

FEDERAL REGISTER: 52 FR 6827 (March 5, 1987)

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 774 and 942

Rulemaking Petition, Guidelines for Significant Revisions

ACTION: Notice of decision on rulemaking petition.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is making available to the public its final decision on a rulemaking petition from Ms. Carol S. Nickle and Mr. Mark Squillace. The petition requested OSMRE to establish, using the rulemaking procedures of the Administrative Procedure Act, guidelines for determining when proposed revisions to permits are significant (and therefore subject to notice and hearing requirements). The Director has made a decision to grant the petition for the Federal program for Tennessee and accept the petitioners' criteria in principle. This will not change the permanent program rules nationally nor the approved regulatory programs in primary States.

ADDRESS: Copies of the petition and other relevant materials comprising the administrative record of this petition are available for public inspection and copying at OSMRE, Administrative Record Room 5315-L, 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Josie Smith, OSMRE (5121-L), 1951 Constitution Avenue, NW., Washington, DC 20240; telephone (202) 343-5150.

SUPPLEMENTARY INFORMATION:

I. PETITION FOR RULEMAKING PROCESS

Pursuant to section 201(g) of the Surface Mining Control and Reclamation Act (SMCRA), any person may petition the Director of OSMRE for a change in OSMRE's regulations. Under the implementing regulations for rulemaking petitions, 30 CFR 700.12, the Director must first determine if the petition provides a reasonable basis for the requested rulemaking. If so, a notice is published in the Federal Register seeking comments from the general public on the proposed change. If a petition is subsequently granted, the Director then initiates rulemaking proceedings. If the petition is denied, the Director notifies the petitioner in writing, setting forth the reasons for denial. Under 30 CFR 700.12, the Director's decision constitutes the final decision for the Department of the Interior.

II. THE NICKLE/SQUILLACE PETITION

OSMRE received a letter dated February 19, 1986, from Ms. Carol S. Nickle presenting a petition requesting OSMRE to amend its regulations to establish guidelines for determining when proposed revisions to existing permits are significant, in accordance with section 511 of SMCRA. Significant revision applications are subject to public notice and hearing requirements.

OSMRE's Division of Tennessee Permitting had proposed draft guidelines for use in reviewing applications in Tennessee. The petitioners sought to have these draft guidelines treated as rules, subject to the Administrative Procedure Act. They also sought specific changes in the draft guidelines.

On June 13, 1986, OSMRE published the notice of availability and request for comments (51 FR 21574). OSMRE also noted that it was clear from the petition whether it was intended for national rulemaking or for the Federal program for Tennessee. As part of their comments responding to this notice, the petitioners clarified that the petition was intended for the national permanent program rules. OSMRE published a notice of this clarification and reopened the comment period on August 1, 1986 (51 FR 27558). The comment period closed September 2, 1986. OSMRE received 21 comment letters.

III. DIRECTOR'S DECISION

OSMRE is granting the petition for the Federal program for Tennessee. OSMRE is also accepting the proposed criteria in principle. The Director's response to the petitioners on this rulemaking appears as an appendix to this notice.

Because SMORA requires the regulatory authority to establish guidelines for determining when a proposed permit revision is significant, OSMRE will continue the effort already started for Tennessee but will do so using the rulemaking procedures of the Administrative Procedure Act. In States with approved regulatory programs, where OSMRE is not the regulatory authority, the State has the authority and responsibility for establishing such guidelines. Primacy States developed guidelines in their regulatory programs to meet their own particular mining and environmental circumstances.

OSMRE is not, therefore, changing its permanent program rules nationally. Primacy States will continue to have the flexibility to establish and use their own guidelines as part of their approved State programs.

Dated: February 26, 1987.

Jed D. Christensen,

Director, Office of Surface Mining Reclamation and Enforcement.

APPENDIX

Ms. Carol S. Nickle,
Legal Environmental Assistance Foundation,
530 Gay Street, Suite 204,
Knoxville, Tennessee 37902

Mr. Mark Squillace,
University of Wyoming,
P.O. Box 3035,
Laramie, Wyoming 82071

Dear Ms. Nickle/Mr. Squillace:

This letter is to inform you of my decision on the petition for rulemaking you submitted in February 1986. In this petition, you asked the Office of Surface Mining Reclamation and Enforcement (OSMRE) to amend its rules to establish certain guidelines you proposed, for the purpose of determining when a proposed revision to a permit is significant. You also asked OSMRE to treat these guidelines as rules, subject to the rulemaking provisions of the Administrative Procedure Act.

On June 16, 1986, I informed you of my determination that the petition provided a reasonable basis upon which to seek comment. OSMRE published a notice in the Federal Register on June 13, 1986, soliciting comments on this petition. Upon receipt of your comment clarifying that the intent of the petition was to establish national rules, OSMRE also published a notice on August 1, 1986, reopening the comment period. OSMRE received numerous comments, representing a full spectrum of interests on the petition, its need and the criteria proposed in the petition. All these comments weighed significantly in my decision. This decision, which is presented to you below, constitutes the final decision for the Department of the Interior, as provided in 30 CFR 700.12(d).

FINAL DECISION

I am granting the petition for the Federal program for Tennessee. Section 511 of the Surface Mining Control and Reclamation Act requires the regulatory authority to establish guidelines for determining when a proposed revision to a permit is significant. As the regulatory authority in Tennessee, it is appropriate for OSMRE to develop such guidelines for use in that State. For the same reason, OSMRE will not develop such guidelines for States with approved regulatory programs. The regulatory authorities in primacy States develop such guidelines to reflect their own unique circumstances and interests.

I am also accepting your proposed criteria in principle. The concepts in your criteria have merit, and OSMRE will give them full consideration along with other criteria developed by OSMRE and identified through public comments.

Following the provisions of the Administrative Procedure Act, OSMRE will now begin to develop proposed rules for 30 CFR 942.774. We will notify you when those draft rules are ready for publication. I hope that you will continue to work with OSMRE in establishing workable guidelines for determining when a permit revision is significant.

Sincerely,
Jed D. Christensen,
Director.

[FR Doc. 87-4579 Filed 3-4-87; 8:45 am]
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