



Kentucky
Department for Surface Mining
Reclamation and Enforcement

Reclamation Advisory Memorandum

From: Commissioner Elmore C. Grim E.C.G.
Subject: Two-Acre Exemption

Date: August 25, 1982

RAM# 45

405 KAR 7:030E, Section 1 states that two-acre or less operations which are exempt from the Surface Mining Control and Reclamation Act are exempt from the permanent program regulations. (However, such two-acre operations are subject to minimal regulation under 405 KAR 26:001E.)

On August 2, 1982, OSM published revised final rules on the two-acre exemption. This rulemaking does not change any of the basic concepts of the existing exemption. All areas affected by the operation must be included in the two-acre calculation, including haul roads and areas overlying underground workings. The rule does, however, provide additional criteria for allocation of commonly used haul road segments and criteria for determination of whether two or more sites are related and should be treated as one operation. It also clarifies the exemption's applicability to activities other than coal extraction, and provides a procedure for determining whether an operation is exempt, considering all circumstances of the operation.

A copy of the OSM rule is attached and is applicable under the state regulations in accordance with 405 KAR 7:030E, Section 1.

In addition, the preamble to this rulemaking announced OSM's intentions regarding exclusion of public roads from the affected area. Although this will be covered by a future OSM rulemaking, it was announced now because of its direct application to the two-acre exemption: "Specifically, a road will be excluded from the 'affected area' for a mine if it meets three criteria: (a) The road has been designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) the road is maintained with the public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction in which it is located; and (c) there is substantial (more than incidental) public use of the road."

Attachment

(b) This chapter does not apply to the extraction of coal for commercial purposes where the surface coal mining and reclamation operation, together with any related operations, has or will have an affected area of two acres or less. For purposes of this paragraph:

(1) Where a segment of a road is used for access or coal haulage by more than one surface coal mining operation, the entire segment shall be included in the affected area of each of those operations; provided, that two or more operations which are deemed related pursuant to paragraph (b)(2) of this section shall be considered as one operation for purposes of this paragraph.

(2) Except as provided in paragraph (b)(3) of this section, surface coal mining operations shall be deemed related if they occur within twelve months of each other, are physically related, and are under common ownership or control.

(i) Operations shall be deemed physically related if drainage from both operations flows into the same watershed at or before a point within five aerial miles of either operation.

(ii) Operations shall be deemed under common ownership or control if they are owned or controlled, directly or indirectly, by or on behalf of:

(A) The same person;

(B) Two or more persons, one of whom controls, is under common control with, or is controlled by the other; or

(C) Members of the same family and their relatives, unless it is established that there is no direct or indirect business relationship between or among them;

(iii) For purposes of this paragraph, "control" means: ownership of 50 percent or more of the voting shares of, or general partnership in, an entity; any relationship which gives one person the ability in fact or law to direct what the other does; or any relationship which gives one person express or implied authority to determine the manner in which coal at different sites will be mined, handled, sold or disposed of.

(3) Notwithstanding the provisions of paragraph (b)(2) of this section, the regulatory authority may determine, in accordance with the procedures applicable to requests for determination of exemption pursuant to paragraph (c) of this section, that two or more surface coal mining operations shall not be deemed related if, considering the history and circumstances relating to the coal, its location, the operations at the sites in question, all related operations and all persons mentioned in paragraph (b)(2)(ii) of this section, the regulatory authority concludes in writing that the operations are not of the type which the Act was intended to regulate and that there is no intention on the part of such operations or persons to evade the requirements of the Act or the applicable regulatory program.

(4) The exemption provided by paragraph (b) of this section applies only to operations with an affected area of less than two acres where coal is being extracted for commercial purposes and to surface coal mining operations within that affected area incidental to such operations.

(c) The regulatory authority may on its own initiative and shall, within a reasonable time of a request from any person who intends to conduct surface coal mining operations, make a written determination whether the operation is exempt under this section. The regulatory authority shall give

reasonable notice of the request to interested persons. Prior to the time a determination is made, any person may submit, and the regulatory authority shall consider, any written information relevant to the determination. A person requesting that an operation be declared exempt shall have the burden of establishing the exemption. If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemption and relied upon the determination, shall not be cited for violations which occurred prior to the date of the reversal.