

In the matter of:  
Jim Walter Resources, Inc.  
Mine No. 4  
I.D. No. 01-01247

Petition for Modification

Mine No. 7  
I.D. No. 01-01401

Docket No. M-2008-035-C

### PROPOSED ORDER OF DISMISSAL

On July 1, 2008, Jim Walter Resources, Inc. filed a petition pursuant to 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. § 811(c), and 30 C.F.R. Part 44 for the modification of the application of 30 C.F.R. § 50.30. This regulation requires operators to submit production reports within 15 days after the end of each calendar quarter. The petitioner requests modification of 30 C.F.R. § 50.30 to allow production reports to be submitted within 60 days after the end of each calendar quarter for its No. 4 and No. 7 mines. However, the petitioned regulation is not a mandatory safety standard subject to petitioning for modification of its application under 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. § 811(c), and 30 C.F.R. Part 44.

Under 30 U.S.C. § 811(c), the Secretary may, under certain circumstances, “modify the application of any mandatory safety standard to a coal or other mine . . . .” Mandatory safety standards are promulgated under the authority of 30 U.S.C. § 811(a), which provides that the Secretary “shall by rule in accordance with procedures set forth in this section and in accordance with section 553 of title 5, United States Code . . . develop, promulgate and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.” The MSHA Form 7000-2 filing regulation at 30 C.F.R. § 50.30 was promulgated pursuant to 30 U.S.C. § 957, which provides that the Secretary is “authorized to issue such regulations as [she] deems appropriate to carry out any provision of this Act.” This filing regulation is not a “mandatory safety standard” under 30 U.S.C. § 811 and is, therefore, not subject to modification under 30 U.S.C. § 811(c). For this reason, MSHA has not considered the merits of the petition.

ORDER

Therefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Coal Mine Safety and Health, Jim Walter Resources, Inc.'s Petition for Modification of 30 C.F.R. § 50.30 at Mine No. 4 and Mine No. 7 is hereby:

DISMISSED WITH PREJUDICE.

Any party to this action desiring a hearing on this matter must file in accordance with 30 C.F.R. Part 44 within 30 days. The request for hearing must be filed with the Administrator for Coal Mine Safety and Health, 1100 Wilson Boulevard, Arlington, Virginia 22209-3939.

If a hearing is requested, the request shall contain a concise summary of position on the issues of fact or law desired to be raised by the party requesting the hearing, including specific objections to the proposed decision. A party other than Petitioner who has requested a hearing may also comment upon all issues of fact or law presented in the petition, and any party to this action requesting a hearing may indicate a desired hearing site. If no request for a hearing is filed within 30 days after service thereof, the Order of Dismissal will become final.

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Stephen J. Gigliotti  
Chief, Safety Division for  
Coal Mine Safety and Health