

# Proposed Rules

Federal Register

Vol. 68, No. 4

Tuesday, January 7, 2003

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-139-FOR]

#### Pennsylvania Regulatory Program

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

**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 the proposed removal of a required amendment to the Pennsylvania regulatory program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). OSM is proposing to remove the required amendment because the Federal regulation upon which the required amendment is based no longer exists. This document gives the times and locations that the Pennsylvania program is 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., e.s.t. on February 6, 2003. If requested, we will hold a public hearing on the amendment on February 3, 2003. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on January 22, 2003.

**ADDRESSES:** You should mail or hand deliver written comments and requests to speak at the hearing to George Rieger at the address listed below.

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

Mr. George Rieger, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, PA 17101, (717) 782-4036, [grieger@osmre.gov](mailto:grieger@osmre.gov).

J. Scott Roberts, Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, PO Box 8461, Harrisburg, PA 17105-8461, (717) 787-5103.

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Telephone: (717) 782-4036 Internet: [grieger@osmre.gov](mailto:grieger@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. 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 the Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to the 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 Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.15, and 938.16.

#### II. Description of the Proposed Amendment

The regulations at 30 CFR 938.16(ss) require Pennsylvania to submit a change to its regulations under the ownership and control provisions concerning an applicant's eligibility for receiving a provisionally issued permit when outstanding violations are present. Specifically, it mandates that Pennsylvania amend 25 Pa. Code 86.37(a)(8) and (11) to require a permit applicant to submit proof that a violation has been corrected or is in the process of being satisfactorily corrected within 30 days of the initial judicial review affirming the violation.

The Federal provision corresponding to the required amendment at 938.16(ss) was formerly located at 30 CFR 773.15(b)(1)(ii). However, on December 19, 2000, we made changes to the Federal rules regarding ownership and control that eliminated this provision (65 FR 79582). In discussing the rule change at 30 CFR 773.15(b)(1)(ii) we noted:

Under the previous rule at § 773.15(b)(1)(ii), the permittee had 30 days from the date that the initial judicial review decision affirmed the validity of the violation to submit proof that the violation was being corrected to the satisfaction of the agency with jurisdiction over the violation. In contrast, final § 773.14(c) requires that the regulatory authority initiate action to suspend or revoke the permit as improvidently issued if the disposition of challenges or administrative or judicial appeals affirms the violation or ownership or control listing or finding. We made this change to ensure prompt implementation of the section 510(c) permit block sanction once the validity of a violation or ownership or control listing or finding is affirmed on appeal. (The previous rule did not specify what action the regulatory authority must take if the permittee did not submit the required proof within 30 days.) 65 FR at 79623.

Rather than requiring the permittee to submit proof that an affirmed violation is being corrected, as required in 30 CFR 938.16(ss), the new rule requires the regulatory authority to initiate action to suspend or revoke the permit if a violation is affirmed. Because the Federal rule change renders the required amendment at 30 CFR 938.16(ss) unnecessary, we are proposing to remove the required amendment. However, at a later date, we will be informing Pennsylvania and other States by letter of any changes required in their

programs as a result of the above-referenced change to the Federal ownership and control regulations, as well as a result of other changes we made to those regulations on December 19, 2000.

### III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the removal of the required amendment satisfies the applicable program criteria of 30 CFR 732.15.

#### 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 Harrisburg 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: SATS No. PA-139" 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 Harrisburg Field 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., e.s.t. on January 22, 2003. 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. In 65 FR 79582, we made several changes to the Federal regulations, including the elimination of the counterpart Federal regulation. Taking all of the changes made into consideration, we noted in that **Federal Register** notice that "in accordance with Executive Order 12630, the rule does not have significant takings implications. This determination is based on the fact that the rule will not have an impact on the use or value of private property and so, does not result in significant costs to the government." Since the elimination of the counterpart Federal regulation had no takings implications, the removal of the amendment requiring the corresponding State provision will have no takings implications.

#### 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 SMGRA (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.*). In the December 19, 2000 **Federal Register** notice eliminating the counterpart Federal regulation, we estimated that there would be no change to industry costs resulting from the changes made to 30 CFR part 773, which, before the changes, had contained the counterpart Federal regulation (65 FR 79582, 79659). Similarly, the removal of the amendment requiring the corresponding State provision will not have a significant economic impact.

#### *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. For the reasons stated above, 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.

#### *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, by removing the required

amendment, we are not mandating any State action.

#### **List of Subjects in 30 CFR Part 938**

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 15, 2002.

**Vann Weaver,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 03-157 Filed 1-6-03; 8:45 am]

**BILLING CODE 4310-05-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[VA085/086/089/102/103-5046b; FRL-7428-1]**

#### **Approval and Promulgation of Air Quality Implementation Plans; Virginia; Reorganization of and Revisions to Administrative and General Conformity Provisions; Documents Incorporated by Reference; Recodification of Existing SIP Provisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. EPA is proposing approval of substantive and format changes to Virginia's general administrative provisions and definitions, reorganization and recodification of the general conformity requirements and provisions, recodification of Virginia's oxygenated gasoline regulation, and revisions to the list of technical documents which Virginia incorporates by reference into its air pollution control regulations.

In the Final Rules section of this **Federal Register**, EPA is approving Virginia's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be

addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by February 6, 2003.

**ADDRESSES:** Written comments should be addressed to Harold A. Frankford, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

**FOR FURTHER INFORMATION CONTACT:** Harold A. Frankford, (215) 814-2108, or by e-mail at [frankford.harold@epa.gov](mailto:frankford.harold@epa.gov). Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 17, 2002.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. 03-94 Filed 1-6-03; 8:45 am]

**BILLING CODE 6560-50-P**

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Chapter 1**

**[WT Docket No. 02-381; FCC 02-325]**

#### **Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; notice of inquiry.