



## COALEX STATE INQUIRY REPORT - 24

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### TOPIC: 16 2/3 EXEMPTION

**INQUIRY:** The definition of surface mining operations, SMCRA Sec. 701(28), specifically excludes the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 per centum of the tonnage of minerals removed for purposes of commercial use, sale, or exploration subject to Sec. 512 of the Act. (See also SMCRA Sec. 701(14)) Relative to 16 2/3 exemption:

1. What is its legislative history?
2. The preamble to the finalized rule 30 CFR Sec. 700.11(e) is not very informative. Is there more information included in the preamble to the proposed rule?
3. What states include the exemption within their regulatory programs?
4. Is there any federal litigation addressing the provision?

### SEARCH RESULTS:

#### Legislative History

A search of COALEX was conducted to examine the legislative history of the 16 2/3 exemption. The exemption has been included in all major versions of the Act from 1973 to 1977. Senate Reports No. 93-402 from the 93rd Congress and 95-128 from the 95th Congress contain the statement that the exemption was "designed to exclude operations, such as limestone quarries, where coal is found but is not the mineral being sought." (S. Rep. No. 93-402, 93rd Cong., 1st Sess. 75 (1973); S. Rep. No. 95-128, 95th Cong., 1st Sess. 98 (1977))

#### Preamble To The Proposed Regulations

Nothing significant was identified in the preamble to the original proposed ruling. (43 FR 41662 (SEPTEMBER 18, 1978)) OSM recently issued an advance notice for revising this section, however, which is discussed further below.

#### State Regulatory Programs

No states were identified which did not include this exemption.

#### Federal Litigation

No federal litigation specifically addressing this issue was identified.

#### Osm Notice Of Proposed New Ruling

OSM is presently examining the 16 2/3 exemption with the objective of revising 30 CFR Sec. 700.11 and has issued an advance notice or proposed rulemaking and request for public comments. (40 FR 19336 (MAY 7, 1984)) Several states, according to the notice, have raised questions concerning OSM's interpretation of the exemption and the possible imposition of



reclamation fee payments. Of special concern is Ohio, with approximately 80 industrial mining operations which might qualify for the exemption.

Issues of specific interest which OSM will be examining in their rulemaking revision include:

1. Criteria to be used in determining eligibility for 30 CFR Sec. 700.11(a)(4).
2. Procedures for making exemption decisions.
3. Consequences for an operator if an operation fails to comply with the exemption requirements.
4. Reapplication for an exemption. (Part IV Discussion of Issues, 49 FR 19336 (MAY 7, 1984))

OSM also includes a set of guidelines developed to assist operators and states in implementing the provision pending the promulgation of the revised regulations. (Part III OSM Guidelines, 49 FR 19336 (MAY 7, 1984))

#### **ATTACHMENTS**

1. Excerpt from S. Rep. No. 93-402, 93rd Cong., 1st Sess. 75 (1973).
2. Excerpt from S. Rep. No. 95-128, 95th Cong., 1st Sess. 98 (1977).
3. Advance Notice of Proposed Rulemaking Concerning 30 CFR 700.11; 49 FR 19336 (MAY 7, 1984).