

**FEDERAL REGISTER: 44 FR 75302 (December 19, 1979)**

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 732

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program

ACTION: Final rule.

**SUMMARY:** OSM is amending Section 732.12(a)(1) of its permanent regulations, relating to the notice and public hearing requirements for State program submissions being reviewed by the Secretary of the Department of the Interior. 30 CFR 732.12(a)(1) is amended to delete the requirement to publish the complete text of the State statutes and regulations in the Federal Register notice announcing the beginning of the public comment period on the substance of the program submission. Instead, the amendment requires OSM to provide each requestor with a single copy of the complete text of the State statutes and regulations at no cost.

**EFFECTIVE DATES:** The amendment is effective December 19, 1979.

**ADDRESSES:** Director, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave. NW., Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining, 1951 Constitution Ave. NW., Washington, D.C. 20240; 202-343-4225.

**SUPPLEMENTARY INFORMATION:**

OSM's final permanent regulations (44 FR 15323 et seq., March 13, 1979) required OSM to publish the complete text of State statutes and regulations in the Federal Register at the time of publication of a notice announcing a public hearing on a State's proposed program for regulation of surface coal mining and reclamation operations. The requirement for publishing the complete text is in Section 732.12(a)(1), 44 FR 15326.

On October 18, 1979, OSM published a proposed amendment to Section 732.12(a)(1) to delete the requirement to publish the full text of State statutes and regulations in the Federal Register. 44 FR 60233.

Reasons given for the proposed amendment included the high cost of publication in comparison to the expected benefits, the severe burden such publication would be on both OSM and the Government Printing Office (GPO), and the potentially misleading effect on the public. With the proposed amendment OSM stated that it would make copies of the State statutes and regulations available to the public, at a reasonable cost, to the fullest extent possible for each State submission and that the reasonable cost was expected to be \$10 for copies of most statutes and regulations.

The proposed amendment included announcement of public comment period and public hearing. Eight written comments were submitted before the close of the public comment period and one of the eight commenters offered oral testimony at the public hearing in Washington, D.C. on November 21, 1979.

Of the eight comments, three strongly opposed the change. Two opposed the change, but recommended conditions under which it would be acceptable. Three commenters supported the change as proposed.

Analysis of the comments reveals two major objections to the proposed amendment:

(1) The amendment passes the cost of reproduction of State statutes and regulations to the public thereby limiting full public involvement, and

(2) The time required in which to request and receive copies of State statutes and regulations decreases the real time available for review.

In support of these objections, one commenter stated that the Surface Mining Act and Executive Order 12044 envision full and complete involvement of the public in proposed rulemaking and without the opportunity to review the State statutes and

regulations which form the basis of a proposed State program, public involvement would be meaningless. The same commenter stated that review of a State program is essentially a rulemaking and failure to publish the text of State statutes and regulations "smacks of secret rulemaking." The commenter continued that mere availability of proposed rules at cost to the public, without actual publication in the Federal Register, might effectively prohibit some of the public from commenting on the rules.

Another commenter stated that the proposed changes would make State program review more cumbersome and decrease the real time for comment. The commenter warned that each time a program was revised, corrected or amended, everyone diligently monitoring would have to request copies and that the amendment would hinder public participation in the government process.

Two commenters registered objection to the amendment on the grounds that it would not be proper to pass the costs of reproduction to the interested public. They stated that even "reasonable" cost would hamper public involvement and recommended that the amendment be changed to make copies of statutes and regulations available at no cost to requesters. Commenters also registered objection to OSM's being able to change regulations that inconvenienced OSM but that the reciprocal was not available to the public or the States.

In support of the proposed amendment, one commenter stated that the present regulation is unnecessarily burdensome upon the Government Printing Office and quite likely cannot be implemented within the time available. Another commenter stated that the proposal was a step in the right direction.

In support one State pointed out that its policy has always been to furnish copies of its enabling legislation and rules promulgated thereunder to the public at a reasonable cost. It further stated that the availability of the statutes and regulations from both OSM and the State agency, as well as the opportunity at both the State and Federal levels to review the complete program in the office of OSM and the State agency at no cost, will in no way hinder a full and effective review of the proposed program by an interested person.

One commenter registered vigorous objection to the scheduling of the public hearing on the same day on which written comments are due. The commenter stated that the procedure precludes commenters from review of the transcript of the hearing and thereby prohibits full and effective development of formal written comments.

OSM has not made a practice of scheduling the public hearing on the same day that the public comment period closes. In the case of this rulemaking, however, there was only one commenter present at the public hearing and the overall results are not believed to have hampered consideration by interested commenters. The APA does not require a public hearing for every rulemaking and, if one is held, does not specify when it must be held during the comment period.

A commenter noted that on November 20, 1979 (the day before comments were due on the proposed rule), OSM published in the Federal Register three documents giving notice of public hearing and setting a comment period on the adequacy of proposed programs for the States of Montana, Mississippi and Texas. The commenter continued that conspicuously absent in the notice were the texts of State statutes and regulations. The commenter objected to OSM's basing these notices on the proposed amendment before it as finalized.

OSM stated in the Federal Register announcements for the proposed programs of Montana, Mississippi and Texas that, in lieu of printing the full text, single copies of the statutes and regulations would be available to all requesters at no charge. 44 FR. OSM believes that this procedure, plus making copies of the entire State program, including State statutes and regulations at the office of the Regional Director and the offices of the State agency will accomplish the intent of the publication requirement. Moreover, providing copies of State statutes and regulations at no cost answers the commenter's concern.

Another commenter recommended that, in lieu of publishing the entire text, OSM should make copies available at no cost and publish those areas of the proposed programs where OSM finds deficiencies. The commenter stated that this would assist citizens in their ability to offer constructive assistance.

OSM has not revised the regulations in response to this suggestion, but notes that existing regulations require the Regional Director to publish a determination on the completeness of each submission within 60 days of receipt, and that such publication must identify the elements that are determined to be missing from the submission. In addition, the regulations require the Secretary to issue a decision approving or disapproving submissions within six months of receipt and that his

decision include the findings upon which it is based. These findings must detail reasons for approval or disapproval sufficiently to allow any interested person to monitor the process.

Another commenter recommended that all contacts with the States regarding the proposed State programs be published in the Federal Register, listing the topic or topics discussed, so that concerned citizens could be made aware of issues and could contact State officials or OSM.

OSM has not revised the regulations to reflect this comment, but notes that its "Guidelines for Post-submission Contacts Between the Department of the Interior, the States and the Public" were published in the Federal Register on September 19, 1979. 44 FR 60969. Under these Guidelines, the Department will post advance notice of all scheduled meetings. If topics of discussion are known, they will also be posted. Although discussions at these meetings may not necessarily be limited to announced topics, once a meeting has been held, a summary of all topics discussed will be placed on public file.

After a thorough review of the proposed change to the regulations, the comments received, the hearing testimony and the issues involved, the final regulation has been revised from the proposed version to require that OSM provide each requestor with a single copy of the State statutes and regulations at no cost. In addition, OSM intends to forward requested copies to requesters utilizing the speediest delivery service available.

The final amended rule addresses the two major objections that have been advanced. Making one copy of the statutes and regulations available at no cost should eliminate the concern about cost. Forwarding copies to requesters utilizing the speediest delivery service available will minimize the delay to receive copies. At the same time, the final amendment does not conflict with the statements of the supporting commenters.

As a clarifying note, the requirement in Section 732.12(a)(1) that copies of the entire State program be available for inspection during regular business hours at the office of the Regional Director and at the central and each field office of the State agency responsible for the submission remains unchanged. The amended regulation requires only OSM, not the State agency, to make single copies of the State statutes and regulations available to requesters at no cost.

The amended rule will allow OSM to accomplish wide dissemination of the full text of State statutes and regulations without expenses or confusion to the public. OSM believes that the amendment is consistent with the purpose of the Surface Mining Act and Executive Order 12044. OSM also believes that the proposed amendment provides sufficient availability of State statutes and regulations to allow for adequate public review and comment.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14, 43 FR 58292, et seq. (December 13, 1978).

The Department of the Interior has determined that this action will not have a significant effect on the human environment and an environmental impact statement will therefore not be prepared.

The amendment is effective December 19, 1979, pursuant to 5 U.S.C. 553(d)(3), so that this new procedure can be applied to State program submissions that are currently under review by OSM. It is expected that Federal Register notices for several States must be published in less than 30 days from today, thereby making it necessary that the amendment be effective immediately. This immediate effective date will not burden the public and will fulfill the purposes of the amendment.

Statement of Authorship. -- The primary author of this document was James Fulton, State Programs Division, Office of Surface Mining.

Dated: December 12, 1979.

Joan M. Davenport, Assistant Secretary for Energy and Minerals .

**AMENDMENT SECTION 732.12 [AMENDED]**

The last sentence of 30 CFR 732.12(a)(1) is revised to read as follows:

(a) \* \* \*

(1) \* \* \* In addition, The notice in the Federal Register shall indicate that each requestor may receive, free of charge, one single copy of the complete text of the State's statutes and regulations from the Regional Director.

\* \* \*