

Proposed Rules

Federal Register

Vol. 71, No. 166

Monday, August 28, 2006

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 938

[PA-147-FOR]

Pennsylvania Regulatory Program

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

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

SUMMARY: We are announcing receipt of a proposed amendment to the Pennsylvania regulatory program (hereinafter, the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Pennsylvania proposes to revise its program concerning reclamation fees, financial guarantees for bonding, money received from fees, the definition of reclamation, reclamation of bond forfeiture sites, alternate reclamation plans for bond forfeiture sites, bond forfeiture sites where reclamation is unreasonable, unnecessary or impossible, and evaluation of bond sites.

The proposed amendments are intended to revise the Pennsylvania program to be consistent with the corresponding Federal regulations and to amend provisions at its own initiative.

This document gives the times and locations that the Pennsylvania program and this submittal are available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing.

DATES: We will accept written comments until 4 p.m., local time, September 27, 2006. If requested, we will hold a public hearing on September 22, 2006. We will accept requests to speak until 4 p.m., local time on September 12, 2006.

ADDRESSES: You may submit comments, identified by "PA-147-FOR", by any of the following methods:

- E-mail: grieger@osmre.gov. Mail/Hand Delivery: George Rieger, Director, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 415 Market Street, Room 304, Harrisburg, PA 17101; Telephone: (717) 782-4036.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency docket number "PA-147-FOR" for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" Section in this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Docket: You may review copies of the Pennsylvania program, this submission, a listing of any scheduled public hearings, and all written comments received in response to this document at OSM's Pittsburgh Field Division Office at the address listed above during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the submission by contacting OSM's Pittsburgh Field Division's Harrisburg Office. In addition, you may receive a copy of the submission during regular business hours at the following location:

Joseph P. Pizarchik, Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, Pennsylvania 17105-8461, Telephone: (717) 787-5103.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: (717) 782-4036. E-mail: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

- Background on the Pennsylvania Program
- Description of the Proposed Amendment
- Public Comment Procedures
- Procedural Determinations

I. Background on the Pennsylvania 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 Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15 and 938.16.

II. Description of the Proposed Amendment

By letter dated May 23, 2006 (Administrative Record Number PA 793.11), Pennsylvania sent OSM a proposed program amendment to revise their program regulations at 25 Pa. Code. The submission includes the following: (1) Revisions to the Pennsylvania program initiated by Pennsylvania at 25 Pa. Code 86.17(e), 86.187(a)(2) and 86.283(c); (2) revisions intended to correct a typographical error in the State program at 25 Pa. Code 86.187(a)(1); (3) revisions intended to satisfy five required amendments codified in the Federal regulations at 30 CFR 938.16(mm)-(qq); and (4) revisions to address a previous OSM disapproval of language at 25 Pa. Code 86.188 (Administrative Record Number PA 793.11). The Pennsylvania Department of Environmental Protection (PADEP or Department) believes that this amendment will make its program consistent with the Federal program and satisfy the required amendments at 30 CFR 938.16(mm)-(qq). The letter described Pennsylvania's intended program changes at 25 Pa. Code 86.17(e), 86.187(a)(1), 86.187(b), 86.187(c) and 86.189(c)(2)-(c)(5), 86.188(b) and (c), 86.190(a), and 86.283(c). The full text of the proposed amendments is available for you to read

at the locations listed above under **ADDRESSES**.

On October 24, 1991, OSM published a final rule requiring the PADEP to amend its program to be no less effective than the Federal program (56 FR 55080–55087). The required amendments concern reclamation of bond forfeiture sites, alternate reclamation plans for bond forfeiture sites, bond forfeiture sites where reclamation is unreasonable, unnecessary or impossible, and evaluation of bond forfeiture sites. In response, PADEP submitted an informal amendment on March 27, 2002, with draft proposed changes intended to satisfy five required amendments codified at 30 CFR 938.16(mm)–(qq). The regulatory process in Pennsylvania was delayed until the State proposed the changes to the Mining and Reclamation Board in 2005.

On March 31, 2005, Pennsylvania sent a summary of the findings for those proposed regulatory changes to OSM (Administrative Record Number PA 793.09). By letter dated April 15, 2005 (Administrative Record Number PA 793.10), we provided Pennsylvania with our comments on their draft amendments.

A summary of the proposed changes are as follows.

25 Pa. Code 86.17(e) Reclamation Fees

Pennsylvania has proposed a revision of this Subsection that would discontinue the collection of the Alternative Bonding System (ABS) \$100 per acre reclamation fee. Pennsylvania believes that this fee is no longer needed because the State now uses a Conventional Bonding System (CBS).

Until 2001, Pennsylvania's bonding program was funded under its ABS, which included a central pool of money used for reclamation which was funded in part by a per-acre reclamation fee paid by operators of permitted sites, and supplemented by site bonds posted by those operators for each mine site. Because of growing problems with the solvency of ABS, in 2001, Pennsylvania began converting all active surface coal mining permits issued under the ABS, to a Full Cost Bonding (FCB) program. This FCB requires a permittee to post bonds in an amount sufficient to cover the estimated costs to complete reclamation in the event of bond forfeiture. The State believes that because all of its permittees are now subject to FCB, there is no longer a basis for maintaining the per acre reclamation fee, and is therefore, proposing to delete the per-acre fee requirement.

25 Pa. Code 86.187(a)(2) Use of Monies and 25 Pa. Code 86.188 Definition of Reclamation—Eligible Sites Statement

PADEP proposes to revise Section 86.187(a)(2), to include a requirement that the forfeited bond money be used “only to reclaim land and restore water supplies affected by the surface mining operation upon which liability was charged on the bond, except as provided in Section 86.190 * * *” The State also provided clarification of its policy on bond collection in a letter to OSM dated May 23, 2006 (Administrative Record No. PA 793.11). The clarification indicates that “when a bond is collected, Pennsylvania earmarks the bond, assigning it to the site for which it was forfeited. It can only be used for that site unless it is released, pursuant to Section 86.190.” Before releasing the funds, PADEP stated that it “conducts a rigorous review to assure that the bond money is not needed for the reclamation at the site for which the bond was forfeited.”

25 Pa. Code 86.283(c) Procedures (Financial Guarantees Program)

Pennsylvania has proposed to remove the requirement relating to the per acre reclamation fees for remaining areas for mine operators approved to participate in the financial guarantees program. The State has proposed this change for consistency with the change proposed in Section 86.17(e); PADEP believes that the removal of the \$100 per acre reclamation fee, as discussed in the previous Section of this proposed amendment, will make this provision inapplicable.

25 Pa. Code 86.187(a)(1) Money Received From Fees

Pennsylvania has proposed a revision of this Subsection to correct a typographical error. PADEP is deleting the reference to Section 86.17(b) and replacing that correction with a reference to Section 86.17(e).

30 CFR 938.16(mm), 25 Pa. Code 86.187(b) Reclamation of Bond Forfeiture Sites

Required Amendment: Pennsylvania has proposed revisions of these Subsections to address a required amendment codified in the Federal regulations at 30 CFR 938.16(mm) (56 FR 55080–55087). The required program amendment requires that Pennsylvania delete 25 Pa. Code 86.187(b)(1), or otherwise amend its program, by requiring that alternative reclamation plans comply with all applicable performance standards in accordance with 86.189(c)(2), (c)(3) or (c)(4),

whichever is appropriate to be consistent with 30 CFR 800.50.

The State is proposing to revise Section 86.187(b) to make clear that an alternative reclamation plan must meet applicable performance standards identified in Section 86.189(c) and to assure that the Department will notify and consult with the landowner prior to expending funds for reclamation of a bond forfeiture site in all cases and not just when an alternative reclamation plan is being considered.

30 CFR 938.16(nn)–(oo), 25 Pa. Code 86.187(c) and 86.189(c)(2)–(c)(5) Alternate Reclamation Plans for Bond Forfeiture Sites

Required Amendment: Pennsylvania has proposed revisions of these Subsections to address required amendments published in the Federal regulations at 30 CFR 938.16(nn) and (oo) (56 FR 55080–55087). The required amendment requires that Pennsylvania amend 25 Pa. Code 86.187(c) and Section 18(c) of the Pennsylvania Surface Mining and Conservation Act or otherwise amend its program to be no less effective than the Federal regulations at 30 CFR 816.133(a) and 817.133(a). The required amendments require Pennsylvania to require that alternative postmining land use determinations for sites with forfeited bonds under the Federal interim program or under Pennsylvania's permanent program be made to ensure that all disturbed areas are restored to conditions that are capable of supporting either the uses they were capable of supporting before any mining, or higher or better uses.

The State is proposing to revise Subsection 86.189(c)(5), to delete the language requiring reclamation plans for bond forfeiture sites allowing the sites to be made suitable at a minimum for agriculture, forests, recreation, wildlife or water conservation. Subsection 86.187(c) is proposed to be revised further by adding language requiring the alternate reclamation plans to provide for restoration of the disturbed land to conditions that are capable of supporting either the uses they were capable of supporting before any mining, or higher or better uses. Paragraphs (c)(2)–(4) of Section 86.189 are proposed to be revised to delete the reference to paragraph (5). The Federal regulations at 30 CFR 816.133(a) and 817.133(a) require that all disturbed areas be restored to uses they were capable of supporting before any mining, or to a higher or better use. Paragraph (c)(5) is being deleted to render Section 86.189 consistent with the Federal provisions.

Both 30 CFR 938.16(nn) and (oo) require that Pennsylvania amend 25 Pa. Code 86.187(b)(1) and Section 18(c) of the Pennsylvania Surface Mining and Conservation Act or otherwise amend its program to be no less effective than 30 CFR 816.133(a) and 817.133(a) by requiring that alternative postmining land use determinations for sites with forfeited bonds under the Federal interim program or under Pennsylvania's permanent program be made to ensure that all disturbed areas are restored to conditions that are capable of supporting either the uses they were capable of supporting before any mining, or higher or better uses.

30 CFR 938.16(pp)–(qq), 25 Pa. Code 86.190(a) Bond Forfeiture Sites Where Reclamation Is Unreasonable, Unnecessary Or Impossible

Required Amendment: Pennsylvania has proposed revisions of these Subsections to address required program amendments codified in the Federal regulations at 30 CFR 938.16(pp) and (qq) (56 FR 55080–55087), which require that the State delete words “but are not limited to” from the introductory paragraph of Section 86.190(a), as well as the entire Subsection (a)(3) to be consistent with 30 CFR 800.50.

Pennsylvania proposes to delete Subsection (a)(3) which allows the landowner of a bond forfeiture site to prevent reclamation. The State is also proposing to revise Subsection (a) to delete language that allows for additional reclamation of bond forfeiture sites for reasons beyond those specifically listed in Subsection (a).

30 CFR 938.15, 25 Pa Code 86.188(b) and (c) Evaluation of Bond Forfeiture Sites

Required Amendment: Pennsylvania has proposed revisions of these Subsections to address an OSM disapproval of Section 86.188 to the extent that Subsections (b) and (c) would allow bond forfeiture funds posted for and needed to complete reclamation of a specific site be used for reclamation of other sites. In that disapproval, OSM stated that the provision would render the Pennsylvania program less effective than the Federal regulations at 30 CFR 800.50(b)(2). (See 56 FR 55084, October 24, 1991).

In this submission, the State is proposing to revise Subsections 86.188(b) and (c) to delete the language in paragraphs (b)(5) and (c)(3). The PADEP stated in its May 23, 2006, letter to OSM that this proposed revision will make it clear that bond forfeiture funds

posted for and still needed to complete reclamation of the specific site for which the bonds were forfeited will not be used for reclamation of other sites until reclamation of the forfeited site has been completed. The PADEP also stated that the Department fully intends to maintain adequate bonding so that funds are available for the completion of reclamation should the bonds be forfeited (Administrative Record No. PA 793.11).

III. Public Comment Procedures

In accordance with 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendments, they will become part of the Pennsylvania program.

Written Comments

Send your written 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 may 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 Pittsburgh Field Division identified above may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include “Attn: PA–147–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 Pittsburgh Field Division's Harrisburg Office at (717) 782–4036.

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 p.m., local time on September 12, 2006. 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 the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a 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 submission, 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 regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) 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, to the extent

allowable 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 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 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian Tribes.

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. 4321 *et seq.*).

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 that is the subject of this rule is based on 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, geographic regions, or Federal, State or local governmental agencies; 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 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 3, 2006.

Michael K. Robinson,

Acting Regional Director, Appalachian Region.

[FR Doc. E6-14229 Filed 8-25-06; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Chapter 1

Negotiated Rulemaking Advisory Committee for Dog Management at Golden Gate National Recreation Area

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App 1, section 10), of the fifth meeting of the Negotiated Rulemaking Advisory Committee for Dog Management at Golden Gate National Recreation Area (GGNRA).

DATES: The Committee will meet on Thursday, September 21, 2006 in the Officer's Club, upper Fort Mason. The meeting will begin at 3 p.m., and is open to the public.

Although the Committee may modify its agenda during the course of its work, the proposed agenda for this meeting is as follows: agenda review; approval of July 31, 2006 meeting summary; update on activities since July meeting; discuss Technical Subcommittee report; discuss potential selection/evaluation criteria; next steps; public comment; adjourn.