

FEDERAL REGISTER: 47 FR 44942 (October 12, 1982)

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 820

Special Permanent Performance Standards for Anthracite Mines in Pennsylvania

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is revising the permanent program regulations that implement Section 529 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revision reflects changes in the anthracite environmental protection provisions adopted by the Commonwealth of Pennsylvania since August 3, 1977, and is being made effective retroactively to July 31, 1982, the same date that the State program for Pennsylvania took effect.

EFFECTIVE DATE: July 31, 1982.

ADDRESSES: See "Supplementary Information" below for addresses where copies of documents associated with this rulemaking are available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Chief, Division of State Program Assistance, Program Operations and Inspection, Office of Surface Mining, 1951 Constitution Avenue NW., Washington, D.C. 20240, Telephone: (202) 343-5351.

SUPPLEMENTARY INFORMATION:

I. AVAILABILITY OF COPIES

Revisions to the anthracite environmental protection provisions, adopted by the Commonwealth of Pennsylvania since August 3, 1977, and public comments received on this rulemaking are available for public inspection and copying at:

Office of Surface Mining Reclamation and Enforcement Administrative Record, Room 5315, 1100 L Street NW., Washington, D.C. 20240, Telephone: (202) 343-7895.

Office of Surface Mining Reclamation and Enforcement, Pennsylvania Field Office, 100 Chestnut Street, Suite 300, Harrisburg, Pennsylvania 17101.

Pennsylvania Department of Environmental Resources; Fulton Bank Building, 10th Floor, Third and Locust Streets, Harrisburg, Pennsylvania 17120.

II. BACKGROUND

On March 13, 1979, OSM promulgated permanent program regulations (*44 FR 15281*) as required by Section 501(b) of SMCRA (*30 U.S.C. 1201 et seq.*). 30 CFR Part 820 of the permanent regulatory program contains special performance standards for anthracite mines in the Commonwealth of Pennsylvania. The environmental protection provisions in force on August 3, 1977, in that State for anthracite mining were adopted by OSM in accordance with Section 529 of SMCRA.

The legislative history of SMCRA confirms that Congress intended that OSM adopt the State environmental protection provisions applicable to anthracite surface coal mines and the surface effects of anthracite underground mines. [See H.R. Rept. No. 94-1445, 94th Cong., 2nd Sess. 125-126 (1976); H.R. Rept. No. 94-896, 94th Cong., 1st Sess. 207 (1975).] SMCRA also requires that changes in the State's regulation of anthracite mining shall be reflected in the regulations that OSM promulgates.

III. DISCUSSION OF FINAL RULE

OSM is amending 30 CFR 820.11 to reflect changes in the Commonwealth's anthracite mining program since August 3, 1977, in accordance with Section 529 of SMCRA. Subsequent to August 3, 1977, the Commonwealth of Pennsylvania adopted revisions to the Administrative Code of 1929, the Coal Refuse Disposal Control Act, the Surface Mining Conservation and Reclamation Act, the Clean Streams Law, Chapters 86 and 88 of Title 25, Pennsylvania Code, and rescinded Chapters 99, 100 and 125 of Title 25, Pennsylvania Code as a part of its effort to obtain primary responsibility for regulating surface coal mining and reclamation activities and coal exploration activities on non-Federal and non-Indian lands in the anthracite region of the Commonwealth.

The revised statutes and regulations mentioned above were submitted to OSM by Pennsylvania as part of its program resubmission of January 25, 1982 (Administrative Record No. PA 292). On January 29, 1982, at *47 FR 4318-4320*, OSM published a notice in the Federal Register announcing a public hearing and public comment period on the resubmitted Pennsylvania program. The public hearing was held in Harrisburg, Pennsylvania on February 25, 1982, and the public comment period on the resubmission closed on March 3, 1982. The Secretary's decision to approve conditionally the Pennsylvania State program was announced on July 30, 1982 (*47 FR 33050-33080*).

By separate action, the Office of the Federal Register published a document listing materials that had been approved for incorporation by reference into Titles 24 and 28 through 41 of the Code of Federal Regulations (*46 FR 33980-33994*, June 30, 1981). This listing contained revisions to 30 CFR 820.11 which reflected amendments to Pennsylvania's anthracite mining statutes adopted by the Pennsylvania General Assembly as of December 31, 1980. On August 5, 1982, OSM proposed an amendment to 30 CFR 820 and requested public comment on the revisions to 30 CFR 820.11 and on all changes to the anthracite environmental protection provisions adopted by the Commonwealth since August 3, 1977, for incorporation by reference in 30 CFR 820.11 (*47 FR 33988-33990*). By that notice, OSM indicated that a public hearing on the proposed rule would be held if requested. Since no person requested a hearing, none was held. The public comment period ended on September 7, 1982.

The amendment to 30 CFR 820.11 being promulgated today encompasses the following Pennsylvania laws and regulations:

(1) The Pennsylvania Administrative Code of 1929, April 9, 1929, Pub. L. 177, as amended through June 30, 1982, 71 P. S. Sections 1920-A and 1928-A (Purdons 1928 Supp.)

(2) The Pennsylvania Coal Refuse Disposal Control Act, September 24, 1968, Pub. L. 1040, No. 318, as amended through June 30, 1982, 52 P. S. Section 30.51 et seq. (Purdons 1966, 1978, 1982 Supp.)

(3) The Pennsylvania Surface Mining Conservation and Reclamation Act, May 31, 1945, Pub. L. 1198, as amended through June 30, 1982, 52 P. S. Section 1396.1 et seq. (Purdons 1966, 1978, 1982 Supp.)

(4) The Pennsylvania Anthracite Coal Mine Act of 1965, Pub. L. 346, as amended through June 30, 1982, 52 P. S. Section 70.101 et seq. (Purdons 1966, 1978, 1982 Supp.)

(5) The Pennsylvania Clean Streams Law, Pub. L. 1987, as amended through June 30, 1982, 35 P. S. Section 619.1 et seq. (Purdons 1977, 1978, 1982 Supp.)

(6) The Pennsylvania Gas Operations, Well-Drilling, Petroleum and Coal Mining Act, Pub. L. 756, November 30, 1955, as amended through June 30, 1982, 52 P. S. Section 2101 et seq. (Purdons 1966, 1982 Supp.)

(7) Provisions regulating the discharge of coal, culm or refuse into streams under Pub. L. 640, June 27, 1913, as amended through June 30, 1982, 52 P. S. Section 631 et seq. (Purdons 1966, 1982 Supp.)

(8) Regulation of coal stripping under Pub. L. 133, June 18, 1941, as amended through June 30, 1982, 52 P. S. Section 1471 et seq. (Purdons 1966, 1982 Supp.)

(9) Regulation of subsidence under Pub. L. 1198, May 22, 1921, as amended through June 30, 1982, 52 P. S. Section 661 et seq. (Purdons 1966, 1982 Supp.)

(10) Regulation of subsidence under Pub. L. 1538, September 20, 1961, as amended through June 30, 1982, 52 P. S. Section 661 et seq. (Purdons 1966, 1982 Supp.)

(11) The establishment of mine safety zones under Pub. L. 1994, December 22, 1959, as amended through June 30, 1982, 52 P. S. Section 3101 et seq. (Purdons 1966, 1982 Supp.)

(12) Pennsylvania Air Pollution Control Act of January 8, 1960, Pub. L. 2119, as amended through June 30, 1982, 35 P. S. Section 4001 et seq. (Purdons 1966, 1982 Supp.)

(13) Pennsylvania Solid Waste Management Act of 1980, Act No. 97, as amended through June 30, 1982, 35 P. S. Section 6018.101 et seq. (Purdons 1982 Supp.)

(14) Use of Explosives Act, July 10, 1957, Pub. L. 685, No. 362, as amended through June 30, 1982, 73 P. S. Section 164 et seq. (Purdons 1976, 1982 Supp.)

(15) Explosives Act, July 1, 1936, Pub. L. 268, No. 537, as amended through June 30, 1982, 73 P. S. Section 151 et seq. (Purdons 1971, 1982 Supp.)

(16) The following Chapters of Title 25 of the Pennsylvania Code: Chapters 75, 77, 86, 88, 91, 92, 93, 94, 95, 97, 100, 101, 102, 105, 121, 123, 124, 127, 129, 131, 133, 135, 137, 139, 141, 143, 209, 210, 211, 241, 243, and 401.

Previous 30 CFR 820.11 actually listed the Pennsylvania statutory provisions that are applicable to anthracite mining in the State. The amended rule being promulgated today simplifies the language of existing 30 CFR 820.11 by incorporating by reference all the approved or amended Commonwealth of Pennsylvania statutes and rules contained in its approved State program, but without listing them. No substantive change is intended by the change in format. The amended rule provides a direct means to incorporate automatically in 30 CFR 820.11 any future changes to Pennsylvania's anthracite laws and rules that are approved by OSM as State program amendments under 30 CFR 732.17.

PROPOSED EFFECTIVE DATE

Under Section 529 of SMCRA, to the extent that the Pennsylvania State program incorporates statutory provisions revised since August 3, 1977, the Federal rules should incorporate those provisions. Thus, to provide the consistency between the Federal rules and the Pennsylvania State program, OSM put operators on notice by that Federal Register notice announcing the proposed rule (*47 FR 33989*) that the final rule adopting the changes being promulgated today will be made effective retroactive to the effective date of the Pennsylvania State program, July 31, 1982.

IV. DISPOSITION OF PUBLIC COMMENTS

One commenter stated that the proposed action should be postponed pending the outcome of litigation in which the litigants seek to enjoin Pennsylvania's revisions to the anthracite program which were approved by the Secretary of the Interior. Inasmuch as the litigation is a State matter before the Commonwealth Court of Pennsylvania, the Secretary finds no basis for postponing the final rule. If the Commonwealth is enjoined from implementing or enforcing its regulatory program governing anthracite, the Secretary will take the appropriate action under SMCRA and 30 CFR Chapter VII. Upon conclusion of the litigation, any State laws that remain in place, or that are subsequently enacted, that cover anthracite mining, and which are approved by OSM as part of Pennsylvania's State program, will be consistent with Section 820.11.

V. PROCEDURAL MATTERS

Paperwork Reduction Act

There are no information collection requirements in 30 CFR 820.11 requiring approval by the Office of Management and Budget under *44 U.S.C. 3507*.

Executive Order 12291

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs, actions, or amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

Regulatory Flexibility Act

The Department of the Interior has also determined, pursuant to the Regulatory Flexibility Act, *5 U.S.C. 601* et seq., that this rule will not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

Because OSM is by this rulemaking incorporating all of Pennsylvania's revisions to its environmental protection revisions concerning anthracite mining without exercising discretion under Section 529 of SMCRA, this is not a major Federal action that may significantly affect the human environment under *43 U.S.C. 4231* et seq.

LIST OF SUBJECTS IN 30 CFR 820

Coal mining, Environmental protection, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 820 is hereby amended, as set forth herein.

Dated: October 1, 1982.

William P. Pendley, Assistant Secretary for Energy and Minerals.

Part 820 Special Permanent Program performance Standards -- Anthracite Mines in Pennsylvania.

PART 820 [AMENDED]

1. The Authority Citation for Part 820 is

Authority: Sections 102, 201, 501, 503, 504, 529, Pub. L. 95-87, 91 Stat. 448, 449, 467, 470, 471, 514 (*30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1279*).

2. Section 820.11 is revised to read as follows:

SECTION 820.11 - PERFORMANCE STANDARDS: ANTHRACITE MINES IN PENNSYLVANIA.

Anthracite mines in Pennsylvania, as specified in Section 529 of the Act, shall comply with its approved State program, including Commonwealth of Pennsylvania statutes and regulations, and revisions thereto that are approved by OSM pursuant to Part 732 of this chapter.

[FR Doc. 82-27925 Filed 10-8-82; 8:45 am]

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