads are required for the approved postmining land use, the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land use plan.

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

3. In Section 817.102, paragraph (b)(1) is revised to read as follows:

**SECTION 817.102 - BACKFILLING AND GRADING: GENERAL GRADING REQUIREMENTS.**

\* \* \* \* \*

(b) \* \* \*

(1) Where specialized grading, foundation conditions, or roads are required for the approved postmining land use, the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary

to implement the postmining land-use plan.

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