

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

[SPATS No. AR-030-FOR]

Arkansas Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Arkansas regulatory program (hereinafter the "Arkansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to and/or additions of regulations pertaining to definitions; reclamation plans; disposal of excess spoil; steep slope mining; permits incorporating variances from approximate original contour restoration requirements for steep slope mining; prime farmlands; performance standards for coal exploration and prime farmland; signs and markers; topsoil and subsoil; hydrologic balance; backfilling and grading; procedures for assessment conference; and request for adjudicatory public hearing. The amendment is intended to revise the Arkansas program to be consistent with the corresponding Federal regulations and to enhance enforcement of the State program.

This document sets forth the times and locations that the Arkansas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.s.t., March 30,

1998. If requested, a public hearing on the proposed amendment will be held on March 23, 1998. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t. on March 13, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

Copies of the Arkansas program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547, Telephone: (918) 581-6430.

Arkansas Department of Pollution Control and Ecology, Surface Mining and Reclamation Division, 8001 National Drive, Little Rock, Arkansas 72219-8913, Telephone (501) 682-0744.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. Background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the November 21, 1980, **Federal Register** (45 FR 77003). Arkansas amended its program by submitting provisions that satisfied all of the conditions of the Secretary's approval of November 21, 1980. Effective January 22, 1982, OSM removed the conditions of the approval of the Arkansas permanent regulatory program. Information on the removal of the conditions can be found in the January 22, 1982, **Federal Register** (47 FR 3108). Subsequent actions concerning the

conditions of approval and program amendments can be found at 30 CFR 904.12, 904.15, and 904.16.

II. Description of the Proposed Amendment

By letter dated February 6, 1998 (Administrative Record No. AR-561), Arkansas submitted a proposed amendment to its program pursuant to SMCRA. Arkansas submitted the proposed amendment in response to a June 17, 1997, letter (Administrative Record No. AR-559) that OSM sent to Arkansas in accordance with 30 CFR 732.17(c), and at its own initiative. Arkansas proposes to amend the Arkansas Surface Coal Mining and Reclamation Code (ASCMRC). The full text of the proposed program amendment submitted by Arkansas is available for public inspection at the locations listed above under **ADDRESSES**. A brief discussion of the proposed amendment is presented below.

1. Editorial and Reference Changes

Arkansas proposes to make editorial and reference changes in the following sections of the ASCMRC: 780.18(b)(7), Reclamation plan: general requirements; 785.15(b) and (c), Steep slope mining; 785.16(a), (c)(6), and (d)(1), Permits incorporating variances from approximate original contour restoration requirements for steep slope mining; 815.15(k), Performance standards for coal exploration; 816.11(g), Signs and markers; 816.43(e) and (f)(5), Hydrologic balance: diversions and conveyance of overland flow, shallow groundwater flow, (and ephemeral streams); 816.44(c), Hydrologic balance: stream channel diversions; 816.48(b), Hydrologic balance: acid-forming and toxic-forming spoil; and 816.107, Backfilling and grading previously mined areas.

2. Section 761.5, Definitions

Arkansas proposes to delete the word "no" from the term "No significant recreational, timber, economic or other values incompatible with surface coal mining operations" so that it reads "Significant recreational, timber, economic or other values incompatible with surface coal mining operations."

3. Section 780.25(a)(3)(i), Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams and Embankments

Arkansas proposes to amend this section by deleting all language following "qualified registered professional engineer."

4. Section 780.35, Disposal of Excess Spoil

At paragraph (b), Arkansas proposes to amend the introductory text by adding the phrase "Except for the disposal of excess spoil on preexisting benches," to the beginning sentence.

5. Section 785.17, Prime Farmlands

Arkansas proposes to add new paragraph (d)(5) to read as follows:

(5) The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the Director and the consent of all affected property owners within the permit area must be obtained.

6. Sections 816.21, Topsoil: General Requirements; 816.22, Topsoil: Removal; 816.23, Topsoil: Storage; 816.24, Topsoil: Redistribution; and 816.25, Topsoil: Nutrients and Soil Amendments

Arkansas proposes to revise section 816.22, Topsoil: removal, by deleting the existing language, adding new language, and changing the section name to Topsoil and subsoil. The revised section pertains to topsoil removal, substitution, storage, and redistribution, and subsoil segregation. Arkansas also proposes to remove existing sections 816.21, 816.23, 816.24, and 816.25 and to combine their provisions into revised section 816.22.

7. Section 816.56, Hydrologic Balance: Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities

Arkansas proposes to amend this section to read as follows:

Before abandoning the permit area or seeking bond release, the person who conducts the (surface mining activities) [underground mining activities] shall ensure that all temporary structures are removed and reclaimed, and renovate, if necessary, all permanent sedimentation ponds, diversions, impoundments, and treatment facilities to meet criteria specified in the detailed design plan for

the permanent structures and impoundments, and the requirements of this Chapter.

8. Section 816.74, Disposal of Excess Spoil: Pre-Existing Benches

a. Arkansas proposes to revise paragraphs (a) through (d), redesignate existing paragraph (e) as paragraph (h), and add new paragraphs (e), (f), and (g).

b. Revised paragraph (a) will allow the Department to approve the disposal of excess spoil through placement on a pre-existing bench if the affected portion of the pre-existing bench is permitted and the standards in sections 816.102(c), (e) through (h), and (i) and the requirements of this section are met.

c. Revised paragraph (b) will require that all vegetation and organic materials be removed from the affected portion of the pre-existing bench before the placement of the excess spoil. Also, any available topsoil on the bench shall be removed, stored and redistributed in accordance with section 816.22. Substitute or supplemental materials may be used in accordance with section 816.22(b).

d. Revised paragraph (c) will require that fill be designed and constructed using current, prudent engineering practices and that the design be certified by a registered professional engineer. Paragraph (c) also specifies how the spoil shall be handled.

e. Arkansas proposes new paragraphs (e) through (g) to read as follows:

(e) All disturbed areas, including diversion channels that are not ripped or otherwise protected, shall be revegetated upon completion of construction.

(f) Permanent impoundments may not be constructed on preexisting benches backfilled with excess spoil under this regulation.

(g) Final configuration of the backfill must be compatible with the natural drainage patterns and the surrounding areas, and support the approved postmining land use.

9. Sections 816.102, Backfilling and Grading: General Grading Requirements and 816.103, Backfilling and Grading: Covering Coal and Acid and Toxic Forming Materials

Arkansas proposes to delete all existing language in this section and replace it with new language pertaining to general backfilling and grading requirements that are applicable to surface and underground coal mining operations. The parts of this section that apply strictly to surface coal mining operations are enclosed in parentheses. The parts that apply strictly to underground coal mining operations are

italicized and are enclosed in brackets. Arkansas also proposes to remove existing section 816.103 and to incorporate its content into revised section 816.102(f).

10. Section 816.104-S, Backfilling and Grading: Thin Overburden

Arkansas proposes to delete all existing language in this section and replace it with new language that provides a definition for "thin overburden" and performance standards for backfilling and grading where thin overburden occurs.

11. Section 816.105-S, Backfilling and Grading: Thick Overburden

Arkansas proposes to delete all existing language in this section and replace it with new language that provides a definition for "thick overburden" and performance standards for backfilling and grading where thick overburden occurs.

12. Section 816.106, Backfilling and Grading: Steep Slopes and Part 826, Special State Program Performance Standards—Operations on Steep Slopes

Arkansas proposes to add new section 816.106 regarding backfilling and grading and performance standards for surface coal mining activities on steep slopes. Arkansas also proposes to remove existing part 826 and to incorporate its provisions into new section 816.106.

13. Section 816.107, Backfilling and Grading Previously Mined Areas

Arkansas proposes to revise this section by deleting paragraph (b) regarding the backfilling and grading of pre-existing highwalls at remaining operations.

14. Part 823, Special State Program Performance Standards—Operations on Prime Farmland

Arkansas proposes to delete the existing language in this part and to replace it with new language. The new language pertains to special environmental protection performance, reclamation, and design standards for surface coal mining and reclamation operations on prime farmland.

15. Section 845.18, Procedures for Assessment Conference

At paragraph (b), Arkansas proposes to revise the start of the 60-day period in which an assessment conference must be held. Currently the assessment conference is to be held within 60 days from the date of issuance of the proposed assessment. Arkansas proposes that the assessment conference

be held within 60 days from the date the conference request is received.

16. Section 845.19, Request for Adjudicatory Public Hearing

At paragraph (a), Arkansas proposes to revise the amount of time in which a person charged with a violation may contest the proposed penalty or the fact of the violation from the date of service of the conference officer's action. Currently the person charged with a violation has 15 days, from the date of service of the conference officer's action, to contest the proposed penalty or the fact of the violation. Arkansas proposes to increase the time to 30 days.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Arkansas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on March 13, 1998. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those

who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1291(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(3)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 19, 1998.

Russell W. Frum,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98-4862 Filed 2-25-98; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51, 53, and 64

[CC Docket No. 95-20, FCC 98-8]

Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.