

qualification of a plan that accepts a rollover contribution.

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Michael P. Dolan,

Acting Commissioner of Internal Revenue.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK-017-FOR]

Oklahoma Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Oklahoma regulatory program (hereinafter referred to as the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for Oklahoma's proposed rules pertain to protected activities. The proposed amendment is intended to revise the Oklahoma regulations to be consistent with the Federal regulations.

DATES: Written comments must be received by 4:00 p.m., c.d.t., October 4, 1996.

ADDRESSES: Written comments should be mailed or hand delivered to Jack R. Carson, Acting Director, Tulsa Field Office at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Jack R. Carson, Acting 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.

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

FOR FURTHER INFORMATION CONTACT:

Jack R. Carson, Acting Director, Tulsa Field Office, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

- I. Background on the Oklahoma Program
- II. Discussion of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Oklahoma Program

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

II. Discussion of the Proposed Amendment

By letter dated February 21, 1996, (Administrative Record No. OK-973), Oklahoma submitted a proposed amendment to its program pursuant to SMCRA. Oklahoma submitted the proposed amendment at its own initiative. The provisions of the Oklahoma regulations that Oklahoma proposed to amend were at Oklahoma Administrative Code (OAC) 460:20-15-7 concerning permit conditions. Specifically, Oklahoma proposed to revise OAC 460:20-15-7 by adding a new permit condition at subsection (5) concerning protected activity and by renumbering existing subsections (5) through (8) to be (6) through (9).

OSM announced receipt of the proposed amendment in the March 5, 1996, Federal Register (61 FR 8536) and invited public comment on its adequacy. The public comment period ended April 4, 1996.

During its review of the amendment, OSM identified concerns relating to Oklahoma's proposed addition, at OAC 460:20-15-7(5), of a new permit condition concerning protected activities. OSM was specifically concerned that the existing state enforcement and citizens complaint regulations do not contain the procedures necessary to implement the requirements of the Federal regulations dealing with protected activities at 30 CFR Part 865. OSM notified Oklahoma of the concerns by letter dated June 25, 1996 (Administrative Record No. OK-973.06). Oklahoma responded in a letter dated August 28, 1996, (Administrative Record No. OK-973.08) by submitting a revised amendment.

Oklahoma proposed the additions of a new subchapter at OAC 460:20-16, concerning protection of employees, to replace the changes originally proposed for OAC 460:20-15-7.

Specifically, Oklahoma proposes to add new subchapter 16 concerning protection of employees that reads as follows.

460:20-16-1. Scope

This subchapter establishes procedures regarding:

- (1) The reporting of acts of discriminatory discharge or other acts of discrimination under the Act and this Chapter caused by any person. Forms of the discrimination include, but are not limited to:
 - (A) Firing,
 - (B) suspension,
 - (C) transfer or demotion,
 - (D) denial or reduction of wages and benefits,
 - (E) coercion of promises of benefits or threats of reprisal, and
 - (F) interference with the exercise of any rights afforded under the Act and this Chapter;
- (2) The investigation of applications for review and holding of informal conferences about the alleged discrimination; and
- (3) The request for formal hearings with the Department's Legal Division.

460:20-16-2. Protected activity

- (a) No person shall discharge or in any other way discriminate against or cause to be fired or discriminated against any employee or any authorized representative of employees because that employee or representative has:
 - (1) Filed, instituted or caused to be filed or instituted any proceedings under the Act and this chapter by:
 - (A) Reporting alleged violations or dangers to the Director, the Department of Mines, or the employer or his representative.
 - (B) Requesting an inspection or investigation; or
 - (C) Taking any other action which may result in a proceeding under the Act and this Chapter.
 - (2) Made statements, testified, or is about to do so:
 - (A) In any informal or formal adjudicatory proceedings;
 - (B) In any informal conference proceeding;
 - (C) In any rulemaking proceeding;
 - (D) In any investigation, inspection or other proceeding under the Act and this Chapter;
 - (E) In any judicial proceeding under the Act and this Chapter.
- (3) Has exercised on his own behalf or on behalf of other any right granted by the Act and this Chapter.
- (b) Each employer conducting operations which are regulated under this Act and this Chapter, shall within 30 days from the effective day of these regulations, provide a copy of this Subchapter to all current employees and to all new employees at the time of their hiring.

460:20-16-3. Procedures for filing an application for review of discrimination

- (a) Who may file. Any employee, or any authorized representative or employees, who believes that he has been discriminated against by any person in violation of 460:20-16-2(a) of this subchapter may file an application for review. For the purpose of this subchapter, an application for review means the presentation of a written report of discrimination stating the reasons why the person believes he has been discriminated against and the facts surrounding the alleged discrimination.
 - (b) Where to file. The employee or representative may file the application for review at any location of the Office and each office shall maintain a log of all filing.
 - (c) Time for filing. The employee or representative shall file an application for review within 30 days after the alleged discrimination occurs. An application is considered filed:
 - (1) On the date delivered if delivered to the Office, or
 - (2) On the date received by the Office.
 (d) Running of the time of filing. The time for filing begins when the employee knows or has reason to know of the alleged discriminatory activity.
- 460:20-16-4. Investigation and conference procedures
- (a) Within 7 days after receipt of any application for review, the Office shall mail a copy of the application for review to the person alleged to have caused the discrimination, shall file the application for review with the Department's Legal Division and shall notify the employee and the alleged discriminating person that the Department will investigate the complaint. The alleged discriminating person may file a response to the application for review within 10 days after he receives the copy of the application for review. The response shall specifically admit, deny or explain each of the facts alleged in the application unless the alleged discriminating person is without knowledge in which case he shall so state.
 - (b) The Department shall initiate an investigation of the alleged discrimination with 30 days after receipt of the application for review. The Department shall complete the investigation within 60 days of the date of receipt of the application for review. If circumstances surrounding the investigation prevent completion within the 60-day period, the Department shall notify the person who filed the application for review and the alleged discriminating person of the delay, the reason for the delay, and the expected completion date for the investigation.

- (c) Within 7 days after completion of the investigation the Department shall invite the parties to an informal conference to discuss the findings and preliminary conclusions of the investigation. The purpose of the informal conference is to attempt to conciliate the matter. If a complaint is resolved at an informal conference, the terms of the agreement will be recorded in a written document that will be signed by the alleged discriminating person, the employee and the representative of the Department. If the Department concludes on the basis of a subsequent investigation that any party to the agreement has failed in any material respect to comply with the terms of any agreement reached during an informal conference, the Department shall take appropriate action to obtain compliance with the agreement.
 - (d) Following the investigation and any informal conference held, the Department shall complete a report of investigation which shall include a summary of the results of the conference. Copies of this report shall be available to the parties in the case.
- 460:20-16-5. Request for hearing
- (a) If the Department determines that a violation of this subchapter has probably occurred and was not resolved at an informal conference, the Director shall request a formal hearing on the employee's behalf before the Hearing Examiner within 10 days of the scheduled informal hearing. The parties shall be notified of the determination. If the Director declines to request a hearing the employee shall be notified within 10 days of the scheduled informal conference and informed of his right to request a hearing on his own behalf.
 - (b) The employee may request a formal hearing with the Hearing Examiner after 60 days have elapsed from the filing of his application.
- 460:20-16-6. Formal adjudicatory proceedings
- (a) Formal adjudication of a complaint filed under this subchapter shall be conducted in the Legal Divisions pursuant to this Subchapter and OAC 460:2, Rules of Practice and Procedure for the Coal Reclamation Act of 1979.
 - (b) A hearing shall be held as promptly as possible consistent with the opportunity for discovery provided for under OAC 460:2.
 - (c) Upon a finding of violation of 460:20-16-2 of this subchapter, the Director shall order the appropriate affirmative relief including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. At the request of the employee a sum equal to the aggregate amount of all costs and expenses including attorney's fees which have been reasonably incurred by the employee for, or in connection with, the institution and prosecution of the proceedings shall be assessed against the person committing the violation.

- (d) On or after 10 days after filing an application for review under this subchapter the Director or the employee may seek temporary relief with the Legal Division.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Oklahoma program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review.

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

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 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 11, 1996.

Michael C. Wolfrom,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

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30 CFR Part 936

[SPATS No. OK-019-FOR]

Oklahoma Regulatory Program

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

ACTION: Proposed Rule; Reopening and Extension of Public Comment Period on Proposed Amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Oklahoma regulatory program (hereinafter referred to as the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for Oklahoma's proposed amendment pertain to repair or compensation for material damage resulting from subsidence caused by underground coal mining operations and to replacement of water supplies adversely impacted by underground coal mining operations. The amendment is intended to revise the Oklahoma program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., c.d.t., October 4, 1996.

ADDRESSES: Written comments should be mailed or hand delivered to Jack R. Carson, Acting Director, Tulsa Field Office at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

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On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. Background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the

conditions of approval can be found in the January 19, 1981, Federal Register (46 FR 4902). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 936.15 and 936.16.

II. Discussion of the Proposed Amendment

By letter dated July 17, 1996 (Administrative Record No. OK-975), Oklahoma submitted a proposed amendment to its program pursuant to SMCRA. Oklahoma submitted the proposed amendment in response to a May 20, 1996, letter (Administrative Record No. OK-976) that OSM sent to Oklahoma in accordance with 30 CFR 732.17(c). The provisions of the Oklahoma Administrative Code (OAC) that Oklahoma proposes to amend are OAC 460:20-3-5, Definitions; OAC 460:20-31-7, Hydrologic information; OAC 460:20-31-13, Subsidence control plan; OAC 460:20-45-8, Hydrologic-balance protection; and OAC 460:20-45-47, Subsidence control.

OSM announced receipt of the proposed amendment in the August 2, 1996, Federal Register (61 FR 40369) and invited public comment on its adequacy. The public comment period ended September 3, 1996.

During its review of the amendment, OSM identified a concern relating to OAC 460:20-3-5, Definitions. Oklahoma had not proposed a definition for "occupied residential dwelling and structures related thereto." This definition was required in OSM's May 20, 1996, letter to Oklahoma. OSM notified Oklahoma of this concern by letter dated August 20, 1996 (Administrative Record No. 975.07). Oklahoma responded in a letter dated August 28, 1996 (Administrative Record No. 975.06, by submitting a revised amendment which contained the missing definition.

Specifically, Oklahoma proposes to add the following definition at OAC 460:20-3-5.

"Occupied residential dwelling and structures" means for purposes of 460:20-31-13 and 460:20-45-47, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes: (A) Any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. (B) Examples of such structures include, but are not limited: (1) garages; (2) storage sheds and barns; (3) greenhouses and related buildings; (4) utilities and cables; (5) fences and other enclosures; (6) retaining walls; (7) paved or