

FEDERAL REGISTER: 52 FR 31621 (August 21, 1987)

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 750

Surface Coal Mining and Reclamation Operations; Federal Program for Indian Lands;
Compliance With Settlement Agreement

ACTION: Notice of suspension.

SUMMARY: The Secretary of the Interior (the Secretary) is suspending the regulation that unilaterally amends all leases of coal on Indian lands to require compliance with the Surface Mining Control and Reclamation Act of 1977 to the extent the regulation requires amendment of existing leases prior to lease renewal, renegotiation, or readjustment. The Secretary is taking this action as a result of a settlement agreement reached in United States District Court in response to litigation on the final rules establishing the regulatory requirements for surface coal mining and reclamation operations under the Federal program for Indian lands. This action will not affect the requirement that, at the time of future lease issuance, renewal, renegotiation, or readjustment, all such leases must include such a provision. By separate rulemaking, the Secretary intends to propose an amendment to the regulation to require that the lease provision will be added only at the time of lease issuance, renewal, renegotiation, or readjustment, as applicable.

EFFECTIVE DATE: September 21, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Hudak, Division of Regulatory Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 343-4540 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of Rule Suspended
- III. Procedural Matters

I. BACKGROUND

The Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95-87, *30 U.S.C. 1201* et seq., provides statutory authority for the development of regulations for surface coal mining operations. Section 710(d) requires compliance "[O]n and after thirty months from the enactment of this Act", with requirements at least as stringent as those imposed by sections 507, 508, 509, 510, 515, 516, 517, and 519 of SMCRA, for all surface coal mining operations on Indian lands. It also requires the Secretary to incorporate the requirements of such provisions in all existing and new leases issued for coal on Indian lands. Section 710(e) further requires the Secretary to include and enforce in all post-SMCRA leases of coal on Indian lands, such terms and conditions as may be requested by the Indian tribe in such leases.

On September 28, 1984, the Secretary issued the final rules implementing the requirements of sections 710(d) and 710(e) of SMCRA (*49 FR 38462*). A new subchapter, Subchapter E -- Indian Lands Program, was added to 30 CFR Chapter VII, and included Part 750 -- Requirements For Surface Coal Mining And Reclamation Operations On Indian Lands, and Part 755 -- Tribal-Federal Intergovernmental Agreements.

The final Indian lands rules were subsequently challenged by the National, Coal Association/American Mining Congress (NCA/AMC) in *NCA v. U.S.*, No. 84-3586 (D.D.C.). One of the provisions to which NCA/AMC objected was the requirement for unilateral amendment of existing leases issued for coal on Indian lands.

The NCA/AMC challenge was settled in July 1985 in United States District Court by an agreement in which, among other actions, the Secretary consented to suspend Section 750.20(a) and propose a new rule providing for alternative measures to satisfy the obligation under section 710(d) of SMCRA to include in all existing and new leases for coal on

Indian lands, the required provisions of SMCRA. By separate rulemaking, the Secretary intends to propose a revision to the suspended rule, as necessary, consistent with SMCRA.

An explanation of the regulation to be suspended and the effect of the suspension is provided below.

II. DISCUSSION OF RULE SUSPENDED

SECTION 750.20 -- ADOPTION OF INDIAN COAL LEASE TERMS

Section 750.20(a). The rule at 30 CFR 750.20(a) is intended to satisfy the Secretary's obligation, under section 710(d) of SMCRA, to incorporate in all existing and new leases issued for coal on Indian lands, the applicable provisions of SMCRA. The Secretary is suspending the final rule at 30 CFR 750.20(a) as required by the NCA/AMC settlement agreement. The effect of the suspension is that the Secretary will use alternative measures to satisfy the obligation under section 710(d) of SMCRA to include in all existing and new leases issued for coal on Indian lands, the required provisions of SMCRA.

The suspension eliminates the requirement for automatic, unilateral inclusion of the provision in existing leases. The regulation remains in effect to the extent it requires the provision to be incorporated at the time of future lease issuance, renewal, renegotiation, or readjustment, as applicable.

The Secretary's legal authority to require compliance with SMCRA is not affected by this suspension. Regardless of the inclusion of a specific provision in existing or future leases, all persons conducting surface coal mining operations on Indian lands are subject to the requirements of 30 CFR Part 750 as a matter of law.

III. PROCEDURAL MATTERS

Federal Paperwork Reduction Act

The rule suspension does not contain information collection requirements that require approval by the Office of Management and Budget under *44 U.S.C. 3507*.

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior (DOI) has determined that this notice is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (*5 U.S.C. 601 et seq.*). The rule suspension would affect a relatively small number of surface coal mining operations. The rule suspension does not distinguish between small and large entities. The economic effects of the rule suspension are estimated to be minor and no incremental economic effects are anticipated as a result of the suspension.

National Environmental Policy Act

The Office of Surface Mining Reclamation and Enforcement (OSMRE) has prepared an environmental assessment (EA), and has made a finding that this suspension would not have a significant impact on the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), *42 U.S.C. 4332(2)(C)*. The EA and finding of no significant impact are on file in the OSMRE Administrative Record at the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1100 L Street, NW., Room 5131, Washington, DC 20240.

LIST OF SUBJECTS IN 30 CFR PART 750

Indians -- lands, Reporting and recordkeeping requirements, Surface mining.

Accordingly, 30 CFR Part 750 is amended as set forth below.

Dated: August 10, 1987.

James E. Cason, Deputy Assistant Secretary-Land and Minerals Management.

PART 750 -- REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON INDIAN LANDS

1. The authority citation for Part 750 is revised to read as follows:

Authority: Pub. L. 95-87, *30 U.S.C. 1201* et seq.; and Pub. L. 100-34.

SECTION 750.20 [Amended]

2. Paragraph (a) of Section 750.20 is suspended insofar as it requires unilateral amendment of existing leases prior to renewal, renegotiation, or readjustment of such leases, as applicable.

[FR Doc. 87-18898 Filed 8-20-87; 8:45 am]
BILLING CODE 4310-05-M