

FEDERAL REGISTER: 50 FR 257 (January 3, 1985)

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 701, 762, 816 and 817
Suspension of Certain Regulations

ACTION: Notice of suspension.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is suspending certain portions of its regulations containing the definitions of fragile lands, historic lands, and adverse physical impact. OSM is also suspending portions of its regulations which contain the performance standards for the backfilling and grading of previously mined areas to the extent that they apply the concept of adverse physical impact in determining the required amount of highwall elimination. This action is being taken as a result of an agreement by the parties, approved in a December 3, 1984 District Court Order, withdrawing certain issues from consideration in Round III of the present litigation on OSM's permanent program regulations.

EFFECTIVE DATE: February 4, 1985. This suspension will be effective until final rules implementing the agreement are promulgated.

FOR FURTHER INFORMATION CONTACT: Brent Wahlquist, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, D.C. 20240; (202) 343-4264.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

The Surface Mining Control and Reclamation Act of 1977, *30 U.S.C. 1201* et seq. (the Act), sets forth the general regulatory requirements governing surface coal mining operations and the surface impacts of underground coal mining. OSM has by regulation implemented or clarified many of the general requirements of the Act and established performance standards to be achieved by different operations. 30 CFR Chapter VII. As part of that process, on September 14, 1983 (*48 FR 41312*) and September 16, 1983 (*48 FR 41720*) OSM promulgated final rules amending certain portions of its permanent regulatory program. In part, the regulations affected were: (1) Those in 30 CFR Part 762 which set forth the procedures for implementing the requirements of section 522 of the Act for designating lands unsuitable for all or certain types of surface coal mining operations; and, (2) those in 30 CFR Parts 701, 816 and 817, which set out the performance standards applicable to remaining operations and, in particular, highwall reclamation.

These regulatory revisions were challenged in Round III of *In Re Permanent Surface Mining Litigation II*, Civil Action No. 79-1144 (D.D.C.). However, before that portion of the case had been decided, the court issued an Order on December 3, 1984 approving an agreement between the Plaintiff Citizen and Environmental Organizations and the Defendant Secretary of the Interior which withdrew from the litigation certain issues involving the regulations described below. A portion of that agreement called for the suspension of certain regulations within 30 days of the Order. This notice implements the agreement.

FRAGILE AND HISTORIC LANDS

In revising the regulations having to do with section 522 of the Act, OSM changed the definitions of fragile lands and historic lands found at 30 CFR 762.5 (*48 FR 41325*). The revised definitions required a showing that irreparable or permanent damage could occur to lands by surface mining operations before such lands could be classified as either historic or fragile. The previous definitions at 30 CFR 762.5 (1982), simply required a showing that some damage could occur before such lands could be classified as either historic or fragile. Section 522(a)(3)(B) of the Act which is the statutory authority for this portion of the regulations requires a showing of possible "significant damage" before a designation of unsuitability may occur.

The settlement agreement calls for the suspension of the definitions of "fragile lands" and "historic lands" contained at 30 CFR 762.5 (1983). In compliance with the agreement, the phrase "beyond an operator's ability to repair or restore," which was added to the definitions in 1983, is suspended. This will mean that instead of requiring a showing of irreparable or permanent damage to the lands to allow for designation of an area as unsuitable for mining, a showing of significant damage will be sufficient. Pursuant to the agreement, OSM will also propose a rule in the Federal Register amending 30 CFR 762.5 and will redefine "fragile lands" and "historic lands" to require only a showing of significant damage before such lands can be designated as unsuitable for mining pursuant to section 522 of the Act. Based on the public comment received, OSM will then promulgate an appropriate final rule.

HIGHWALL ELIMINATION IN REMINING SITUATIONS

On September 16, 1983 (*48 FR 41720*), OSM revised various performance standards pertaining to re-mining operations. OSM created a new definition of "adverse physical impact" at 30 CFR 701.5. Also, in 30 CFR 816.106(b) and 817.107(b) OSM incorporated the concept of adverse physical impact as a threshold requirement for reclamation of the highwall in re-mining operations. The effect of these changes was no longer to require the achievement of approximate original contour and complete elimination of preexisting highwalls in re-mining operations which did not cause or were not expected to cause an "adverse physical impact" on the pre-existing highwalls, even where there was reasonably available spoil to eliminate the highwalls in the immediate vicinity of the highwalls.

The settlement agreement requires OSM to suspend 30 CFR 816.106(b) and 817.106(b), and the definition of adverse physical impact at 30 CFR 701.5 insofar as they fail to require all persons conducting surface coal mining and reclamation operations to use all reasonably available spoil to backfill highwall(s) in all re-mining situations. This suspension will mean that the concept of adverse physical impact will no longer apply and all persons conducting re-mining operations will be required to use all reasonably available spoil in the immediate vicinity of the re-mining operation to backfill the highwall to the maximum extent technically practical. Pursuant to the agreement, OSM will also propose a rule in the Federal Register which will remove 30 CFR 816.106(b) and 817.106(b), and the definition of adverse physical impact at 30 CFR 701.5 from the Code of Federal Regulations.

In consideration of the foregoing, the following regulations in 30 CFR Parts 701, 762, 816 and 817 are suspended.

Dated: December 26, 1984.

Wesley R. Booker, Acting Director, Office of Surface Mining Reclamation and Enforcement.

SECTION 701.5 [Amended]

1. In 30 CFR 701.5, the definition of "adverse physical impact" is suspended.

SECTION 762.5 [Amended]

2. In 30 CFR 762.5, the phrase "beyond an operator's ability to repair or restore" in the definitions of "fragile lands" and "historic lands" is suspended.

SECTION 816.106 [Amended]

3. 30 CFR 816.106(b) is suspended.

SECTION 817.107 [Amended]

4. 30 CFR 817.107(b) is suspended.