

FEDERAL REGISTER: 45 FR 32328 (May 16, 1980)

DEPARTMENT OF THE INTERIOR

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

30 CFR Chapter VII

Federal Programs for States

ACTION: Notice of intent to develop Federal programs and request for public comments.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) has initiated actions to propose, promulgate and implement Federal programs for the regulation of coal exploration, surface coal mining and reclamation operations and the surface effects of underground coal mining on non-Federal and non-Indian lands in the States of Georgia and Washington. Georgia and Washington have failed to submit programs and therefore, in accordance with Section 504 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and 30 CFR Part 736, OSM is initiating the Federal program promulgation process. Also, the Director, OSM (the Director), is soliciting public comments on whether to propose, promulgate and implement Federal programs in other States with coal reserves.

DATE: Public comment on whether the potential economic consequences of the Georgia and Washington Federal programs require preparation of a regulatory analysis should be submitted by June 16, 1980.[Page 32329]

ADDRESS: Information and comments should be sent to: Office of Surface Mining, Room 153, South Interior Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Assistant Director for State and Federal Programs, Office of Surface Mining, U.S. Department of the Interior, South Interior Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; 202-343-4225.

SUPPLEMENTARY INFORMATION:

This notice provides information to assist the public in understanding the responsibilities, actions and procedures of OSM related to developing, proposing, promulgating and implementing Federal permanent regulatory programs for surface coal mining and reclamation operations.

GENERAL BACKGROUND ON THE PERMANENT REGULATORY PROGRAM

The environmental protection provisions of SMCRA are being enacted in two phases -- the initial program and the permanent program -- in accordance with Sections 501-503 of SMCRA, 30 USC 1251-1253. The initial program became effective on February 3, 1978, for new coal mining operations on non-Federal and non-Indian lands which received State permits on or after that date and became effective on May 3, 1978, for all coal mines existing on that date. The interim program rules were promulgated by the Secretary on December 13, 1977 under 30 CFR Parts 710-725, 42 FR 62639. The permanent program will become effective in each State upon the approval of a State program by the Secretary of the Interior or the implementation of a Federal program within the State. If a Federal program is implemented in a State, OSM will be the primary regulator of activities in that State. Termination of a Federal program can occur only upon the approval of a State program by the Secretary of the Interior.

The Federal rules for the permanent program are found in 30 CFR Parts 700-707 and 730-865. Part 705 was published October 20, 1977 (42 FR 56064). Parts 795 and 865 (originally part 830) were published December 13, 1977 (42 FR 65639). The other permanent program regulations were published at 44 FR 15385-15393 (March 13, 1979). Corrections were published at 44 FR 15485 (March 14, 1979), 44 FR 53507-53509 (September 14, 1979) and 44 FR 66195 (November 19, 1979). Amendments to the rules have been published at 44 FR 60969 (October 22, 1979), as corrected at 44 FR 75143 (December 19, 1979), at 44 FR 75302 (December 19, 1979), 44 FR 77440-77447 (December 31, 1979), and 45 FR 2626-2629 (January 11, 1980). Portions of these rules have been suspended, pending further rulemaking. See 44 FR 67942 (November 27, 1979), 44 FR 77447-77454 (December 31, 1979), 44 FR 77454-77455 (December 31, 1979) and 45 FR 6913 (January 30, 1980).

CRITERIA FOR PROMULGATING FEDERAL PROGRAMS

Section 504 of the Act and 30 CFR 736.11 establish specific criteria for the Director to use in determining whether to promulgate and implement a Federal program in a State. Under 30 CFR 736.11(a)(1)(i), the Director shall promulgate and implement a Federal program for a State if the Director reasonably expects coal exploration or surface coal mining and reclamation operations to exist on non-Federal and non-Indian lands within that State at any time before June, 1985, and that State fails to submit a State program for regulation of such activities under the time provided in 30 CFR 731.12, August 3, 1979. In an August 22, 1979, opinion, the District Court for the District of Columbia extended the prescribed August 3, 1979, State program submission deadline to March 3, 1980 (see *In Re: Permanent Surface Mining Reclamation Litigation*, 13 ERC 1586). This decision was premised on the Department's seven month delay in promulgating the permanent regulatory program rules and the need to provide States an equal extension of time to prepare and submit their programs.

CONTENTS OF A FEDERAL PROGRAM

Each Federal program for a State will be specific to that State and will implement the permanent program of environmental protection provisions of the Act. When proposing, promulgating or revising any Federal program for a State, the Director will consider the nature of that State's soils, topography, climate, and biological, chemical, geological, hydrological, agronomic and other relevant physical conditions in accordance with 30 CFR 736.22(a)(1).

As provided in 30 CFR 736.22(b), each Federal program for a State will include rules necessary to provide Federal regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within the State. At a minimum, the regulations will specify performance requirements, provisions regarding applications for and issuance of coal exploration approvals and surface and underground coal mining and reclamation operations permits, blasting procedures, standards for performance bonds, procedures for inspections and enforcement actions, procedures for assessments of civil penalties, provisions for designating lands unsuitable for mining, rules for the certification and training of blasters, and employee protection provisions. Whenever possible and practicable, OSM will include those provisions of existing State statutes or rules which provide equivalent standards to SMCRA and the permanent regulatory program rules contained in 30 CFR Chapter VII. OSM will review existing State laws and rules. Emphasis will be given to seeking ways to apply those equivalent standards found during the review or brought to OSM's attention by public commenters. OSM will urge public commenters to indicate which State statutory or regulatory provisions they believe provide standards that are equivalent to the Federal requirements and to suggest ways in which such standards may be applied. The application of existing State standards which are determined to be equivalent by OSM will help to ensure the consideration of each State's special conditions in accordance with 30 CFR 736.22(a)(1).

Under 30 CFR 736.22(a)(3), each Federal program for a State will also contain any existing State performance standards which are determined by the Office to be more stringent than those otherwise provided by the Act and the permanent program rules. These standards would include provisions of any State statute or regulation providing more stringent land use and environmental control and regulation of coal exploration or surface coal mining and reclamation operations pursuant to 30 CFR 736.22(a)(3) and 736.23(b). State statutes or regulations that are determined by the Office to be inconsistent, less stringent or which preclude compliance with the purposes and requirements of the Act and the Federal program will be superseded by the rules promulgated under the Federal program and will not be in effect for that Federal program. [Page 32330]

To comply with the requirements of 30 CFR 736.22(a)(3) and 736.23(b), OSM will consider existing State laws and regulations before issuing proposed rules for a Federal program in that State. Throughout the development of proposed rules, OSM will consult appropriate Federal, State and local government agencies. Upon issuing proposed rules, OSM will solicit public comments.

Under 30 CFR 736.22(a)(2), each Federal program will include provisions to implement the requirements of the Endangered Species Act of 1973, as amended (16 USC 531 *et seq.*), the Fish and Wildlife Coordination Act, as amended (16 USC 661-666c), the National Historic Preservation Act of 1974 (16 USC 469a), the Archaeological and Historic Preservation Act of 1974 (16 USC 479a), the National Environmental Policy Act of 1969 (42 USC 4332), and other relevant Federal laws and executive orders imposing duties upon the Secretary.

Each Federal program will include a process for coordinating the review and issuance of permits with other Federal, State and local planning or permit processes which are applicable to surface coal mining and reclamation operations in the jurisdiction involved. Such processes will include at a minimum those related to the Clean Air Act, as amended (42 USC 7401 *et seq.*), the Clean Water Act, as amended (30 USC 1251 *et seq.*), the Resource Conservation and Recovery Act (42 USC 3251 *et seq.*) and plans approved by the Administrator of the U.S. Environmental Protection Agency under Sections 208a, 303(c) of the Clean Water Act, as amended (33 USC Section 1288, 1313(c)).

APPLICABILITY OF THE FEDERAL PROGRAM PROMULGATION AND IMPLEMENTATION PROCESS TO THE STATES OF GEORGIA AND WASHINGTON

The States of Georgia and Washington have officially notified the Office that they will not submit a regulatory program for approval by the Secretary of the Interior. Georgia notified OSM of its decision in a June 20, 1979, letter from the Governor to the OSM Regional Director for that State. The State of Washington indicated its decision not to submit a program in a September 11, 1979, letter from the Commissioner, Washington Department of Natural Resources, to the Undersecretary of the Interior.

All States, including Georgia, were notified of the change in the deadline for submission of State programs from August 3, 1979, to March 3, 1980, pursuant to the opinion of the District Court for the District of Columbia (see *In Re: Permanent Surface Mining Regulation Litigation*, 13 ERC 1586) in an August 27, 1979, letter from the Undersecretary of the Interior to the Governor of each State. Subsequent to the Undersecretary's letter, Georgia did not notify OSM of any change in its decision not to submit a State program by March 3, 1980.

Copies of these letters may be obtained and are available for public inspection from 8:30 a.m. to 5:00 p.m., Monday through Friday in the OSM Administrative Record Office, Room 153, Interior South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240.

The Director has determined that each of these States presently has coal exploration or surface coal mining and reclamation operations on non-Federal and non-Indian lands. Because Georgia and Washington have such operations and have failed to submit State programs by March 3, 1980, the Department must promulgate and implement a Federal program for each as provided in 30 CFR 736.11(a)(1)(i). In the near future, proposed rules for each will be published in the Federal Register in accordance with 30 CFR 736.12.

The Office invites public comment on whether the potential economic consequences of the Georgia and Washington Federal programs require preparation of a regulatory analysis under 43 CFR Part 14.

APPLICABILITY OF THE FEDERAL PROGRAM PROMULGATION AND IMPLEMENTATION PROCESS TO OTHER STATES WITH KNOWN COAL RESERVES

The Director is presently considering whether any of the criteria for the promulgation of Federal programs for States contained in 30 CFR 736.11(a)(1)(i) are currently applicable to other States with known coal reserves which did not submit State programs for approval by March 3, 1980. States which submitted State programs for approval by March 3, 1980 include Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Virginia, West Virginia and Wyoming. Alaska did not submit a program and has asserted it does not have to do so at this time because the study of surface coal mining in Alaska being carried out by the National Academy of Sciences pursuant to Section 708 of the Act is not complete. OSM is currently examining what action should be taken with regard to Alaska, and when such action should occur. If the Director finds reason to believe that coal exploration and surface mining and reclamation operations are expected to exist on non-Federal and non-Indian lands within any other States prior to June 1985, the Director will notify those States and the public of such a determination.

Persons wishing to provide information about present or anticipated coal exploration or surface coal mining and reclamation operations on non-Federal and non-Indian lands in States with known coal reserves and whether a regulatory program is needed may submit such information to OSM's administrative record at the following address: Office of Surface Mining, Room 153, South Interior Building, 1951 Constitution Ave., N.W., Washington, D.C. 20240.

PROCEDURES OSM WILL IN PROPOSING, PROMULGATING AND IMPLEMENTING FEDERAL PROGRAMS IN STATES

The specific regulations for proposing, promulgating and implementing Federal programs are found in 30 CFR 736.12-15 (see 44 FR 15330-15331). Throughout the period for proposing and promulgating a Federal program for a State, OSM will actively work with the State authorities in developing the program, if the State desires. OSM will follow the published "Guidelines for Contacts with Interior Department Employees and Officials During Consideration of State Permanent Regulatory Programs" (44 FR 54444-54445). In proposing a Federal program, the Office will give advance notice in the Federal Register at least 60 days prior to a public hearing date, and in a newspaper of general circulation in the State within 30 days of the public hearing date. The notices will provide the date, time and location of the public (hearings) which will be held in

each State. At least one public hearing will be held to afford interested persons an opportunity to submit data and comments on the proposed Federal program. The (hearings) will follow legislative procedures and include a presentation on the proposed program or revision by the Regional Director's Office.

The notices will also provide information on how interested persons may request public meetings with OSM officials to receive additional advice and recommendations concerning the content of the proposed program. Interested persons are urged not only to provide data and comments on the proposed Federal program rules, but also to suggest areas in which OSM may make additional revisions on a State specific basis, and to note possible conflicts between Federal and State laws and regulations. [Page 32331]

Both notices will indicate at which locations copies of the proposed Federal program rules may be examined and copied, and will solicit written public comments on the proposed program. The Federal Register notice will also explain the basis and purposes of the proposed program and will set forth the proposed text of the regulations of the program. At the completion of the public hearings and public comment period, the Regional Director will forward to the Director the hearing transcripts, exhibits submitted, written presentations at the hearings, copies of public comments and the Regional Director's recommendation concerning the promulgation of the Federal program. The Director will then decide whether to promulgate the program and will publish the decision in the Federal Register along with the regulations of the Federal program, a statement of the basis and purpose of the program and the effective date of the program.

The Director will implement the Federal program not later than 30 days after publication in the Federal Register, except that in accordance with 30 CFR 736.15 and 765.13(b) the provisions for designating State lands as unsuitable for mining will not be implemented until one year after the Federal program is made effective.

Dated: May 12, 1980.

Walter N. Heine,
Director, Office of Surface Mining .

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