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DEPARTMENT OF THE INTERIOR

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

30 CFR Chap. VII

[30 CFR Parts 700, 701, 761, 786, 805, 806, 808, 816, 817]

Surface Coal Mining and Reclamation Operations: Permanent Regulatory Program

ACTION: Notice of suspension of certain rules in 30 CFR Chapter VII

SUMMARY: Notice is given that certain rules are suspended pending the outcome of rulemaking to consider modifications of those rules. This action is being taken as a result of certain issues raised during litigation on the permanent program regulations. The specific regulations affected by this action are listed below.

EFFECTIVE DATE: November 27, 1979.

FOR FURTHER INFORMATION CONTACT: Paul L. Reeves, Deputy Director, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240; (202) 343-4222.

SUPPLEMENTARY INFORMATION:

On March 13, 1979, OSM published its permanent program regulations (44 FR 15312 et seq.) implementing the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

As a result of certain issues raised during litigation on the permanent program regulations (*In re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79-1144, Consolidated (D.D.C. filed May, 1979)), OSM has recognized the need to propose changes to certain sections of those regulations. Notices proposing revisions to the rules will be published in the Federal Register in the foreseeable future.

EFFECT ON STATE PROGRAMS

OSM is concerned that the submission and approval of State regulatory programs proceed expeditiously without imposing an undue burden on the States and associated parties that may be affected by those areas where rulemaking is to be proposed. This general guidance is offered to assist States in preparing their programs for submission. Where the suspended regulations have explicit underpinnings in SMCRA, States must still include corresponding statutory provisions in their program applications. For instance, although the definition of "public road" in 30 CFR 761.5 is being suspended, State statutes must, nevertheless, contain a statutory provision correspondent to Section 522(e) of the SMCRA. 30 U.S.C. 1272(e)(4). Where a regulation has been suspended, the State program can have any regulatory provision or not regulatory provision at all, so long as the State program is in accordance with the requirements of the Act and is not inconsistent with regulations which were not suspended. OSM will provide States an opportunity to amend or modify State programs or State program proposals should the Federal regulations not be amended in sufficient time for States to include corresponding regulations in their State programs in their initial submission. Authorities for such adjustments include the provisions for modifications of proposals during the initial stage of program review in accordance with 30 CFR 732.11; for conditional approval under 30 CFR 732.13; or program amendment under 30 CFR 732.17.

JUSTIFICATION FOR IMMEDIATE EFFECTIVE DATE OF SUSPENSION

Pending the outcome of the upcoming rulemakings, certain of the rules must be suspended immediately so as not to prejudice the interests of the plaintiffs in the lawsuit. In addition, maintaining regulations in effect which OSM has determined should be proposed for amendment would be unfair to the States which have submitted or are preparing State program applications for filing by March 3, 1980. As these regulations have no direct impact upon existing or new coal mining operations at this time, except Section 700.11 and those in Subchapter F which implement Section 522(e) of SMCRA, their temporary suspension will have little adverse affect upon achieving the Act's purposes pending completion of the rulemaking process.. The suspension of portions of Section 700.11(b) and Part 761 will not materially affect the administration of the existing structures provisions of the designation program.

Dated: November 23, 1979.
Charles P. Eddy, Acting Assistant Secretary, Energy and Minerals.

NOTICE OF SUSPENDED REGULATIONS:

Portions of the following regulations are suspended, or will be amended, as listed below:

A. 30 CFR 700.11(b).

The following language is suspended: “any such operation conducted by a person who affects or intends to affect more than two acres at physically unrelated sites within one year.”

B. 30 CFR 701.11(e)(i) and (ii).

These two paragraphs are suspended insofar as they may be read to retain discretion in the regulatory authority to grant an exemption from reconstruction of existing structures after making the findings in 30 CFR 786.21.

C. SUBCHAPTER D.

OSM has agreed to amend the subchapter by adding a time table for processing permits on Federal lands. At present, however, no regulation exists to be suspended.

D. 30 CFR 761.5

The definition of “public road” is suspended. OSM will rely on Section 522(e)(4) of SMCRA, to interpret this definition pending the outcome of rulemaking.

E. 30 CFR 701.5(c)

OSM has agreed that as an alternative to the present regulatory language, existing State law may be applied to interpret whether the document relied upon establishes valid existing rights. Furthermore, no plaintiff has taken issue with what is contained in this subsection as far as it goes. Therefore, suspension is not necessary and would be inappropriate because Part 761, implementing 30 U.S.C. 1172(e), is applicable to operations under the initial program.

F. 30 CFR 761.12(e).

OSM has agreed to interpret Section 522(e)(5) of SMCRA as authorizing valid pre-Act waivers and binding subsequent owners to valid waivers of prior owners. However, no plaintiff has taken issue with what is now contained in this subsection as far as it goes. Therefore, its suspension is not necessary to protect plaintiffs’ interests and would likewise be inappropriate because Part 761 is applicable to operations under the initial program.

G. 30 CFR 761.11(c) and 761.12(f)(1).

The words “or eligible for listing on” in these paragraphs of the regulations are suspended.

H. 30 CFR 761.11(c) and 761.12(f)(1).

The words “or a statutory or regulatory responsibility for” in 30 CFR 761.12(f)(1) are suspended and both these regulations are suspended insofar as they would apply to privately owned places listed on the “National Register of Historic Places” in addition to publicly owned places.

I. 30 CFR 786.5.

The words “or has not been” are suspended from the definition of “irreparable harm to the environment”.
J. 30 CFR 805.13(d).

The regulation is suspended insofar as it grants an exception from revegetation requirements for a long term intensive agricultural land use, which requirements are specified as those “Of 30 CFR Part 816”.

K. 30 CFR 806.12(e)(6)(iii) and (g)(7)(iii).

The following language is suspended: “and shall discontinue surface coal mining operations until new performance bond coverage is approved”.

L. 30 CFR 808.12(c).

The following language is suspended: “with respect to protection of the hydrologic balance”.

M. 30 CFR 816.103(a)(1) and 817.103(a)(1).

These regulations are suspended. OSM will apply Sections 515(b)(14) and 516(b)(10), SMCRA, and 30 CFR 816.48 and 817.48 pending the outcome of rulemaking.

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