

FEDERAL REGISTER: 58 FR 41936 (Thursday, August 5, 1993)

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 718, 720 and 735

Adoption of State Standards; State Enforcement Activities; Part VI

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) is removing regulations on the adoption of state standards and state enforcement activities from the initial regulatory program under the Surface Mining Control and Reclamation Act of 1977 (the Act). These provisions have been rendered redundant or unnecessary by enactment of the permanent regulatory program.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: James L. Hedglin, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 208-2634.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion
- III. Procedural Matters

I. BACKGROUND

The Surface Mining Control and Reclamation Act of 1977, *30 U.S.C. 1201 et seq.*, (the Act), was enacted August 3, 1977. Two principal purposes of the Act are to establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations and to assist the States in developing and implementing a program to achieve the purposes of the Act.

The scheme designed by Congress to implement the requirements of the Act consisted of two distinct regulatory programs on non-Federal and non-Indian lands, one transitional and one permanent. In each coal producing State the transitional program, known as the initial program, took effect six months after the enactment of the Act and created a dual inspection and enforcement role for OSM and the States in ensuring compliance with certain key provisions of the Act at all surface coal mining and reclamation operations. A permanent program would in turn become effective in each State upon either approval by the Secretary of the Interior (the Secretary) of a State regulatory program based on findings that the program provisions met the purposes of the Act and the State had the capability of carrying them out; or, where a State did not submit an application for a State program, upon promulgation and implementation of a Federal program. The initial program in each coal producing State effectively ended upon approval of a permanent State program by the Secretary or the implementation of a Federal program. All such States had either received full or conditional approval of their permanent programs or implementation of a Federal program by 1988.

To implement the requirements of sections 502 and 503 of the Act, the Secretary promulgated regulations on December 13, 1977 (*42 FR 62639*) and March 13, 1978 (*44 FR 14902*) for the initial and permanent programs respectively. Among the numerous performance standard and procedural regulations promulgated for the initial program were 30 CFR Part 718 - Adoption of State Standards, and Part 720 - State Enforcement Activities, both of which are subject of this rulemaking. Part 718 contains procedures for adoption of State laws and regulations when they prescribe more stringent standards of performance than the general or special performance standards of the initial regulatory program. Part 720 sets forth the regulations governing enforcement activities to be carried out by the States during the initial regulatory program. OSMRE published a proposed rule in the Federal Register on August 11, 1992 (*56 FR 35960*) which would remove these two parts from the initial program regulations. The comment period closed on October 13, 1992. No comments were submitted nor requests made for either a public hearing or meeting. OSMRE is adopting the

removal of parts 718 and 720 as proposed with one additional conforming change made to the permanent program rules at 30 CFR 735.21 which deletes its references to part 720.

II. DISCUSSION OF THE FINAL RULE

This final rule removing parts 718 and 720 of the initial regulatory program arose as a result of the periodic review of OSM's regulations required by the Paperwork Reduction Act of 1980, *44 U.S.C. chapter 35*. In accordance with the Paperwork Reduction Act, agencies must review their regulations and, where regulations are identified which are unnecessary or duplicative, they are required to be removed. Parts 718 and 720 were identified by OSM as unnecessary or duplicative for the reasons discussed below.

PART 718 - ADOPTION OF STATE STANDARDS

Section 718.1 provided that States could request the Secretary to review any State surface coal mining performance standard in relation to the Federal initial program counterpart to determine which is more stringent and whether the State standard should through rulemaking procedures be adopted as the Federal standard in that State. Since the effective date of the initial program in 1977, no State has ever made a request to the Secretary under this section. Sufficient authority exists under the procedures of 30 CFR 732.17 for a regulatory authority to request approval of a more stringent performance standard for inclusion in a State program. Accordingly, OSM believes this section is no longer necessary.

Section 718.10 sets forth the Secretary's information collection responsibilities under the Paperwork Reduction Act in accordance with 5 CFR 1320.7. Removal of this Section will result in the elimination of the associated burden hours currently charged to the agency.

PART 720 - STATE ENFORCEMENT ACTIVITIES

Section 720.10 sets forth the Secretary's information collection responsibilities under the Paperwork Reduction Act in accordance with 5 CFR 1320.7. Removal of this Section will result in the elimination of the associated burden hours currently charged to the agency.

Section 720.11 specifies that a State may continue to exercise its authority to enforce State laws, regulations, and permit conditions in place during the initial program so long as compliance with State law, regulations or permit conditions does not preclude compliance with the initial program performance standards. This section is no longer applicable nor has any meaning to initial program minesites since all States where initial program permits remain either adopted regulations that contained the performance standards of the Federal initial regulatory program or became subject to direct regulation by the Office of Surface Mining through a Federal program. Thus, once the States adopted these regulations or came under a Federal program, the possibility of conflict between State laws and regulations and the Federal initial program performance standards became nonexistent.

The requirement under Section 720.12 that States incorporate terms in initial program permits that comply with the initial program performance standards is unnecessary because the issuance of permits pursuant to the initial regulatory program ended in all States upon the adoption of permanent State or Federal programs.

Section 720.13 specifies certain initial regulatory program reporting requirements regarding the condition of mine sites and the issuance of permits. These reporting requirements are obsolete and no longer necessary since the requirements of the initial program ended with the adoption of State or Federal permanent programs. Moreover, the requirements of this section have been carried over into 30 CFR 840.14 of the permanent program regulations. This latter section requires that each State make available to OSM upon request, copies of all documents relating to applications for and approvals of existing, new or revised coal exploration approvals or surface coal mining and reclamation operations permits and all documents relating to inspection and enforcement actions. The specified information is currently being made available to all local OSM offices for both initial and permanent program minesites as necessary to evaluate the administration of each State program.

Removal of parts 718 and 720 does not in any way abrogate any unsatisfied obligation to comply with initial program standards for operators who operated during that program.

III. PROCEDURAL MATTERS

Executive Order 12778 on Civil Justice Reform

This rule has been reviewed under the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform (*56 FR 55195*). In general, the requirements of section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

To the extent that the rule would remove, rather than impose regulatory requirements, the rule will not preempt State law or regulation.

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified.

This rule modifies the implementation of SMCRA as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this rule.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

To the extent that the rule would remove specific regulatory requirements, the rule promotes simplification and burden reduction.

D. What is the retroactive effect, if any, to be given to the regulation?

This rule is not intended to have retroactive effect.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under section 526(a) of SMCRA, *30 U.S.C. 1276(a)*.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items.

Terms which are important to the understanding of this rule are set forth in 30 CFR 700.5 and 701.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

As of August 5, 1993 the Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

Executive Order 12291

The Department of the Interior (DOI) has examined the final rule according to the criteria of Executive Order 12291 (February 17, 1981), and has determined that it is not a major rule within the standards established by the Executive Order. Therefore, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department of the Interior has determined, pursuant to the Regulatory Flexibility Act, *5 U.S.C. 601 et seq.*, that the final rule will not have a significant economic impact on a substantial number of small entities. No negative economic effects are anticipated as a result of the rule where the chief purpose is to remove unnecessary and redundant initial program requirements.

Federal Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under *44 U.S.C. 3501* et seq.

National Environmental Policy Act

OSM has prepared an environmental assessment (EA) and has made a finding that this rule will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, *42 U.S.C. 4332(2)(C)*. The EA is on file in the OSM Administrative Record, room 660, 800 North Capitol St., NW., Washington, DC.

Author

The author of this final rule is James L. Hedglin, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; telephone (202) 208-2634.

LIST OF SUBJECTS

30 CFR Part 718

Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 720

Intergovernmental relations, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 735

Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: June 14, 1993.

Bob Armstrong, Assistant Secretary, Land and Minerals Management.

Accordingly, 30 CFR parts 718 and 720 are removed and part 735 is amended as set forth below.

SUBCHAPTER B-INITIAL PROGRAM REGULATIONS [REMOVED]

PART 718 - ADOPTION OF STATE STANDARDS

1. Part 718 is removed.

Authority: Sections 201 and 501, Pub. L. 95-87, 91 Stat. 445 (*30 U.S.C. 1201* et seq.)

PART 720 - STATE ENFORCEMENT ACTIVITIES [REMOVED]

2. Part 720 is removed.

Authority: Sections 201, 501 and 502, Pub. L. 95-87, 91 Stat. 445 (*30 U.S.C. 1201* et seq.)

SUBCHAPTER C-PERMANENT REGULATORY PROGRAMS FOR NON-FEDERAL AND NON-INDIAN LANDS

PART 735 - GRANTS FOR PROGRAM DEVELOPMENT AND ADMINISTRATION AND ENFORCEMENT

3. The authority citation for part 735 continues to read as follows:

Authority: Sections 201, 501, and 502, Pub. L. 95-87, 91 Stat. 445 (*30 U.S.C. 1201*).

4. Section 735.21 paragraph (a)(6) is revised to read as follows:

SECTION 735.21 -- GRANT REDUCTION AND TERMINATION.

(a) * * *

(6) If an agency fails to submit reports required by this part or part 705 of this chapter the Director shall reduce or terminate the grant.

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