

FEDERAL REGISTER: 46 FR 40650 (August 10, 1981)

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 700

Permanent and Interim Program Modifications; Two-Acre Exemption

ACTION: Withdrawal of final rule.

SUMMARY: The Surface Mining Control and Reclamation Act of 1977 exempts from regulation surface coal mining operations which affect two acres or less. OSM has determined to withdraw the final two-acre exemption published January 23, 1981, at *46 FR 7902*, and to announce its intent to propose a revised two-acre exemption to replace the current exemption, which is published at 30 CFR 700.11(b).

OSM is taking this action in part because it believes that the January 23, 1981, rule may unnecessarily restrict the availability of the exemption to underground mines by including all land above underground mine workings in determining the size of a mine. In addition, OSM does not believe the rule adequately addresses the important "related sites" issue and the complex issues involved in counting haul roads and access roads as part of a mine. OSM intends to address these and other issues in proposing a revised two-acre exemption.

EFFECTIVE DATE: August 10, 1981.

ADDRESSES: Director, Office of Surface Mining, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Stanford Zeccolo, Office of Surface Mining, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, phone number: 343-5365.

SUPPLEMENTARY INFORMATION:

On February 6, 1980, OSM proposed a revision to 30 CFR 700.11(b), the so-called two-acre exemption. *45 FR 8241*. This provision implements Section 528(2) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which exempts from the provisions of SMCRA "the extraction of coal for commercial purposes where the surface mining operation affects two acres or less." A hearing was held on the proposal in Washington, D.C. on February 25, 1980. Public comment on the proposal extended from February 6, 1980, to March 7, 1980. On January 23, 1981, OSM issued a final two-acre exemption effective February 23, 1981. *46 FR 7902*.

On January 28, 1981, the Secretary of the Interior initiated a program to reevaluate the Department's existing rules to determine where they might be excessive, burdensome or counterproductive. The two-acre exemption rule was among those being evaluated. On February 4, 1981 in accordance with the President's memorandum of January 29, 1981, the Department extended until March 30, 1981, the effective date of numerous rules, including the two-acre exemption rule. *46 FR 10707*. On April 3, 1981, OSM extended until May 4, 1981, the effective date of the two-acre exemption rule and solicited comments as to whether the rule should be suspended indefinitely pending the outcome of rulemaking to consider modifications of the exemption. *46 FR 20211*. On April 29, 1981, OSM further extended the effective date until June 16, 1981, and reopened the comment period on the suspension issue. *46 FR 23924*. Finally, on June 15, 1981, OSM deferred until August 15, 1981, the effective date of the two-acre exemption rule. *46 FR 31258*. Today OSM announces its withdrawal of the rule published January 23, 1981, and notices its intent to propose a revised two-acre exemption.

OSM is taking this action in part because it believes that the January 23, 1981, rule may unnecessarily restrict the availability of the exemption to underground mines by including all land above underground mine workings in determining the size of a mine. In addition, OSM does not believe the rule adequately addresses the important "related sites" issue and the complex issues involved in counting haul roads and access roads as part of a mine. OSM intends to address these and other issues in proposing a revised two-acre exemption.

Withdrawal of the January 23, 1981, rule will not affect enforcement of the two-acre exemption. The rule implementing the exemption that was published March 13, 1979, at *44 FR 15311*, as amended November 27, 1979, at *44 FR 67942*, has continued in effect during the rulemaking resulting in the January 23, 1981, exemption and will continue in effect pending

adoption of a final revised two-acre exemption. OSM is also in the process of drafting enforcement directives on two-acre exemption issues that will clarify and make consistent enforcement of the exemption. This process will be correlated with development of the revised two-acre exemption rule.

RESPONSE TO PUBLIC COMMENT

OSM has reviewed all comments received after the Federal Register notice dated April 20, 1981, extending the comment period and providing notice to withdraw, suspend or modify the two-acre exemption rule published on January 23, 1981. OSM responds below to comments relating to withdrawal of the January 23, 1981, rule. Comments relating to the substance of the two-acre exemption and to other issues not concerned with withdrawal of the January 23, 1981, rule will be considered together with comments received on the revised exemption that OSM intends to publish in the future.

1. Two comments requested that the rule be suspended. These comments have been accepted insofar as the January 23, 1981, rule is being withdrawn and OSM intends to propose a revised rule.
2. Several commenters requested immediate implementation of the January 23, 1981, rule. These comments have been rejected because OSM believes this rule must be withdrawn for the reasons described above. OSM intends, however, to propose a revised two-acre exemption that will remedy problems that may exist with the current rule.
3. Two commenters requested additional time to respond to the April 3, 1981, request for comments. These request were granted.
4. One commenter claimed that deferral of the effective date of the January 23, 1981, rule was illegal. OSM rejects this comment because it believes it was within OSM's legal authority to defer the effective date of the rule pending an evaluation of the adequacy of the rule.

OSM has evaluated the withdrawal of the January 23, 1981, rule according to the criteria of Executive Order 12291 (February 17, 1981) and the Regulatory Flexibility Act, 5 *U.S.C.* 601 et seq. OSM has determined that the withdrawal is not a major rule and that it will not have a significant impact on a substantial number of several entities, primarily because the effect of the withdrawal is to continue in effect the current two-acre exemption rule. OSM previously analyzed the impacts of the two-acre exemption currently in effect and of the January 23, 1981, exemption and has determined that neither constituted a major federal action having a significant impact on the human environment. Accordingly, the withdrawal is exempt from the requirement to prepare a detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 *U.S.C.* 4332(2)(C).

Dated: August 3, 1981.

Approved:

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

SECTION 700.11 [AMENDED]

Accordingly, the revision of Section 700.11(b) published on January 23, 1981, at 46 *FR* 7902 is withdrawn.

[FR Doc. 81-23255 Filed 8-7-81; 8:45 am]

BILLING CODE 4310-05-M