

FEDERAL REGISTER: 52 FR 21228 (June 4, 1987)

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 700 and 870

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Two-Acre Exemption Repeal

ACTION: Notice of suspension.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is suspending certain portions of its permanent program regulations. OSMRE is taking these actions to conform its regulatory program to recently enacted legislation repealing the exemption previously provided in section 528(2) of the Surface Mining Control and Reclamation Act of 1977 for coal extraction affecting two acres or less. The suspension is not intended to affect any pending or future enforcement action against persons who incorrectly asserted that exemption when it was in effect.

EFFECTIVE DATE: June 6, 1987.

FOR FURTHER INFORMATION CONTACT: Arthur Abbs, Division of Regulatory Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-343-5361 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of Rules Suspended
- III. Procedural Matters

I. BACKGROUND

Section 528(2) of the Surface Mining Control and Reclamation Act of 1977, *30 U.S.C. 1201* et seq. (SMCRA), exempted from the requirements of SMCRA "the extraction of coal for commercial purposes where the surface mining operation affects two acres or less." Therefore, operators of surface coal mining operations affecting two acres or less were not required to comply with the permitting, land reclamation or environmental performance requirements imposed on larger operations under SMCRA. Regulations implementing this provision (30 CFR 700.11(b)) were originally published on March 13, 1979 (*44 FR 15311*). This regulation has a complicated history which is set forth fully in the Federal Register notice of January 4, 1982 (*47 FR 41*) and subsequent rulemaking at *47 FR 33424* (August 2, 1982).

The regulations at 30 CFR Part 870 implement the reclamation fee collection program of Title IV of SMCRA and exempt the extraction of coal for commercial purposes by surface coal mining operations which affect two acres or less from the requirements of that Part (30 CFR 870.11(b)). Those regulations were originally published on December 13, 1977 (*42 FR 62713*) as Part 837, were later renumbered as Part 870, and revised on June 30, 1982 (*47 FR 28574*).

On May 7, 1987, the President signed Pub. L. 100-34 which directly affects the regulation of two-acre sites. Title II of the legislation amends section 528(2) of SMCRA by repealing the exemption previously provided for coal extraction for commercial purposes from sites affecting two acres or less. The amendment provides effective dates for new two-acre surface coal mining operations and existing two-acre operations. Subsection 201(b) provides that the repeal of the two-acre exemption is effective 30 days after enactment of Pub. L. 100-34 for surface coal mining operations commencing after that date. This effective date is June 6, 1987. Subsection 201(c) provides that the repeal is effective 6 months after enactment for lawful operations commencing prior to June 6, 1987. This effective date is November 8, 1987. The grace period for existing operations will allow ongoing operations a reasonable amount of time to complete coal extraction or to apply for other permits. Thus, the requirements of SMCRA will apply to all surface coal mining operations regardless of size, unless exempt under some other provision of SMCRA. Subsection 201(d) of the legislation preempts any inconsistent State law or regulation which was previously allowed pursuant to that exemption.

Reclamation under State law may continue after November 8, 1987. As discussed in the House of Representatives Report, "Any reclamation requirements and enforcement powers which states have under their existing laws and

regulations, with regard to existing two-acre sites where coal extraction ceases prior to the effective date in subsection 201(c), are not considered as inconsistent with subsection 201(d). Thus, Congress intends that the states continue to use their enforcement and other authorities to ensure that the reclamation required prior to this Act at such sites is accomplished, even after the effective date in subsection 201(c)." (H.R. Rep. No. 59, 100th Cong., 1st Sess. 5, April 21, 1987)

Although this suspension notice affects the Code of Federal Regulations, this notice is an interpretive statement which describes how the Secretary is already implementing Pub. L. 100-34. Even in the absence of this notice, the actions of the Secretary and other affected persons must be consistent with that legislation. Suspension of the rules to conform to the provisions of section 201 of Pub. L. 100-34 is not intended to affect the applicability of the rules to pending or future enforcement actions regarding application of the two-acre exemption during the time when the exemption was in effect.

An explanation of the regulations to be suspended is provided below. By separate rulemaking, OSMRE intends to propose revisions to the suspended rules as necessary, consistent with the new law.

IMPACT ON STATE REGULATORY PROGRAMS

Section 528(2) of SMCRA exempted from the requirements of SMCRA the extraction of coal for commercial purposes which affected two acres or less. Pursuant to that exemption, States were free to adopt or continue regulatory schemes for these smaller sites, or to adopt procedures no less effective than the Federal regulatory program for making a determination that an operation was exempt.

Pub. L. 100-34 preempts any State law or regulation which permits surface coal mining operations affecting two acres or less without satisfying the requirements of SMCRA. The legislation invalidates applicable State laws or regulations as of June 6, 1987, insofar as they would authorize persons to commence surface coal mining operations of two acres or less without complying with SMCRA and the approved regulatory program. Operations which commence mining under the exemption before June 6, 1987, will be allowed to continue surface coal mining operations until November 8, 1987. On November 8, 1987, all surface coal mining operations previously exempt under section 528(2) will no longer be exempt. Thus, as of November 8, 1987, surface coal mining operations which are not otherwise exempt under SMCRA may not be conducted without an approved permit under the applicable regulatory program.

With regard to existing exempt operations which cease extracting coal prior to November 8, 1987, the new legislation does not preempt State laws or regulations concerning reclamation activities on the existing sites and does not preempt State enforcement provisions necessary to ensure that reclamation work required under State law is completed.

EFFECT ON FEDERAL PROGRAM STATES AND ON INDIAN LANDS

Suspension of Section 700.11 applies through cross-referencing to those States with Federal programs. This includes Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The suspension of Section 700.11 also applies to Indian lands under the Federal program for Indian lands at 30 CFR Part 750. Suspension of Section 870.11 applies to all surface coal mining operations which are subject to SMCRA, including those in Federal program States and on Indian lands under the Federal program for Indian lands.

II. DISCUSSION OF RULES SUSPENDED

1. SECTION 700.11(b) - TWO-ACRE EXEMPTION

General applicability of OSMRE's regulatory program is established at 30 CFR 700.11. Section 700.11(b) provides that the requirements of 30 CFR Chapter VII do not apply to the extraction of coal for commercial purposes where the coal mining and reclamation operation (together with any related operation) has or will have an affected area of two acres or less. This section includes criteria for determining how to treat haul or access roads used by two or more operations and criteria for determining whether two or more operations are related.

In conformance with Pub. L. 100-34, OSMRE is suspending Section 700.11(b) insofar as it excepts from the applicability of OSMRE's regulatory program in 30 CFR Chapter VII any surface coal mining operations commencing on or after June 6, 1987. This section is also suspended insofar as it allows any surface coal mining operations to be conducted on or after November 8, 1987, without first obtaining a valid permit issued pursuant to SMCRA.

2. SECTION 870.11(b) - ABANDONED MINE RECLAMATION FUND, FEE COLLECTION

Part 870 sets out requirements and procedures for coal production reporting and the collection of fees for the Abandoned Mine Reclamation Fund. The extraction of coal for commercial purposes by a surface coal mining operation which affects two acres or less during the life of the mine is exempted from the requirements of Part 870 by Section 870.11(b).

In conformance with Pub. L. 100-34, OSMRE is suspending Section 870.11(b) insofar as it exempts from the requirements of Part 870: (1) Any surface coal mining operations affecting two acres or less commencing on or after June 6, 1987; and (2) any surface coal mining operation affecting two acres or less conducted on or after November 8, 1987. Thus, operators of such operations will be subject to the reclamation fee payment and reporting requirements of 30 CFR Part 870 and Title IV of SMCRA.

III. PROCEDURAL MATTERS

Administrative Procedure Act

Proceeding immediately with this notice complies with applicable provisions of 5 *U.S.C.* 553 (b) and (d) because (1) as stated earlier, this is an interpretative document describing the effect of Pub. L. 100-34 upon the Secretary's regulatory programs; and (2) good cause exists to do so. In this context, the public should be informed before the effective date of Pub. L. 100-34 of its effect on the Secretary's rules.

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this notice is not a major rule under E.O. 12291 and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 *U.S.C.* 601 et seq.) The economic effects of the suspensions are estimated to be minor and no incremental economic effects are anticipated as a result of the suspensions.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) and has made a finding that these suspensions would not have a significant impact on the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 *U.S.C.* 4332(2)(C). The EA and finding of no significant impact are on file in the OSMRE Administrative Record at the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1100 L St., NW., Room 5131, Washington, DC 20240.

LIST OF SUBJECTS

30 CFR Part 700

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 870

Reporting and recordkeeping requirements, Surface mining, Underground mining.

For the reasons set out in this preamble, 30 CFR Parts 700 and 870 are amended as follows:

Dated: May 29, 1987.

J. Steven Griles, Assistant Secretary for Land and Minerals Management.

PART 700 -- GENERAL

1. The authority citation for Part 700 is revised to read as follows:

Authority: *30 U.S.C. 1201* et seq., as amended; and Pub. L. 100-34.

SECTION 700.11 [Amended]

2. Paragraph (b) of Section 700.11 is suspended insofar as it excepts from the applicability of 30 CFR Chapter VII: (1) Any surface coal mining operations commencing on or after June 6, 1987; and (2) any surface coal mining operations conducted on or after November 8, 1987.

PART 870 -- ABANDONED MINE RECLAMATION FUND -- FEE COLLECTION AND COAL PRODUCTION REPORTING

3. The authority citation for Part 870 is revised to read as follows:

Authority: *30 U.S.C. 1201* et seq., as amended: and Pub. L. 100-34.

SECTION 870.11 [Amended]

4. Paragraph (b) of Section 870.11 is suspended insofar as it excepts from the applicability of 30 CFR Part 870: (1) Any surface coal mining operations commencing on or after June 6, 1987; and (2) any surface coal mining operations conducted on or after November 8, 1987.

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