

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 936**

[SPATS No. OK-025-FOR]

**Oklahoma Regulatory Program****AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Oklahoma proposes revisions to its rules concerning permit revisions. 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 the 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 until 4 p.m., c.s.t., March 19, 2001. If requested, we will hold a public hearing on the amendment on March 12, 2001. We will accept requests to speak at the hearing until 4 p.m., c.s.t. on March 2, 2001.

**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, the proposed 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, 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, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547, Telephone: (918) 581-6430.

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521-3859.

**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**

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 19, 1981, **Federal Register** (46 FR 4902). You can find later actions concerning the Oklahoma program at 30 CFR 936.15 and 936.16.

**II. Description of the Proposed Amendment**

By letter dated January 25, 2001 (Administrative Record No. OK-990), the Oklahoma Department of Mines (Department) sent us an amendment to the Oklahoma program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Oklahoma sent the amendment at its own initiative. Oklahoma is amending its rules at OAC 460:20-17-3 concerning permit revisions by providing guidelines for determining when a permit revision is major/significant or minor and by specifying a time period for approval or disapproval of a permit revision application. Below is a summary of the changes proposed by Oklahoma.

1. *OAC 460:20-17-3(a) General.* At Section 460:20-17-3(a) Oklahoma is adding the following provision:

Any revision application to the approved mining or reclamation plan will be subject to review and approval by the Department. During the revision review, the revision will be classified as either: (1) Major or Significant; or (2) Minor.

2. *OAC 460:20-17-3(b) Application requirements and procedures.* Oklahoma is removing the existing provisions in Section 460:20-17-3(b), and adding the following new provisions:

(b) Application requirements and procedures. A permittee is required to submit any permit revision applications to the Chief of Technical Services for review. The Technical Service review shall determine:

(1) Whether the permittee has provided all technical and public notice requirement information the Department deems necessary to adequately evaluate and find that the revision meets the requirements of the statutes and of this Chapter; and

(2) Whether the revision application contains any deficiencies. The Department is required to send written notification to the permittee of any deficiencies along with a

response date deadline for answering the deficiencies noted. Any deadline extension requests shall be in writing and are subject to the approval of the Chief of Technical Services. Failure of the permittee to file written responses within the required time frames, will result in the denial of the revision application.

3. *OAC 460:20-17-3(c) Significant revisions.* Oklahoma is moving the existing provision in Section 460:20-17-3(c) to new Section 460:20-17-3(f), and is adding the following provision to Section OAC 460:20-17-3(c):

A significant revision to the mining or reclamation plan will be subject to the permit application information requirements and procedures of this Subchapter, including notice, public participation, and notice of decision requirements of Sections 460:20-15-5, 460:20-15-8(b)(1) and (3), and 460:20-23-9 prior to approval by the Department and implementation by the permittee.

4. *OAC 460:20-17-3(d) Departmental consideration.* Oklahoma is moving the existing provision in Section 460:20-17-3(d) to new Section 460:20-17-3(g), and is adding the following new provisions to Section OAC 460:20-17-3(d):

(d) Departmental consideration. The Department will consider any proposed revision to be significant if its implementation could reasonably be expected, in the opinion of the Director, to result in any adverse impact to persons, property, or the environment outside the permit area. Revisions with impacts confined to the permit area will be evaluated on a case by case basis to determine if significant. While consideration will be given to the size, location, type and extent of impact in classifying a revision, the following will typically be considered significant:

- (1) Incidental boundary changes;
- (2) Hydrology plan changes which could have adverse impacts outside the permit acres, such as:
  - (A) The addition or relocation of permanent impoundments;
  - (B) The addition, deletion, or relocation of stream diversions; and
  - (C) The addition or deletion of acid mine drainage treatment facilities;
- (3) The addition of a coal wash plant;
- (4) The addition of or changes to a non coal waste storage plan;
- (5) Construction or relocation of county roads;
- (6) Addition of blasting plans;
- (7) Postmining land use changes to residential, industrial or commercial (except for changes involving oil and gas wells and private roads), recreation, or developed water resources as discussed 460:20-27-14(a)(2);
- (8) Changes impacting historical or cultural areas, high value wildlife habitat, and parks and public places;
- (9) Permanent changes which could have a limiting or adverse effect on the long term future of the land; and
- (10) Other changes deemed significant by the Director which affect the landowner and or the public.

4. *OAC 460:20-17-3(e) Minor revisions.* Oklahoma is adding the following new provisions at OAC 460:20-17-3(e):

(e) Minor revisions. The following revisions are typically considered minor revisions:

- (1) Changes to pond designs;
- (2) Addition or deletion of dewatering pipes on ponds;
- (3) Addition, deletion or changes to office facilities, explosive storage areas, temporary haul roads, and coal pads;
- (4) Changes to surface and groundwater monitoring plans;
- (5) Vegetation changes;
- (6) Change of operator without a change of permittee; and
- (7) Conversion to incremental bonding or change to bond increments, pursuant to the requirements of Subchapter 37 of this Chapter.

5. *OAC 460:20-17-3(h) Application decisions.* Oklahoma is adding the following new provision at Section 460:20-17-3(h):

The Department will make a decision of approval or denial of a revision application within six months of receipt of the application unless the application, or some aspect of the application, is under technical, administrative or judicial review.

### III. Public Comment Procedures

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

*Written Comments:* If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

*Electronic Comments:* Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. OK-025-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:* Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Tulsa Field Office (see **ADDRESSES**).

Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous 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 inspection 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., c.s.t. on March 2, 2001. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

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 testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been 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 all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

If you are disabled and need a special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*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. If you wish to meet with us to discuss the proposed amendment, you may 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 also make a written summary of each meeting a part of the Administrative Record.

### IV. Procedural Determinations

#### *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 12630—Takings*

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

#### *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, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary under SMCRA.

#### *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 allowed by law, this rule meets the applicable standards of subsections (a) and (b) of this 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 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*

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of

section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

#### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the Office of Management and Budget 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. Therefore, 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.

#### *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 government agencies, or geographic regions.
- 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 a cost of \$100 million or more in any given year

on any governmental entity or the private sector.

#### **List of Subjects in 30 CFR Part 936**

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 6, 2001.

**Charles E. Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

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**BILLING CODE 4310-05-P**

## **DEPARTMENT OF THE INTERIOR**

### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 938**

**[PA-132-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.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Pennsylvania regulatory program (Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of excerpts of House Bill 393 containing costs in mine proceedings legislation. The amendment is intended to revise the Pennsylvania program to be consistent with the corresponding federal regulations.

**DATES:** If you submit written comments, they must be received by 4 p.m. (local time), March 19, 2001. If requested, a public hearing on the proposed amendment will be held on March 12, 2001. Requests to speak at the hearing must be received by 4 p.m. (local time), on March 2, 2001.

**ADDRESSES:** Mail or hand-deliver your written comments and requests to speak at the hearing to Mr. Robert J. Biggi, at the address listed below.

You may review copies of the Pennsylvania program, the proposed 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, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Robert J. Biggi, Director, Office of Surface Mining Reclamation and

Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717)782-4036, e-mail: bbiggi@osmre.gov.

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

#### **FOR FURTHER INFORMATION CONTACT:**

Robert J. Biggi, Director, Harrisburg Field Office, Telephone: (717)782-4036.

#### **SUPPLEMENTARY INFORMATION:**

#### **I. Background on the Pennsylvania Program**

On July 31, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and the conditions of the approval in the July 31, 1982, **Federal Register** (47 FR 33050). You can find subsequent actions concerning the conditions of approval and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

#### **II. Description of the Proposed Amendment**

By letter dated January 3, 2001, (Administrative Record No. PA-848.25), Pennsylvania submitted a proposed amendment to its program at the Pennsylvania Consolidated Statutes, Title 27 (Environmental Resources), Chapter 77, section 7708. The full text of the amendment is:

Excerpts of House Bill 393 Containing Costs in Mine Proceedings Legislation

Amending Title 27

(Environmental Resources) of the Pennsylvania Consolidated Statutes, providing for participation in environmental law or regulation and for costs in mining proceedings.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 27 of the Pennsylvania Consolidated Statutes is amended by adding chapters to read:

Subpart A

General provisions

Chapter 77. Costs and fees

Sec. 7708. Costs for mining proceedings.

(A) Purpose.—This section establishes costs and fees available in proceedings involving coal mining activities. The purpose of this section is to provide costs and fees to the same extent of section 525(e) of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C. § 1201