

FEDERAL REGISTER: 45 FR 51547 (August 4, 1980)

DEPARTMENT OF THE INTERIOR

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

30 CFR Chap. VII

Surface Mining and Reclamation Operations; Permanent Regulatory Program

ACTION: Notice of suspension and statement of policy regarding effect on State programs.

SUMMARY: Notice is given that certain rules in 30 CFR Chapter VII, are suspended pending the outcome of rulemaking to consider modification of those rules. The effect of the suspensions on the process for review of State permanent regulatory programs is also announced. Affected rules are all rules suspended or remanded by the decision of the United States District Court for the District of Columbia (Civil Action No. 79-1144). Memorandum Opinions, February 26, 1980 and May 16, 1980.

EFFECTIVE DATE: August 4, 1980.

ADDRESSES: Copies of the Court opinions mentioned below may be obtained from the Administrative Record, Office of Surface Mining, Room 153, 1951 Constitution Avenue, N.W., Washington D.C. 20240.

FOR FURTHER INFORMATION CONTACT: David R. Maneval, Assistant Director, Technical Services and Research, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240; (202) 343-4264.

SUPPLEMENTARY INFORMATION:

On March 13, 1979, OSM published regulations (44 FR 14901 et seq.) implementing the permanent regulatory program of Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95-87, 30 U.S.C. 1251-1279. The rules were challenged in lawsuits brought by representatives of the coal industry, two States, and environmental groups. These lawsuits were consolidated and heard by the U.S. District Court for the District of Columbia, In re: Permanent Surface Mining Regulation Litigation, Civil Action No. 79-1144, Consolidated, filed May 10, 1979. After a review of the challenges brought, OSM recognized the need to propose changes to certain sections of those regulations. Notices were published in the Federal Register suspending the effectiveness of certain regulations challenged in this litigation. 44 FR 67942 (November 27, 1979), 44 FR 77447 and 77454 (December 31, 1979), and 45 FR 6913 (January 30, 1980).

The present notice suspends other regulations at issue in the litigation which were remanded by the District Court in its opinions of February 26, 1980 and May 16, 1980. At the discretion of the Secretary, the Department may appeal the Court's decisions. This suspension notice is thus no reflection on the Secretary's intent to appeal any of these regulations. OSM intends to propose appropriate revisions to the rules in the Federal Register in the near future.

STATEMENT OF POLICY REGARDING STATE PROGRAMS

OSM is concerned that the review 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. In its May 16, 1980, opinion, the District Court ordered the Secretary to affirmatively disapprove any provision in a State program under consideration which incorporates a suspended or remanded Federal regulation. Although the Secretary intends to appeal that portion of the court's opinion, he intends to comply with it pending its modification by appeal or by his stay motion filed June 16, 1980. States are not required to take any action to implement the court's order. The Secretary will disapprove in each State program submission the provisions which incorporate suspended or remanded Federal regulations. At least ten days prior to the close of the public comment period on a State submission, the Regional Director shall make publicly available a list of all provisions of the State program which OSM intends to recommend the Secretary disapprove. In the alternative, comment periods on the State submission will be extended or reopened to allow a minimum of ten days for public review of the list of provisions which may be disapproved. Notice of the availability of this list shall appear in the Federal Register. Disapproval of specific provisions will not jeopardize the approval, or approval with conditions, of the entire State program if the program otherwise adequately satisfies the minimum criteria for approval. Upon promulgation of new regulations to replace those which have been

suspended, the Secretary will afford States which do not have approved programs a reasonable opportunity to amend their programs as appropriate. In general, the provisions of 30 CFR 732.17 will govern this process for States with approved programs.

JUSTIFICATION FOR IMMEDIATE EFFECTIVE DATE OF SUSPENSION

Pending the outcome of the upcoming rulemaking actions, certain rules must be suspended immediately to implement the order of the District Court. In addition, maintaining regulations in effect which the Secretary has determined should be proposed for amendment would be unfair to the States which have submitted State regulatory programs for review.

Dated: July 29, 1980.

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

In consideration of the foregoing, the following regulations are suspended:

SECTIONS 732.15 AND 840.13 [Certain provisions suspended]

1. 30 CFR 732.15(b)(7) and 840.13(a). These regulations are suspended insofar as they require State programs to establish a point system for assessing civil penalties or to impose civil penalties as stringent as those appearing in 30 CFR 845.15. Section 518(i) of the Act requires only the incorporation of penalties and procedures explicated in section 518. The system proposed by the State must incorporate the four criteria of section 518(a).

(30 U.S.C. 1268)

SECTION 761.5 [Certain provisions suspended]

2. 30 CFR 761.5(a)(2)(i). The regulation is suspended insofar as it requires that all permits must have been obtained prior to August 3, 1977, in order to establish a valid existing right to surface mine. Pending further rulemaking, the Secretary will interpret this regulation as requiring a good faith effort to obtain all permits.

(30 U.S.C. 1272(c))

SECTION 776.11 [Certain provisions suspended]

3. 30 CFR 776.11(b)(3) and (5). Section 776.11(b)(3) is suspended insofar as it requires a map of the exploration area. A description of the area is still required. Section 776.11(b)(5), requiring an operator to explain the basis upon which he claims the right to enter the exploration area when the surface is owned by a person other than the operator, is suspended.

(30 U.S.C. 1262(a))

SECTIONS 779.20, 783.20, 780.16 and 784.21 [Certain provisions suspended]

4. 30 CFR 779.20/783.20 and 780.16/784.21. The regulations requiring the permit application to contain a study of fish and wildlife and a fish and wildlife reclamation plan are suspended.

(30 U.S.C. 1257(b) and 1258(a))

SECTIONS 779.21 and 783.21 [Certain provisions suspended]

5. 30 CFR 779.21 and 783.21. the regulations are suspended to the extent they require soil survey information for lands not qualifying as prime farmland. Section 507(b)(16) of the Act requires a permit applicant to conduct a reconnaissance of the permit area. The Permit application must contain a soil survey only for those lands which the inspection indicates are or may be prime farmlands.

(30 U.S.C. 1257(b)(16))

SECTION 783.25 [Certain provisions suspended]

6. 30 CFR 783.25 (c), (h), and (i). Section 783.25 requires cross sections, maps and plans as part of the information submitted in an underground permit application. Subsections (c), (h), and (i), which concern coal seam and overburden description; location of existing and previously mined areas; and location of waste disposal and impoundments, are suspended.

(30 U.S.C. 1257(b))

SECTION 785.17 [Certain provisions suspended]

7. 30 CFR 785.17(b)(8). The regulation is suspended insofar as it requires demonstration in the permit application of current estimated yields under a high level of management. The permit application must still demonstrate that the applicant has the technological capability to restore the prime farmland to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management.

(30 U.S.C. 1260(b))

SECTION 785.19 [Certain provisions suspended]

8. 30 CFR 785.19(d)(2)(iii) and (iv). The regulation is suspended to the extent it requires water quality analyses describing seasonal variations over at least one full year. States may permit submission of an analysis from data collected over a shorter period of time or extrapolation from existing data if such shorter period or extrapolation process is sufficient to enable the regulatory authority to make a determination of the impact of the proposed operation on the hydrologic balance of the area, as required by Section 785.19(e).

(30 U.S.C. 1260(b) and 1265(b))

SECTION 785.19 [Remanded]

9. 30 CFR 785.19(e)(1)(ii). In order to approve a permit application for surface coal mining on lands located west of the one hundredth meridian west longitude, the regulation requires the regulatory authority to find that a proposed operation will not materially damage the quantity and quality of water in surface and underground water systems that supply alluvial valley floors. The regulation was remanded by the court to allow the Secretary to add exclusions for undeveloped rangelands and negligible farmland interruption. Pending further rulemaking, the Secretary will interpret this regulation in accordance with the court decision.

(30 U.S.C. 1260(b)(5))

SECTION 785.19 [Certain provisions suspended]

10. 30 CFR 785.19(e)(2). The small acreage exemption test for mining on alluvial valley floors is suspended. The regulation was remanded to allow the Secretary to revise it to allow mining on all alluvial valley floor that results in a negligible impact on a farm's production.

(30 U.S.C. 1260(b)(5))

SECTION 807.11 [Remanded]

11. 30 CFR 807.11(e). The regulation was remanded to allow revision to permit citizen access to the minesite during performance bond release proceedings, as required by section 519 of the Act. Pending further rulemaking, the Secretary will interpret the regulation in accordance with the court decision.

(30 U.S.C. 1263(b) and 1269(g))

SECTION 808.14 [Certain provisions suspended]

12. 30 CFR 808.14(b). The regulation is suspended insofar as it allows the regulatory authority to retain forfeited bond money in excess of the amount necessary to implement and complete a reclamation plan.

(30 U.S.C. 1259(a))

SECTIONS 816.42 and 817.42 [Certain provisions suspended]

13. 30 CFR 816.42(a) (1) & (7) and 817.42(a) (1) and (7). The regulations are suspended to the extent they require runoff from reclaimed areas to meet the same effluent limitations as those for actively mined lands. However, as provided in Sections 816.46(u) and 817.46(u), sedimentation ponds shall not be removed until the drainage entering the pond from both reclaimed lands and actively mined areas has met the applicable State and Federal water quality requirements for the receiving stream.

(30 U.S.C. 1265(b)(10))

SECTIONS 816.65 and 817.65 [Certain provisions suspended]

14. 30 CFR 816.65(f) and 817.65(f). The regulations are suspended insofar as they restrict blasting at distances greater than 300 feet from a dwelling or other structure, or from flammable facilities and water lines.

(30 U.S.C. 1272(e)(5))

SECTIONS 816.95 and 817.95 [Certain provisions suspended]

15. 30 CFR 816.95 and 817.95. The air resources protection regulations are suspended.

(30 U.S.C. 1265(b)(4))

SECTIONS 816.115 and 817.115 [Certain provisions suspended]

16. 30 CFR 816.115 and 817.115. Sections 816.115 and 817.115 are suspended to the extent they require that land must be used for livestock grazing when the approved postmining land use is range or pasture.

(30 U.S.C. 1260(d) and 1265(b))

SECTIONS 816.116 and 817.116 [Certain provisions suspended]

17. 30 CFR 816.116(b) and 817.116(b). The regulations are suspended insofar as they extend the period of responsibility for revegetation from the point at which the operator meets the vegetative standards of section 515(b)(19). States may permit the period of liability to begin from the point at which the operator has completed seeding and fertilizing. The period of liability shall begin again whenever augmented seeding, fertilizing, irrigation or other work is required or conducted on the site prior to bond release. [30 CFR 805.13(b)].

(30 U.S.C. 1265(b)(20))

SECTIONS 816.133 and 817.133 [Certain provisions suspended]

18. 30 CFR 816.133(b)(1) and 817.133(b)(1). The regulations are suspended to the extent they preclude the operator from choosing to restore previously mined but unreclaimed land to a condition capable of supporting prior-to-mining use as well as a higher use.

(30 U.S.C. 1265(b)(2))

SECTIONS 816.133 and 817.133 [Certain provisions suspended]

19. 30 CFR 816.133(c) (4) and (9) and 30 CFR 817.133(c) (4) and (9). The regulations are suspended to the extent they require the applicant for an alternative land use to submit letters of commitment or firm written commitments from third parties to demonstrate that financing, attainment, and maintenance of the postmining land use are feasible.

(30 U.S.C. 1265(b)(2))

SECTIONS 816.150-176 and 817.150-176 [Certain provisions suspended]

20. 30 CFR 816.150-176 and 817.150-176. The regulations on roads are suspended.

(30 U.S.C. 1265(b))

SECTION 817.54 [Certain provisions suspended]

21. 30 CFR 817.54. The regulation requiring underground mining operators to replace the water supply of landowners if the operation contaminates, diminishes, or interrupts the supply is suspended.

(30 U.S.C. 1307)

SECTIONS 817.101 and 817.102 [Remanded]

22. 30 CFR 817.101(b)(1) and 817.102. The regulations were remanded for revision to allow the approximate original contour requirement as applied to underground mining to provide some flexibility for settled fills that have become stabilized and revegetated. Pending further rulemaking, the Secretary will interpret the regulation in accordance with the court decision.

(30 U.S.C. 1265(b)(3) and 1266 (b)(10))

SECTIONS 823.11 and 823.15 [Certain provisions suspended]

23. 30 CFR 823.11(c), 823.15(b), and 823.15(c). Sections 823.11(c), 823.15(b), and 823.15(c) are suspended to the extent they require actual crop production to measure revegetation success on prime farmlands.

PART 823 [REMANDED]

24. 30 CFR Part 823. This Part was remanded as it applies to underground mining to allow revision to provide an exemption for surface facilities that are actively used over extended periods but which affect a minimal amount of land. Pending further rulemaking, the Secretary will interpret this Part in accordance with the court decision.

(30 U.S.C. 1260(d))

PARTS 701, 779, 780, 783 AND 784 [CERTAIN PROVISIONS SUSPENDED]

25. 30 CFR 701.5 and Parts 779, 780, 783, 784. The definition of the term "mine plan area" in 30 CFR 701.5 is suspended. Pending further rulemaking, the term mine plan area as used in Parts 779, 780, 783, and 784 will be interpreted to mean permit area.

Accordingly, the words "permit" or "permit area" will be substituted for "mine plan" or "mine plan area," as appropriate, in the following sections:

SECTION 779.11 AND 783.11 -- GENERAL REQUIREMENTS

SECTIONS 779.12 AND 783.12 -- GENERAL ENVIRONMENTAL RESOURCES INFORMATION

SECTIONS 779.13 AND 783.13 -- DESCRIPTION OF HYDROLOGY AND GEOLOGY: GENERAL REQUIREMENTS

SECTION 779.14 AND 783.14 -- GEOLOGY DESCRIPTION:

SECTION 779.15 AND 783.15 -- GROUND WATER INFORMATION

SECTION 779.16 AND 783.16 -- SURFACE WATER INFORMATION

SECTION 779.17 AND 783.17 -- ALTERNATIVE WATER SUPPLY INFORMATION

SECTION 779.18 AND 783.18 -- CLIMATOLOGICAL INFORMATION

SECTION 779.22 AND 783.22 -- LAND USE INFORMATION

SECTION 779.24 AND 783.24 -- MAPS: GENERAL REQUIREMENTS

SECTION 779.25 AND 783.25 -- CROSS SECTIONS, MAPS AND PLANS

SECTION 779.27 AND 783.27 -- PRIME FARMLAND INVESTIGATION

SECTION 780.11 AND 784.11 -- OPERATION PLAN: GENERAL REQUIREMENTS

SECTION 780.14 AND 784.23 -- OPERATION PLAN: MAPS AND PLANS

SECTION 780.21 AND 784.14 -- RECLAMATION PLAN: PROTECTION OF HYDROLOGIC BALANCE

SECTION 780.25 AND 784.16 -- RECLAMATION PLAN: PONDS, IMPOUNDMENTS, BANKS, DAMS, AND EMBANKMENTS

SECTION 780.37 AND 784.24 -- TRANSPORTATION FACILITIES

(30 U.S.C. 1257(b) and 1258(a))

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