

FEDERAL REGISTER: 44 FR 54444 (September 19, 1979)

DEPARTMENT OF THE INTERIOR

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

Publication During Consideration of State Permanent Regulatory Programs

ACTION: Publication of Guidelines for contacts with the employees and officials of the Department of the Interior during consideration of State permanent regulatory programs.

SUMMARY: OSM is adopting guidelines which set forth the procedures to be followed by employees and officials of the Department of the Interior when they have any conversations, meetings or other contacts relating to a proposed State regulatory program which has been submitted for approval by the Secretary of Interior in compliance with 30 CFR Parts 731 and 732.

EFFECTIVE DATE: The Guidelines are effective immediately.

ADDRESSES: FOR FURTHER INFORMATION CONTACT: Carl C. Close, Assistant Director, State & Federal Programs, Office of Surface Mining and Reclamation, Room 224, Interior South Building, Washington, D.C. 20240, (202-343-4225).

SUPPLEMENTARY INFORMATION:

Section 503 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1253, provides that each State wishing to assume exclusive jurisdiction over the regulation of surface coal mining shall submit to the Secretary of the Department of the Interior a proposed State regulatory program. This program must demonstrate that such State has the capability of carrying out the provisions of SMCRA and meeting its purposes. The Secretary must thereafter approve or disapprove the State program. The procedures and criteria for the approval or disapproval of State program submissions are set out at 30 CFR Parts 731-732 (44 FR 15324-15328, March 13, 1979). After the submission of a State program and prior to its approval or disapproval, interested parties will have an opportunity to examine and comment upon the proposed State regulatory program.

Four State programs have already been submitted to OSM. These States are: Texas, Mississippi, Montana and Wyoming.

OSM believes that SMCRA's purpose of providing for public participation in review of State programs makes it necessary and appropriate to issue guidelines governing contacts between the Department of the Interior and both State officials and members of the public, once State programs have been submitted to OSM for review.

On March 13, 1979, OSM declared its intention to issue these Guidelines (44 FR 14958). The United States District Court for the District of Columbia discussed the fact that these Guidelines were forthcoming when it stated recently that some degree of formality may be appropriate during the post-submission period. In Re: Permanent Surface Mining Regulation Litigation, No. 79-1144 (D.D.C., August 21, 1979).

Public comments were solicited and received concerning the procedures to be followed during the post-submission period in the context of the development of OSM's permanent program regulations (44 FR 14958). Those comments have been fully considered in drafting the Guidelines.

The Guidelines, which will be followed by all employees and officials of the Department of the Interior, are being published today in order to assure immediate and widespread circulation. OSM believes that open communication between State and Federal officials is important to assure public participation in review of State programs which fully implement all the goals of SMCRA. By publication of the Guidelines, OSM hopes to encourage full cooperation by all affected persons with the procedures being implemented.

The Department of the Interior has determined that these Guidelines do not constitute a significant rule and do not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

The Department of Interior has also determined that the adoption of these guidelines does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2) (C) of the National

Environmental Policy Act of 1969.

Dated: September 13, 1979.

Joan M. Davenport, Assistant Secretary Energy and Minerals.

The following Guidelines are hereby adopted:

GUIDELINES FOR POST-SUBMISSION CONTACTS BETWEEN THE DEPARTMENT OF THE INTERIOR, THE STATES AND THE PUBLIC

APPLICABILITY

These guidelines apply to all contacts between (1) employees and officials of the Department of the Interior and the government of a State for which a program has been formally submitted for consideration by the Secretary under the Surface Mining Control and Reclamation Act and (2) between employees and officials of the Department and the public. These guidelines will apply from the time of submission to the time of final approval or formal disapproval of the State program, and apply to those contacts (meetings, telephone calls, etc.) at which the State program or its approval or disapproval is discussed.

BACKGROUND

The Department has been considering appropriate guidelines for its contacts with State representatives and the public during formal consideration of State programs. Public comments on appropriate guidelines were elicited during development of OSM's permanent regulatory program rules, which were published March 13, 1979. At that time OSM stated it would issue these guidelines at a later date. (See 44 FR 14958, March 13, 1979). In addition to considering the public comments received during the permanent regulatory program rulemaking, OSM has taken into account, in drafting the guidelines, the purposes of the Act and recent judicial interpretations of applicable requirements, including the August 21, 1979, opinion of the District Court for the District of Columbia in Re: Permanent Surface Mining Regulation Litigation, Civil Action No. 79-1144.

The Surface Mining Control and Reclamation Act of 1977 establishes a special relationship between the States and the Department of the Interior in the regulation of surface coal mining operations. Development of mutually acceptable State laws, regulations and other components of a State regulatory program is a joint Federal-State process. Accordingly, there is an exceptional need to preserve the ability of the Department and the States to work together through all stages of program development, review and approval. The Department wishes to assist the States, in every appropriate manner, to assume jurisdiction for implementation of the permanent regulatory program.

At the same time, the Department believes that public participation in the consideration of a State program will improve the quality of the final program and will greatly assist the Secretary in making his decision to approve or disapprove a program. The public has a clear right to participate in the development, review and approval process. This includes the right to be informed and the opportunity for meaningful comment and presentation of arguments. The Department has carefully considered how to achieve guidelines which will protect both the special relationship with the States and the rights of the public. The following principles and guidelines shall be followed by employees and officials of the Department when dealing with States and the public following formal submission of a proposed State regulatory program.

PRINCIPLES {54445}

1. The State program review and approval process will be on the record. An open record of items discussed and information exchanged at all meetings concerning the consideration of State program submissions, along with a record of all comments and testimony received, will be maintained. Anyone interested in the State program review process will have the opportunity to review the substance of contacts between employees or officials of the Department and other persons concerning the State program prior to a final decision. If new information is received from a State after the close of the original comment period, an additional comment period will be provided prior to the decision by the Secretary if necessary to meet the Department's obligation to give the public a chance to review information that will affect whether a program can be approved, and to ensure an adequate record in the event of judicial review. Comments received during this additional comment period would be evaluated and may be used by the Secretary in reaching a final decision on the State program.

2. Preserving the ability to communicate formally or informally with a State until the Secretary decides whether to approve or disapprove a submission is necessary to carry out the intent of Congress to establish a special role for the States in the regulation of surface coal mining operations. The Act establishes the States as the focal points of surface mine reclamation and control programs. The development and review of State programs requires a partnership effort between the Department and the States. Communication, information exchange and cooperation are necessary to assure that State programs are responsive to the requirements of the Act and regulations. OSM and the Department intend to take necessary and appropriate steps to carry out the purposes of the Act in this regard.

3. The process of Federal-State information exchange must be as open to the general public as possible. Meetings between the Department and the States generally will be open to the public to the fullest extent consistent with the other principles underlying these guidelines. The Department must reserve the ability to hold executive sessions when needed. The summary records of all meetings will be made available to the public.

4. Uniform, nationwide guidelines for contacts between the Department of the Interior and either the States or the public are necessary to assure consistency and to implement the three principles above.

GUIDELINES

1. Upon request the Department will meet with any public representatives - citizens, environmental groups, industry - through the end of the public comment period. Notices of scheduled meetings shall be posted in a public place. The meetings will be open.

2. The Department will meet with State representatives or have telephone conversations with them, upon the initiative of either party, up to the point of the Secretary's decision to approve or disapprove a State program. Through the end of public comment period, the meetings will be open unless an OSM or Departmental official decides to hold an executive session. Advance notice of scheduled meetings will be posted in a public place. Both before and after the end of the public comment period, some meetings may be in executive session. Notice of executive sessions will be posted.

3. The Department shall keep a summary record of all discussions and meetings on a State's program submission, whether in person or by telephone. This record shall include a summary of the discussions and a list of all written information OSM receives. All such records along with all written communications relating to the State program submission, shall be made available to the public.

4. In those instances where the Department has conducted meetings or discussions with a State after the close of the public comment period, the Department will include a summary of the meeting and, if necessary to assure an effective opportunity for public participation, provide an opportunity for the public to review the record of such meetings and discussions and to comment on them before a decision is made to approve or disapprove the State program.