

FEDERAL REGISTER: 57 FR 33874 (July 31, 1992)

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 816

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Compliance with Court Order

ACTION: Notice of suspension.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) is suspending its regulations at 30 CFR 816.101 which prescribe national time and distance performance standards for the completion of rough backfilling and grading for surface mining operations. This action is being taken as a result of a Joint Stipulation of Dismissal submitted by the National Coal Association, the American Mining Congress, and DOI and entered by the D.C. District Court on April 16, 1992. On that date, the court dismissed without prejudice a complaint filed against DOI regarding these performance standards.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis Hunter, Jr., Chief, Research and Technical Standards Branch, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; telephone: (202) 343-1504.

SUPPLEMENTARY INFORMATION:

1. Background and Discussion of Suspended Rule.
2. Procedural Matters.

1. BACKGROUND AND DISCUSSION OF SUSPENDED RULE

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq. (the Act) sets forth the general requirements governing surface coal mining operations and the surface impacts of underground coal mining operations. OSM has by regulation implemented or clarified many of these requirements and established performance standards to be achieved by various types of mining operations.

In response to U.S. District Court and Court of Appeals decisions (*In re Permanent Surface Mining Regulation Litigation II*, 21 ERC 1724, October 1, 1984, and *National Wildlife Federation v. Hodel*, 839 F.2d 694, January 29, 1988), OSM proposed national time and distance performance standards for rough backfilling and grading for surface mining operations. This proposed rule, at 30 CFR 816.101, would have allowed regulatory authorities to submit alternative schedules in lieu of such national standards for area and contour mine operations. (53 FR 43970, October 31, 1988).

On December 17, 1991, OSM promulgated final 30 CFR 816.101. The final rule did not contain the provisions for alternative State-specific schedules which had been included in the proposed rule.

On February 14, 1992, the National Coal Association and the American Mining Congress filed a complaint in the U.S. District Court for the District of Columbia, *National Coal Association and American Mining Congress v. U.S. Department of the Interior, et al.*, Civ. No. 92-0408-CRR. The plaintiffs challenged the above regulation's failure to include the proposed alternative schedules. Among other reasons for challenging the rule, the plaintiffs objected to a lack of notice of and opportunity to comment on the agency's failure to adopt the provision which would have allowed alternative State-specific schedules.

On April 16, 1992, the district court entered a Joint Stipulation of Dismissal in the case. The Joint Stipulation, without conceding the merits of any party's claim, provided for dismissal of the action without prejudice, the suspension of the regulation described above, a reconsideration by the Secretary of all issues and the proposal of a new rule, if necessary. The Joint Stipulation also provided that the Secretary would proceed in good faith to consider all comments received on

any proposed rule, which will be subject to the usual rulemaking requirements of the Administrative Procedure Act, 5 *U.S.C. 553*.

In compliance with the Joint Stipulation, the regulation at 30 CFR 816.101, promulgated on December 17, 1991, is suspended in its entirety.

2. PROCEDURAL MATTERS

Administrative Procedure Act

Good cause exists under 5 *U.S.C. 553(b)(3)(B)* to issue this document without advance notice and comment. Publication of the suspension of 30 CFR 816.101 is required to implement the court-approved Joint Stipulation of Dismissal and is a necessary first step in the reconsideration of all issues. Further, suspension of this rule will have immediate impact on mining operations because such operations will continue to be subject to the State-specific contemporaneous reclamation regulations of State and Federal programs which are currently in effect and, prior to the December 17, 1991 rulemaking, were in effect during the preceding seven years when no national OSM rule was in place. A new rulemaking would be subject to the usual APA rulemaking requirements, including the opportunity for notice and public comment.

Executive Order 12291

The DOI has examined this suspension notice according to the criteria of Executive Order 12291 and determined that it is not a major rule and does not require a regulatory impact analysis for the same reasons that promulgation of Section 816.101 in 1991 was not a major action and did not require a regulatory impact analysis.

Regulatory Flexibility Act

The DOI has determined, pursuant to the Regulatory Flexibility Act, 5 *U.S.C. 601* et seq., that this suspension notice will not have significant economic impact on a substantial number of small entities for the same reasons that promulgation of Section 816.101 in 1991 did not have such an impact.

Federal Paperwork Reduction Act

The DOI has determined that this suspension notice does not contain collections of information which require approval by the Office of Management and Budget under 44 *U.S.C. 3501* et seq. for the same reasons the promulgation of Section 816.101 in 1991 did not require such approval.

National Environmental Policy Act

The effect of this suspension notice is covered by environmental assessments prepared by the DOI containing a finding that the promulgation of Section 816.101 in 1991 would 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 environmental assessments are on file in the OSM Administrative Record, room 5131, 1100 L Street, NW., Washington, DC 20240.

Author

The author of this suspension notice is John T. Smathers, Division of Surface Mining, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240.

LIST OF SUBJECTS IN 30 CFR PART 816

Environmental protection, Reporting and recordkeeping requirements, Surface Mining.

Accordingly, 30 CFR Part 816 is amended as set forth below:

Dated: July 24, 1992.

David C. O'Neal, Assistant Secretary, Land of Minerals Management.

SUBCHAPTER K -- PERMANENT PROGRAM PERFORMANCE STANDARDS

PART 816 -- PERMANENT PROGRAM PERFORMANCE STANDARD -- SURFACE MINING ACTIVITIES

1. The authority citation for part 816 continues to read as follows:

Authority: Public Law 95-87, *30 U.S.C. 1201* et seq., as amended; Section 115 of Public Law 98-146, *30 U.S.C. 1257*; and Public Law 100-34.

SECTION 816.101 [Amended]

2. 30 CFR 816.101 is suspended.

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