

FEDERAL REGISTER: 45 FR 44326 (July 1, 1980)

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 722

Interim Regulatory Program Modifications

ACTION: Proposed rules.

SUMMARY: These proposed rules revise 30 CFR 722.11 and 722.12 to make clear OSM's authority to take enforcement action against permittees found to be in violation of any requirement of the Surface Mining Control and Reclamation Act of 1977 (Act) or of any regulations promulgated thereunder and applicable during the interim regulatory program.

DATES: Comments must be received by 5:00 p.m. on July 31, 1980, at the address indicated below. Comments received after that time will not be considered. A public hearing on these proposed rules will be held on July 22, 1980, at 9:30 a.m. at the address below. Representatives of OSM will be available to meet with interested persons upon request before the close of the comment period.

ADDRESSES: Written comments must be mailed or hand delivered to the Office of Surface Mining, U.S. Department of the Interior, Room 153, South Building, 1951 Constitution Avenue, NW, Washington, D.C. 20240. Persons wishing to testify at the hearing should contact Neil Stoloff at (202) 343-2084. A transcript of the public hearing, all written comments received, and summaries of meetings with representatives of OSM will be prepared and made available for public review in Room 153, Interior South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, The public hearing will be held at Room 252, South Interior Building, 1951 Constitution Avenue, Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Neil Stoloff, Office of Surface Mining, Division of Enforcement, (202) 343-2084, or Mark Squillace, Office of the Solicitor, Division of Surface Mining, (202) 343-4671.

SUPPLEMENTARY INFORMATION:

Sections 521(a) (2) and (3) of the Act provide, among other things, that OSM must take enforcement action when an inspector finds that a permittee is violating "any requirement of this Act." 30 USC 1271. Pursuant to section 501 (30 U.S.C. 1251 (Supp. I 1977)), OSM promulgated 30 CFR 722.11 and 722.12. Section 722.11 provides that a cessation order shall be issued whenever OSM finds "conditions or practices, or violations of applicable performance standards, which create an imminent danger to the health or safety of the public. . . ." Section 722.12 of the regulations provides that a notice of violation shall be issued when OSM "finds a violation which is not covered by Section 722.11," i.e., for non-imminent dangers.

In *Eastover Mining Co. (Eastover)*, 2 IBSMA 70 (May 16, 1980), inspectors from OSM had been conducting an inspection at Eastover's mine in Arjay, Kentucky. When an inspector attempted to take photographs at the site of an apparent violation she was informed that company policy prohibited the taking of photographs on company property by anyone except company employees. She issued a notice of violation to Eastover, citing interference with a federal inspection by virtue of the company's refusal to allow the inspector to take photographs, Notice of Violation No. 79-II-53-2. The time for abatement was set at 24 hours.

On her return the next day, the inspector was again prohibited from taking photographs. Consequently, she issued a cessation order to Eastover for failure to abate the violation.

In Eastover's appeal of the notice and order, the interior Board of Surface Mining Appeals (Board) held that Secs. 722.11 and 722.12 of the regulations must be construed in relation to one another. Accordingly, the Board interpreted the "violations" referred to in Section 722.12 to mean "violations of applicable performance standards" as provided in Section 722.11, and held that interference with a federal inspection is not an administratively sanctionable violation. The Board appeared further to indicate that OSM's authority to issue notices of violation and cessation orders may be limited to findings of violations of applicable performance standards. Presumably, certain other requirements and obligations of operators, in addition to that of allowing unimpeded inspections, 30 U.S.C. 1294, may be outside OSM's enforcement authority.

As noted above, sections 521(a)(2) and (3) of the Act require OSM to take enforcement action whenever an inspector finds that a permittee is violating "any requirement of this Act." 30 U.S.C. 1271. OSM believes that the Board's interpretation of 30

CFR 722.11 and 722.12 may preclude OSM from taking administrative enforcement action in response to violations of the Act that do not relate to performance standards.

Consequently, OSM proposes these rules which specifically provide that OSM has both the authority and indeed the responsibility to take enforcement action whenever it finds *any* violation of the Act or applicable regulations. To implement this, OSM proposes that the terms "violations of applicable performance standards" (30 CFR 722.11(a)) and "a violation which is not covered by Section 722.11 of this part" (30 CFR 722.12(a)) both be amended to read "a violation of any requirement of the Act, or of any requirement of this Chapter applicable during the interim regulatory program * * *."

The current regulation shall remain in effect pending final promulgation of these revisions.

In accordance with Executive Order 12044 and 43 CFR Part 14, the Department of the Interior has determined that this rule does not require a regulatory analysis. The significance determination upon which that decision was made is a part of the administrative record for this rule and is available for inspection in Room 153, Interior South Building, 1951 Constitution Avenue NW, Washington, D.C.

Section 501(a) of the Act specifically provides that the promulgation of interim regulations such as these is not to be deemed a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act. 42 U.S.C. 4332(2)(C).

DRAFTING INFORMATION: The proposed regulations have been drafted principally by Neil Stoloff, Office of Surface Mining Reclamation and Enforcement.

Dated: June 25, 1980.

David A. Schuenke,
Acting Assistant Secretary, Energy and Minerals.

Sections 722.11(a) and 722.12(a) are proposed to be revised as follows:

SECTION 722.11 - IMMINENT DANGERS AND HARMS.

(a) If an authorized representative of the Secretary finds a condition or practice, or violation of any requirement of the Act, or of any requirement of this Chapter applicable during the interim regulatory program, which creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause, significant, imminent environmental harm to land, air, or water resources, the authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or that portion of the operation relevant to the condition, practice, or violation.

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SECTION 722.12 - NON-IMMINENT DANGERS OR HARMS.

(a) If an authorized representative of the Secretary finds a condition or practice, or violation of any requirement of the Act, or of any requirement of this Chapter applicable during the interim regulatory program, but such violation does not create an imminent danger to the health or safety of the public, or cannot reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the authorized representative shall issue a notice of violation fixing a reasonable time for abatement.

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