

**FEDERAL REGISTER: 46 FR 42082 (August 19, 1981)**

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 808

Surface Coal Mining and Reclamation Operations Permanent Program Regulations;  
Performance Bonding

ACTION: Announcement of acceptance of petition for rulemaking.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) has granted a petition for rulemaking related to the performance bonding requirements under the Surface Mining Control and Reclamation Act of 1977. Pending the outcome of rulemaking which will result from granting this petition, OSM is suspending 30 CFR 808.12(c). (See final rule section of this issue of the Federal Register.)

FOR FURTHER INFORMATION CONTACT: Mr. Russell Price, Division of Technical Services, Office of Surface Mining, Washington, D.C. 20240; telephone (202) 343-4022.

**SUPPLEMENTARY INFORMATION:**

OSM received a letter dated January 13, 1981, from the President of the Mining and Reclamation Council of America presenting a petition from the council and the Surety Association of America for revision of the bonding regulation found at 30 CFR 808.12(c). Pursuant to the Surface Mining Act, section 201(g), *30 U.S.C. 1211(g)*, any person may petition for a change in the permanent program rules, 30 CFR Chapter VII. The Act allows for a period of 90 days within which to decide to grant or deny a petition. Section 201(g)(4); *30 U.S.C. 1211(g)(4)*. The Acting Director determined that the petition had a reasonable basis because the change it sought was consistent with the intent behind the regulation as it was originally proposed in the permanent program regulations. See *43 FR 41662, 41873* (September 18, 1978).

On March 12, 1981, OSM published notice in the Federal Register seeking public comments on the amendment proposed in the petition by no later than 5:00 p.m. on April 13, 1981. *46 FR 16276*. The notice stated that if the decision was made to grant the petition, rulemaking proceedings would be initiated in which public comment would again be sought before a final rulemaking notice appeared. It also stated that a decision might be made to suspend the regulation pending final rulemaking.

Ten comments were received during the public comment period, all but one of which supported the petition. After carefully considering each of these comments, the Acting Director has decided to grant the petition and suspend the regulation pending final rulemaking. Rulemaking on the proposed amendment to 30 CFR 808.12(c) will be conducted as part of an overall review of 30 CFR Subchapter J, announced April 17, 1981, in the Federal Register. See *46 FR 22399*.

**JUSTIFICATION FOR ACCEPTING THE PETITION AND SUSPENDING 30 CFR 808.12(C)**

Nine of ten timely received comments supported the petition. One commenter, Westmoreland Resources, Inc., believes that the change would make the regulations more consistent with the Surface Mining Act and remove some of the uncertainties surrounding the forfeiture procedure.

The State of Illinois pointed out that 30 CFR 808.12(c) as currently drafted renders the concept of incremental bonding meaningless because "forfeiture is allowed independently of the site of bonded performance." Accordingly, bonding companies cannot know with certainty what performance they are insuring and where that performance will be required. The State of Missouri agreed with Illinois, calling the change a "mandatory and vital step" if its mine operators are to obtain reclamation bonds. Similar comments came from two attorneys, three coal companies, an insurer, a major surety association and a mining trade association.

The only opposition came from the State of West Virginia which asserted that the proposed rule directly jeopardizes the West Virginia bonding arrangement. It should be pointed out that OSM's action in suspending the regulation does not mean that West Virginia must modify its plan. State plans may vary from the Federal rules, so long as they are no less stringent than the Federal regulations and meet the applicable provisions. See 30 CFR 730.5.

The commenters provided numerous specific suggestions on the bonding rules, and they will be addressed in the preamble to be published in the Federal Register with the proposed revised rules.

The need to suspend the regulation is best set forth in a comment by the Surety Association of America which stated that the gravity of the current situation requires faster resolution than normal rulemaking procedures allow. This is so because many mine operators must, by this summer, re-permit and re-bond their mines in accordance with the federal or approved state programs. This regulation is currently a part of the federal program and is, or may be reflected in state programs as they seek approval or implementation in time to satisfy the strictures of the Act. The Surety Association of America and other commenters supported the proposal to suspend this rule.

If OSM's planned future rulemaking differs from the current statement of 30 CFR 808.12(c), state resources will have been needlessly expended. Imposition of such an unnecessary burden requiring states to implement this provision in their regulatory programs is not justifiable. Consequently, good cause exists for immediate suspension of this rule.

It has been determined that suspension of the regulation is not a major federal action having a significant effect on the human environment. Therefore, an environmental impact statement is not required in order to comply with the National Environmental Policy Act, 42 U.S.C. 4332.

It has also been determined that suspension is not a major rule for which a regulatory impact analysis is required under Executive Order 12291. In addition, it has been determined that a significant number of small entities will not be substantially affected since the criteria of the Regulatory Flexibility Act, 5 U.S.C. Section 601, are not met by the suspension of the regulation.

Dated: August 6, 1981.  
J. R. Harris, Director.

[FR Doc. 81-24143 Filed 8-18-81; 8:45 am]  
BILLING CODE 4310-05-M