

## Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation. Because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Comments and Public Hearing

Before this proposed regulation is adopted as a final regulation, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 5, 1998, at 10 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Ave., NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by April 6, 1998 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 14, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Drafting Information:** The principal author of this regulation is Michael J. Danbury of the Office of Assistant Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in its development.

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements

## Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par 2.** Section 1.356-6 is added to read as follows:

#### **§ 1.356-6 Rules for treatment of nonqualified preferred stock as "other property."**

[The text of this proposed section is the same as the text of § 1.356-6T published elsewhere in this issue of the **Federal Register**.]

**Michael P. Dolan,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 98-18 Filed 1-5-98; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 936

[SPATS No. OK-024-FOR]

#### Oklahoma Regulatory Program

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Oklahoma regulatory program (hereinafter the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to and/or additions of regulations pertaining to definitions; reclamation plan: siltation structures, impoundments, banks, dams, and embankments; permit variances from approximate original contour restoration requirements; small operator assistance; bond release applications; hydrologic balance: siltation structures; disposal of excess spoil: preexisting benches; coal mine waste: general requirements; state inspections and monitoring; and request for hearing. The amendment is intended to revise the Oklahoma program to be consistent with the corresponding Federal regulations.

This document set forth the times and locations that the Oklahoma program

and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received by 4:00 p.m., c.s.t., February 5, 1998. If requested, a public hearing on the proposed amendment will be held on February 2, 1998. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t., on January 21, 1998.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

Copies of the Oklahoma program, the proposed amendment, a listing of any scheduled public hearings, 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.

Michael C. Wolfrom, 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:** Michael C. Wolfrom, Director, Tulsa Field Office, Telephone: (918) 581-6430.

#### SUPPLEMENTARY INFORMATION:

##### **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. Description of the Proposed Amendment**

By letter dated December 18, 1997 (Administrative Record No. OK-981), Oklahoma submitted a proposed

amendment to its program pursuant to SMCRA. Oklahoma submitted the proposed amendment in response to a June 17, 1997, letter (Administrative Record No. 979) that OSM sent to Oklahoma in accordance with 30 CFR 732.17(c). Oklahoma proposes to amend the Oklahoma rules. The full text of the proposed program amendment submitted by Oklahoma is available for public inspection at the locations listed above under **ADDRESSES**. A brief discussion of the proposed amendment is presented below.

#### A. 460:20-3-5. Definitions

1. Oklahoma proposes to add a definition for "other treatment facilities."

2. Oklahoma proposes to revise its definition for "previously mined area."

3. Oklahoma proposes to add a definition for "siltation structure."

#### B. 460:20-27-14. and 460:20-31-9. Reclamation Plan; Ponds, Impoundments, Banks, Dams, and Embankments

1. In the titles to these sections, Oklahoma proposes to replace the word "ponds" with the words "siltation structure."

2. At paragraphs (a), Oklahoma proposes to replace the words "sedimentation ponds" with the words "siltation structure."

3. At paragraphs (a)(2), Oklahoma proposes to add language that makes specific references to the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 criteria for dam classification and requires compliance with this technical release if structures meet or exceed the size or other criteria of the Mine Safety and Health Administration.

4. At paragraphs (b), Oklahoma proposes to change the term "Sedimentation ponds" to "Siltation structures" throughout these paragraphs. The State also proposes to make a minor wording changes to these paragraphs.

#### C. 460:20-27-14. Reclamation Plan; Ponds, Impoundments, Banks, Dams, and Embankments

Oklahoma proposes to revise paragraph (f) by deleting the phrase, "If the structure is 20 feet or higher or impounds more than 20 acre-feet," and replacing it with the phrase, "If the structure meets the Class B or C criteria for dams in TR-60 or meets the size or other criteria of 77.216(a) of this Chapter."

#### D. 460:20-31-9. Reclamation Plan; Ponds, Impoundments, Banks, Dams, and Embankments

Oklahoma proposes to revise paragraph (f) by deleting the phrase, "If the structure is 20 feet or higher or impounds more than 20 acre-feet."

#### E. 460:20-33-6. Permits Incorporating Variances from Approximate Original Contour Restoration Requirements

Oklahoma proposes to revise paragraph (a) to clearly define that the State may issue a permit for nonmountaintop removal "steep slope" mining and that this type of permit includes a variance from the requirements of certain sections in its regulations.

#### F. 460:20-35-6. Program Services and Data Requirements

Oklahoma proposes to revise paragraph (a) to read as follows:

(a) To the extent possible with available funds, the program administrator shall select and pay a qualified laboratory to make the determination and statement and provide other services referenced in Subsection (b) of this Section for eligible operators who request assistance.

#### G. 460:20-37-15. Requirement to Release Performance Bonds

Oklahoma proposes to add paragraph (a)(3) to read as follows:

(3) The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the Department, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

#### H. 460:20-43-12. and 460:20-45-12. Hydrologic Balance: Siltation Structures

Oklahoma proposes to delete paragraphs (a)(1) which are definitions of "siltation structure" and to redesignate paragraphs (a)(2) as paragraphs (a)(1). Oklahoma also proposes to delete paragraphs (a)(3) which are definitions of "other treatment facilities."

#### I. 460:20-43-27. and 460:20-45-27. Disposal of Excess Spoil: Preexisting Benches

Oklahoma proposes to revise paragraphs (c) to require the designs to be certified by a registered professional engineer. The spoil shall also be placed on the solid portion of the bench in a controlled manner and concurrently compacted as necessary to attain a long-

term static safety factor of 1.3 for all portions of the fill. Any spoil deposited on any fill of the bench will be treated as excess spoil fill under 20:43-24.

#### J. 460:20-43-29. and 460:20-45-29. Coal Mine Waste: General Requirements

Oklahoma proposes to revise paragraphs (a) by adding the phrase "disposed of in an area other than the mine workings or excavations."

#### K. 460:20-57-2. State Inspections and Monitoring

1. Oklahoma proposes to revise paragraph (g)(2) by deleting the words, "or the Office."

2. Oklahoma proposes to revise paragraph (g)(4) by deleting the phrase, "or permit revocation proceedings have been initiated and are being pursued diligently;."

3. Oklahoma proposes to revise paragraph (h)(1) to require that the State inspect each abandoned coal mine site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site.

In no case shall the inspection frequency be set at less than one complete inspection per calendar year. Oklahoma also proposes procedures for selecting the inspection frequency for each site.

#### L. 460:20-61-11. Request for Hearing

Oklahoma proposes to revise paragraph (a) by changing from 15 days to 30 days the amount of time a person has to submit a petition for requesting a hearing after the date of service of the conference officer's action.

#### M. Regulations With Editorial Changes

Oklahoma proposes to make citation corrections at 460:20-27-7 and 460:20-31-16, Operation plan: Maps and plans.

### III. Public Comment Procedures

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 to 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.

#### *Public Hearing*

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on January 21, 1998. The location and time of the hearing will be arranged will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to speak at the public hearing the hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

#### *Public Meeting*

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the location listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

### **IV. Procedural Determinations**

#### *Executive Order 12866*

This 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*

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100

million or more in any given year on local, state, or tribal governments or private entities.

#### **List of Subjects in 30 CFR Part 936**

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 29, 1997.

**Brent Wahlquist,**

*Regional Director, Mid-Continent Regional Coordinating Center.*

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### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 52**

[IN76-1; FRL-5945-9]

#### **Approval and Promulgation of Implementation Plan; Indiana**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve Indiana's request to grant an exemption for the northwest Indiana (Lake and Porter Counties) severe ozone nonattainment area from the otherwise applicable Oxides of Nitrogen (NO<sub>x</sub>) transportation conformity requirements. On May 24, 1996, the Indiana Department of Environmental Management (IDEM) submitted to the EPA a State Implementation Plan (SIP) revision request for an exemption under section 182(b)(1) of the Clean Air Act (Act) from the transportation conformity requirements for NO<sub>x</sub> for the northwest Indiana (Lake and Porter Counties) severe ozone nonattainment area. On November 26, 1996, IDEM submitted additional materials, including Public Hearing documentation to complete the submittal. The request is based on the urban airshed modeling (UAM) conducted for the attainment demonstration for the Lake Michigan Ozone Study (LMOS) modeling domain. The rationale for this proposed approval is set forth below; additional information is available at the address indicated below.

**DATES:** Written comments on this proposed action must be received by February 5, 1998.

**ADDRESSES:** Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. Copies of the SIP revision and supporting documentation,