

Proposed Rules

Federal Register

Vol. 66, No. 246

Friday, December 21, 2001

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 ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM02-1-000]

Standardizing Generator Interconnection Agreements and Procedures; Notice of Extension of Time

December 14, 2001.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of extension of time.

SUMMARY: On October 25, 2001, the Federal Energy Regulatory Commission issued an Advance Notice of Proposed Rulemaking (ANOPR) seeking comments on a standard generator interconnection agreement and procedures that would be applicable to all public utilities that own, operate or control transmission facilities under the Federal Power Act, 66 FR 55140 (November 1, 2001). The date for filing comments is being extended at the request of various interested parties.

DATES: Comments on the filing of a single consensus document are extended to and including January 11, 2002. Comments on issues posed by the ANOPR shall be filed on or before January 25, 2002.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Linwood A. Watson, Jr., Acting Secretary 888 First Street, NE., Washington, DC 20426 (202) 208-0400.

On December 14, 2001, the Generator Interconnection Coalition¹ (Coalition),

on behalf of its members, filed its Status Report on its Consensus Process and (1) an interim draft standard connection agreement and (2) an interim draft standard interconnection procedures document on which Coalition Members have made substantial progress (Status Report), in response to the Commission's Advance Notice of Proposed Rulemaking (ANOPR) issued October 25, 2001, in the above-docketed proceeding. With the Status Report, the Coalition also requested an extension of time to complete the consensus process and to respond fully to the issues raised by the Commission in its ANOPR. In its motion, the Coalition states that finalizing consensus documents will require the continued significant investment of time and resources on the part of the Coalition Members and that an extension would allow Coalition Members to integrate and finalize consensus documents that are consistent with the Commission's mandate in the ANOPR. The motion also states that an extension will allow all stakeholders in the ANOPR process to have the opportunity to seek clarification and comment orally on the draft documents during the plenary meetings.

Upon consideration, notice is hereby given that an extension of time to file a single consensus document is granted to and including January 11, 2002. Comments on issues posed by the ANOPR shall be filed on or before January 25, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01-31442 Filed 12-20-01; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[OK-029-FOR]

Oklahoma Regulatory Program

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

of the Coalition Members is included in Attachment 1 of the Coalition's Status Report.

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

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Oklahoma regulatory program (the Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Oklahoma Department of Mines (Department or Oklahoma) proposes revisions to and additions of rules about areas designated by act of Congress as unsuitable for mining and coal exploration operations. Oklahoma intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Oklahoma program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.s.t., January 22, 2002. If requested, we will hold a public hearing on the amendment on January 17, 2002. We will accept requests to speak at a hearing until 4 p.m., c.s.t. on January 7, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

You may review copies of the Oklahoma program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday,

¹ The Coalition includes representatives from: generators, marketers, transmission owners, industrial power producers, transmission dependent utilities, regional transmission organizations, independent system operators, distributed resources and state commissions. A list

excluding holidays. You may receive one free copy of the 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, Internet: mwolfrom@osmre.gov

Mary Ann Pritchard, Director, Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521-3859, Internet: maryann@guinan.osmre.gov

FOR FURTHER INFORMATION CONTACT:

Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581-6430. Internet: mwolfrom@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program
II. Description of the Proposed Amendment

III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Oklahoma Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . . ; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Oklahoma program on January 19, 1981. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program in the January 19, 1981, **Federal Register** (46 FR 4902). You can also find later actions concerning Oklahoma's program and program amendments at 30 CFR 936.15 and 936.16.

II. Description of the Proposed Amendment

By letter dated November 20, 2001 (Administrative Record No. OK-988.02), Oklahoma sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Oklahoma sent the amendment in response to an August 23, 2000, letter (Administrative Record No. OK-988) that we sent to Oklahoma in accordance

with 30 CFR 732.17(c). Oklahoma proposes to amend the Oklahoma Administrative Code (OAC) at Subchapter 7 (Areas Designated by Act of Congress as Unsuitable for Mining) and Subchapter 13 (General Requirements for Coal Exploration Operations). Below is a summary of the changes proposed by Oklahoma. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

A. OAC 460:20-7-2 Authority

Oklahoma proposes to revise its authority provision to read as follows:

The Department is authorized by Act to prohibit or limit surface coal mining operations on or near private, Federal, and other public lands, except for those operations which existed on August 3, 1977 or were subject to valid existing rights at the time the land came under the protection of 45 O.S. Section 783 and Section 460:20-7-4.

B. OAC 460:20-7-3 Definitions

Oklahoma proposes to remove its definition of "surface coal mining operations which exist on the date of enactment." Oklahoma also proposes to revise its definition of "valid existing rights."

C. OAC 460:20-7-4 Areas Where Surface Coal Mining Operations Are Prohibited or Limited

Oklahoma proposes to revise the introductory paragraph of OAC 460:20-7-4 to read as follows:

No surface coal mining operations shall be conducted on the following lands unless those operations either have valid existing rights, as determined under Section 460:20-7-5, or qualify for the exception for existing operations under Section 460:20-7-4.1.

Oklahoma also proposes minor wording, editorial, and punctuation changes to OAC 460:20-7-4(2) through (5).

D. OAC 460:20-7-4.1 Exception for Existing Operations

Oklahoma proposes to add this new section to describe those surface coal mining operations for which the provisions of OAC 460:20-7-4 do not apply.

E. OAC 460:20-7-5 Procedures

Oklahoma proposes to revise this section to describe the procedures applicants for surface coal mining operation permits must follow when requesting a valid existing rights determination. This section also describes the evaluation procedures and decision-making criteria the regulatory

authority will follow when making a valid existing rights determination.

F. OAC 460:20-13-5 Permit Requirements for Exploration Removing More Than 250 Tons of Coal

1. At OAC 460:20-13-5(b)(14), Oklahoma proposes to require applicants for coal exploration permits to include the following information in their applications:

For any lands listed in Section 460:20-7-4 of this Chapter, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of Section 460:20-7-4 of this Chapter, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of Section 460:20-7-4 of this Chapter.

2. At OAC 460:20-13-5(d)(2)(D), Oklahoma proposes to add the following new requirement that it will use when making decisions on applications for coal exploration permits:

With respect to exploration activities on any lands protected under Section 460:20-7-4 of this Chapter, minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the Department must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of Section 460:20-7-4 of this Chapter, and when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of Section 460:20-7-4 of this Chapter, to comment on whether the finding is appropriate.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment

period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Tulsa Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: [OK-029-FOR]" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581-6430.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on January 7, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that 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 because each 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 the Federal regulations at 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.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws

regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because 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 certifies 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. 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.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 30, 2001.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 01-31536 Filed 12-20-01; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF VETERANS AFFAIRS**38 CFR Part 20**

RIN 2900-AL11

Board of Veterans' Appeals Rules of Practice: Claim for Death Benefits by Survivor

AGENCY: Department of Veterans Affairs.
ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs' (VA) Rules of Practice at the Board of Veterans' Appeals (Board) to

clarify that the general rule that the Board is not bound by prior dispositions during the veteran's lifetime of issues involved in the survivor's claim does not include claims for "enhanced" Dependency and Indemnity Compensation (DIC). This amendment is necessary to eliminate confusion between the Board's current rule and another rule relating to DIC for survivors of certain veterans rated totally disabled at the time of death.

DATES: Comments must be received on or before January 22, 2002.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (O2D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to OGCRegulations@mail.va.gov.

Comments should indicate that they are submitted in response to "RIN 2900-AL11." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202-565-5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials of claims for veterans' benefits.

The purpose of this document is to comply with the order of the U.S. Court of Appeals for the Federal Circuit in *National Organization of Veterans' Advocates, Inc. v. Secretary of Veterans Affairs*, Nos. 00-7095, 00-7096, 00-7098 (Fed. Cir. Aug. 16, 2001) ("NOVA"). That case was a petition challenging VA's January 2000 final rule which amended 38 CFR 3.22, relating to dependency and indemnity compensation (DIC) benefits for survivors of certain veterans rated totally disabled at the time of death. See 65 FR 3388 (Jan. 21, 2000).

While the NOVA court explicitly declined to invalidate the rule, NOVA, slip op. at 42, it did note that there was an apparent conflict between the new rule and 38 CFR 20.1106. The court concluded that those two rules stated conflicting interpretations of two virtually identical statutes. The statutes, 38 U.S.C. 1311(a)(2) and 1318, both provide benefits to the survivor of a veteran who was at the time of death "in receipt of or entitled to receive"

compensation for a service-connected disability that was continuously rated totally disabling for a specified number of years prior to death. The regulation in 38 CFR 3.22 interprets the phrase "entitled to receive" in 38 U.S.C. 1318 to mean that the VA had awarded the veteran a total disability rating for the specified period during his or her lifetime, but for some reason the veteran did not receive payment based on that rating, or that the veteran would have had a total disability rating for that period if not for a clear and unmistakable error by VA during the veteran's lifetime. The NOVA court concluded that 38 CFR 20.1106 interprets the same language in 38 U.S.C. 1311(a)(2) to require a posthumous determination of the veteran's "entitlement" to compensation without regard to whether VA rating decisions during the veteran's lifetime established such entitlement. Having concluded that VA established conflicting interpretations of the identical language in these two statutes, the NOVA court ordered VA to conduct an expedited rulemaking to either explain the basis for the differing interpretations or to revise one of its regulations to remove any inconsistency. NOVA, slip op. at 43.

As explained in this notice, VA has not interpreted 38 U.S.C. 1318, and 38 U.S.C. 1311 in inconsistent ways. Nevertheless, to eliminate the potential ambiguity identified in the NOVA decision, we are amending 38 CFR 20.1106 to clarify that, as with decisions under 38 U.S.C. 1318, decisions under 38 U.S.C. 1311(a)(2) will be decided taking into consideration prior dispositions made during the veteran's lifetime of issues involved in the survivor's claim. The effect of this change is to make VA's position clear that entitlement to benefits under either 38 U.S.C. 1318 or 38 U.S.C. 1311 must be based on the determinations made during the veteran's lifetime, or challenges to such decisions on the basis of clear and unmistakable error, rather than on de novo posthumous determinations as to whether the veteran hypothetically could have been entitled to certain benefits if he or she had applied for them during his or her lifetime.

Background on Dependency and Indemnity Compensation

Since 1957, survivors of a veteran who died in service or as a result of a service-connected disability have been entitled to a monthly benefit called "Dependency and Indemnity Compensation" (DIC). 38 U.S.C. 1310(a), 1311.