

**FEDERAL REGISTER: 44 FR 77454 (December 31, 1979)**

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 783, 785, 816, 817, and 823

Surface Mining and Reclamation Operations; Permanent Regulatory Program

ACTION: Notice of suspension.

**SUMMARY:** Notice is given that the Secretary intends to publish interpretations of certain rules and that others are suspended pending the outcome of rulemaking to consider modifications of those rules. Rules affected deal with negative determinations for prime farmlands, geologic descriptions of strata beneath surface operations and facilities associated with underground mines, alternative postmining land use determinations for underground mines, the permanent program prime farmland grandfather clause, the most bulk density criteria for prime farmland soil compaction, underdrain requirements for coal processing waste banks, ground water monitoring of recharge capacity for underground mines, and reference area requirements for certain underground mines.

EFFECTIVE DATE: December 31, 1979.

FOR FURTHER INFORMATION CONTACT: Paul 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 14901 et seq .) implementing Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), P.L. 95-87, 30 U.S.C. 1251-1279. As a result of 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 and publish interpretations of others. A prior notice was published in the Federal Register suspending the effectiveness of certain regulations at issue in the "first round" of this litigation. 44 FR 67942 (November 27, 1979). The present notice suspends certain regulations at issue in the "second round" pending completion of rulemaking to consider their amendment and gives notice of intent to publish interpretations of other rules at issue in this litigation. Notices proposing revisions to or stating interpretations of the rules will be published in the Federal Register in the foreseeable future.

**STATEMENT OF POLICY REGARDING 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 rules are being suspended and new regulations will 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 Secretary is suspending his rule (30 CFR 785.17(a)) implementing the grandfather clause exemption from certain prime farmland requirements of the permanent program, State statutes must, nevertheless, contain a statutory provision corresponding to the statutory grandfather clause in Section 510(d)(2) of the SMCRA, 38 U.S.C. 1260(d)(2). Where a regulation has been suspended, the State program can have any regulatory provision or no 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 which are being suspended not be amended in sufficient time for States to include corresponding regulations in their initial State program 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.

## **NOTICE OF FUTURE ACTIONS:**

30 CFR 779.27(b)(4) and 183.27(b)(4) . The Secretary intends to publish his interpretation of the phrase "other factors" in these sections as being limited solely to those factors contained in the Secretary of Agriculture's regulations for identification of prime farmland (7 CFR 657.5(a)(2)). Section 779.27(b)(4) and 783.27(b)(4) merely provide for a determination that lands within a proposed permit area clearly do not meet the USDA technical criteria for prime farmland as set forth at 7 CFR 657.5(a)(2). At no time did OSM intend that the reference to "other factors" extend to matters not expressly covered by Section 657.5(a)(2).

30 CFR 783.22, 784.15, and 817.133 . The Secretary intends to publish his interpretation of these regulations to allow an operator to apply through the permit revision or renewal procedures of 30 CFR 788.12-788.15 for regulatory authority approval of an alternative postmining land use toward the end of the life of an underground mine rather than obtaining such approval in the original permit, if the original permit demonstrates that the land will be returned to its premining land use capability as required by 30 CFR 817.133(a).

30 CFR 817.116 . The Secretary will propose an amendment to this regulation comparable to that in 30 U.S.C. 816.116(d) for surface mines, to add a provision that, for underground mine permit areas of 40 acres or less in locations with an average annual precipitation of more than 26 inches, certain specified performance standards may be used as an alternative to reference areas to measure revegetation success. The existing regulation remains in effect.

## **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, their temporary suspension will have little adverse affect upon achieving the Act's purposes pending completion of the rulemaking process.

Dated: December 21, 1979.

Joan M. Davenport, Assistant Secretary, Energy and Minerals .

## **IN CONSIDERATION OF THE FOREGOING THE FOLLOWING REGULATIONS ARE SUSPENDED:**

### **1. 30 CFR 783.14(a)(1) .**

The regulation is suspended insofar as it requires a geologic description of the strata down to and including the strata immediately below any coal seam for areas to be affected only by "surface operations and facilities," where no removal; of overburden down to the level of the coal seam will occur. For purposes of this suspension test borings and core samplings do not constitute removal of the overburden down to the coal seam. However, geologic descriptions will continue to be required for areas where overburden is being removed to the level of the coal seam and for certain specified "surface operations and facilities" where required by other regulatory requirements. See 30 CFR 783.25, 784.16(e) and 784.24(b)

Authority: 30 U.S.C. 515(b), 516, and 510.

### **2. 30 CFR 785.17(a).**

The prime farmland grandfather clause is suspended. The Secretary will rely on Section 510(d)(2), SMCRA, to interpret this exemption for the purposes of the permanent program pending the outcome of further rulemaking. The Secretary's grandfather regulation under the initial program (30 CFR 716.7(a)(2)) remain in effect.

Authority: 30 U.S.C. 510(d)(2).

**3. 30 CFR 785.17(b)(3) and 823.14(c) .**

These regulations are suspended insofar as they establish the "moist bulk density" standard for prime farmland soil compaction. Until a standard for soil compaction is proposed and adopted, the Office will implement the permanent program prime farmland standards by requiring that prime farmland permit applications demonstrate and operators mine so that excessive compaction is avoided in replacement of the soil, under Section 508(a)(4)-(5), 510(d)(1) and 515(b)(7) SMCRA. Avoiding excessive compaction is critical to the successful reclamation of prime farmland. See 44 FR 15086.

Authority: 30 U.S.C. 510 (b) and (d), 515(b)(7).

**4. 30 CFR 816.83(a) and 817.83(a) .**

These regulations are suspended to the extent that they would preclude an exemption from the underdrain requirement for coal processing waste banks where an operator demonstrated that an alternative to the subdrainage system required in this regulation would ensure structural integrity of the wastebank and protection of ground or surface water quality.

Authority: 30 U.S.C. 515(b)(13), 516(b)(5).

**5. 30 CFR 817.52(a)(1) .**

The following language is suspended: "on the recharge capacity of reclaimed lands and..."

As stated in the preamble to the proposed rules, underground mining should not affect the structural integrity of water bearing formations and thus no special precautions are necessary to protect recharge capacity. (43 FR 41780, September 18, 1978). For this reason the Secretary determined that a performance standard equivalent to 30 CFR 816.51 was unnecessary. With no performance standard concerning recharge capacity for underground mines in the regulations, a monitoring requirement becomes unnecessary.

Authority: 30 U.S.C. 515(b)(10) and 516(b)(9).