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; Reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Arkansas regulatory program (hereinafter referred to as the "Arkansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for Arkansas's proposed rules pertain to ASCMRC 701.5, Definitions; ASCMRC 780.14, Operations Plan: Maps and Plans; ASCMRC 816.46, Hydrologic Balance: Siltation Structures; ASCMRC 816.56, Hydrologic Balance: Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities; ASCMRC 816.102, Backfilling and Grading: General Grading Requirements; ASCMRC 823.11, Applicability; and ASCMRC 823.15, Revegetation and Restoration of Soil Productivity. Arkansas also proposes to change the old name of the "U.S. Soil Conservation Service" to its new name of "Natural Resources Conservation Service" throughout its regulations. 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.

DATES: Written comments must be received by 4:00 p.m., c.d.t., August 19, 1998.

ADDRESSES: Written comments 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, 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 requestor 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, Arkansas 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
II. Discussion of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

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 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. Discussion 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. The provisions of Arkansas Surface Coal Mining and Reclamation Code (ASCMRC) that Arkansas proposes to amend are: ASCMRC 761.5, Definitions; ASCMRC 780.25, Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments; ASCMRC 816.35, Disposal of Excess Spoil; ASCMRC 785.17, Prime Farmlands; ASCMRC 816.21, Topsoil: General Requirements; ASCMRC 816.22, Topsoil: Removal; ASCMRC 816.23, Topsoil: Storage; ASCMRC 816.24, Topsoil: Redistribution; ASCMRC 816.25, Topsoil: Nutrients and Soil Amendments; ASCMRC 816.56, Hydrologic Balance: Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities; ASCMRC 816.74, Disposal of Excess Spoil: Pre-existing Benches; ASCMRC 816.102, Backfilling and grading: General Grading Requirements; ASCMRC 816.103, Backfilling and grading: Covering Coal and Acid and toxic forming materials; ASCMRC 816.104–S, Backfilling and Grading: Thin Overburden; ASCMRC 816.105–S, Backfilling and Grading: Thick Overburden; ASCMRC 816.106, Backfilling and Grading: Steep Slopes; ASCMRC Part 826, Special State Program Performance Standards—Operations on Steep Slopes; ASCMRC 816.107, Backfilling and Grading: Previously Mined Areas; ASCMRC Part 823, Special State Program Performance Standards—Operations on Prime Farmland; ASCMRC 845.18, Procedures for Assessment Conference; and ASCMRC 845.19, Request for Adjudicatory Public Hearing. Arkansas also proposed to make editorial and reference changes in the following sections of ASCMRC: 780.18(b)(7), Reclamation plan: general requirements; 785.15(b) and (c), Steep slope mining; 785.16(a), (c)(6), and (d)(4), Permits incorporating provisions for approximately 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.

OSM announced receipt of the proposed amendment in the February 26, 1998, Federal Register (63 FR 9747) and invited public comment on its adequacy. The public comment period ended March 30, 1998.


Arkansas proposes to change the old name of the “U.S. Soil Conservation Service” throughout its regulations.

Specifically, Arkansas proposes the following changes to its regulations.

1. ASCMRC 701.5, Definitions; ASCMRC 780.14, Operations Plan: Maps and Plans
   - Arkansas proposes to amend this section by adding a designation for paragraph (b)(6), pertaining to water diversions, collection, conveyance, treatment, storage, and discharge facilities, to the list of paragraphs requiring maps, plans, and cross sections.

2. ASCMRC 816.46, Hydrologic Balance: Siltation Structures
   - 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 shall ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments, and treatment facilities meet the requirements of this Chapter for permanent structures, have been maintained properly, and meet the requirements of the detailed design plan for permanent structures and impoundments. The operator shall renovate such structures if necessary to meet the requirements of this Chapter and to conform to the approved reclamation plan.

3. ASCMRC 816.56, Hydrologic Balance: Postmining Rehabilitation of Sediment Ponds, Diversions, Impoundments, and Treatment Facilities
   - Arkansas proposes to amend this section to read as follows:

   Arkansas proposes to revise paragraph (d) to read as follows:
   - Soil may be placed on the area outside the mined-out [surface] area in nonsteep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:

4. ASCMRC 816.102, Backfilling and Grading: General Grading Requirements
   - Arkansas proposes to revise paragraph (d) to read as follows:

5. ASCMRC 823.11, Applicability
   - Arkansas proposes to revise the editorial note to read as follows:

6. ASCMRC 823.15, Revegetation and Restoration of Soil Productivity
   - Arkansas proposes to revise paragraph (b)(6) to read as follows:

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Arkansas program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. 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.

IV. Procedural Determinations

Executive Order 12866

This proposed 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 subsections (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. 1292(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(2)(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.


Brent Wahlquist,
Regional Director, Mid-Continent Regional Coordinating Center.

For further information contact: Christine DeRosa or Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for ferroalloys production, which is comprised of ferronickel production facilities and ferromanganese, silicomanganese, and ferrochromium production facilities. The EPA has identified these facilities as major sources of hazardous air pollutants (HAP) emissions such as nickel and manganese. Nickel compounds such as nickel carbonyl and nickel sub sulfate are some of the most toxic compounds of nickel. They can affect the lungs and the kidneys. Symptoms such as headaches, vomiting, chest pains, dry coughing, and visual disturbances have been reported from short-term exposure in humans. Additionally, human and animal studies reveal an increased risk of lung and nasal cancers from exposure to nickel refinery dusts and nickel sub sulfate. Chronic exposure to nickel in humans also results in respiratory effects such as asthma due to primary irritation or an allergic response, and an increased risk of chronic respiratory tract infections.