

*Unfunded Mandates*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 917**

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 3, 2004.

**George J. Rieger,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

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**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 920**

[MD-054-FOR]

**Maryland Regulatory Program**

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

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

**SUMMARY:** We are announcing receipt of a proposed amendment to the Maryland regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the Code of Maryland Regulations (COMAR) concerning valid existing rights. The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations.

**DATES:** We will accept written comments on this amendment until 4 p.m. (local time), on August 18, 2004. If requested, we will hold a public hearing on the amendment on August 13, 2004. We will accept requests to speak at a hearing until 4 p.m. (local time), on August 3, 2004.

**ADDRESSES:** You should mail or hand-deliver written comments and requests to speak at the hearing to Mr. George Rieger at the address listed below.

You may review copies of the Maryland program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Appalachian Regional Coordinating Center.

Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937-2153. E-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov).

Mr. C. Edmon Larrimore, Program Manager, Mining Program, 1800 Washington Boulevard, Baltimore, Maryland 21230, Telephone: (410) 537-3557 or 1-800-633-6101.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Rieger, Telephone: (412) 937-2153. Internet: [grieger@osmre.gov](mailto:grieger@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Maryland Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

**I. Background on the Maryland Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, “\* \* \* a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act \* \* \* and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Maryland program on December 1, 1980. You can find background information on the Maryland program, including the Secretary’s findings, the disposition of comments, and conditions of approval in the December 1, 1980, **Federal Register** (45 FR 79431). You can also find later actions concerning Maryland’s program and program amendments at 30 CFR 920.12, 920.15, and 920.16.

**II. Description of the Proposed Amendment**

By letter dated May 4, 2004 (Administrative Record Number MD-583-11), Maryland sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment revises COMAR provisions concerning valid existing rights.

The full text of the program amendment is available to you to read at the locations listed above under **ADDRESSES**. Specifically, Maryland proposes the following amendments to COMAR.

**1. COMAR 26.20.10.01.B(7) Definition of Valid Existing Rights**

This definition is amended at paragraph (7)(a)(i) by deleting the phrase “on August 3, 1977” and by adding in its place the words “at the time the land came under the protection of Environment Article, § 15-505(b)(2), Annotated Code of Maryland or Regulation .02 of the chapter.”

Subparagraph (7)(a)(ii) is amended by several deletions and additions of language as follows. In the first sentence, the phrase “these lands either had” is revised to read “the land had.” The following words are added immediately following the revised phrase “the land had:” “obtained all permits and other authorizations required to conduct surface coal mining operations or had.” Further along in the first sentence, “good faith efforts” is amended to be “good faith effort.” Also in the first sentence, the words “State and federal permits” are deleted. The words “permits and authorizations” are added immediately before the words “to conduct the operations.” The word “those” is deleted and replaced by the word “the.” The words “lands, on or before” are revised to read “land before.” The date “August 3, 1977” is deleted, and the following words are added in their place: “the land came under the protection of Environment Article, § 15-505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter and at a minimum had submitted an application for any permit required under this subtitle.” The word “coal” is being deleted following the phrase “to the Bureau that the” and the word “land” is added in its place. The word “both” is deleted from the phrase “is both needed for.” The words “an on-going” are being deleted immediately following the words “adjacent to.” The words “obtained before August 3, 1977” are being deleted at the end of the sentence, and those words are being replaced by the following words:

And other authorizations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made before the land came under the protection of Environment Article § 15-505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter.

As amended, COMAR 26.20.10.01.B(7)(a)(ii) provides as follows:

(ii) The person proposing to conduct surface coal mining operations on the land had obtained all permits and other authorizations required to conduct surface coal mining operations or had made a good faith effort to obtain all necessary permits and authorizations to conduct the operations

on the land before the land came under the protection of Environment Article, § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter and at a minimum had submitted an application for any permit required under this subtitle, or can demonstrate to the Bureau that the land is needed for and immediately adjacent to a surface coal mining operation for which all permits were and other authorizations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made before the land came under the protection of Environment Article § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter.

Subparagraph (7)(b)(i) is being amended by adding the word “properly” between the word “A” and the word “recorded” at the beginning of the sentence. The word “recorded” immediately before the word “easement” is deleted and is replaced by the word “or.” The words “or a permit,” “coal haul,” and “recorded as of August 3, 1977; or” are deleted following the word “easement.” New language is added at the end of this provision. As amended, Subparagraph (7)(b)(ii) provides as follows:

(i) A properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of Environment Article, § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter, and under the document creating the right-of-way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right-of-way or easement for surface coal mining operations;

Subparagraph (7)(b)(ii) is being amended by deleting the words “other” and “as of August 3, 1977,” and adding new language. As amended, Subparagraph (7)(b)(ii) provides as follows:

(ii) Any road in existence when the land upon which it is located came under the protection of Environment Article, § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter, and the person has a legal right to use the road for surface coal mining operations;

Subparagraphs (7)(b)(iii) and (iv) are new and provide as follows:

(iii) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of Environment Article, § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter; or

(iv) Valid existing rights exist under Section B(7)(a) of this regulation.

## 2. COMAR 26.20.10.01–1 Demonstration Standards

This provision is new and provides as follows:

### .01–1 Demonstration Standards

A. In order to meet the needed for and adjacent standard in Regulation .01B(7)(a)(ii) of this regulation a person shall demonstrate that prohibiting expansion of the surface coal mining operation onto land under the protection of Environment Article, § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter would unfairly impact the viability of the operation as originally planned before the land came under the protection of Environment Article, § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of Environment Article, § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter when the Bureau approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made.

B. In evaluating whether a person meets the standard in § A of this regulation, the Bureau may consider factors such as:

(1) The extent to which the coal supply contracts or other legal and business commitments that predate the time the land came under the protection of Environment Article, § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter depend upon use of that land for surface coal mining operations;

(2) The extent to which plans used to obtain financing for the operation before the land came under the protection of Environment Article, § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter rely upon the use of that land for surface coal mining operations;

(3) The extent to which investments in the operation before the land came under the protection of Environment Article, § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter rely upon the use of that land for surface coal mining operations; or

(4) Whether the land lies within the areas identified on the map required under COMAR 26.20.02.10A(6) before the land came under the protection of Regulation .02 of this chapter.

### 3. COMAR 26.20.10.02 Prohibition

The introductory paragraph to this provision is amended by adding the words “as determined under Regulation .07 of this chapter, or an exception for existing operation under Regulation .04 of this chapter” immediately after the words “valid existing rights.” In addition, the words “after August 3, 1977” and “unless those operations were being conducted on August 3, 1977” are deleted. As amended, the introductory paragraph to this provision provides as follows:

Subject to valid existing rights, as determined under Regulation .07 of this chapter, or an exception for existing operations under Regulation .04 of this

chapter, surface coal mining operations may not be conducted on any of the following lands.

Subparagraph 26.20.10.02.C.(1) is amended by deleting the words “join this” and replacing those words with the words “are located within the.” Also, the words “in order to join the public road” are added immediately following the words “right-of-way line.” As amended, Subparagraph 26.20.10.02.C.(1) provides as follows:

(1) Where mine access roads or haulage roads are located within the right-of-way line in order to join the public road, or

Subparagraph 26.20.10.02.C.(2) is amended by adding the word “closed” immediately following the word “relocated.”

### 4. COMAR 26.20.10.03 Determination of Limits and Prohibitions

Subparagraph 26.20.10.03.A. is amended by adding the words “application for a” immediately following the word “complete.” In addition, the word “application” is deleted immediately following the word “permit” and the words “for a surface coal mining operation or for a revision of the boundaries of a surface coal mining operation permit” are added in place of the deleted word. Also, the words “review the application to” are added immediately following the words “the Bureau shall.” As amended, Subparagraph 26.20.10.03.A. provides as follows:

A. Upon receipt of a complete application for a permit for a surface coal mining operation or for a revision of the boundaries of a surface coal mining operation permit, the Bureau shall review the application to determine whether the proposed surface coal mining operations are limited or prohibited under this chapter.

Subparagraph 26.20.10.03.B. is amended by adding the words “any portion of” immediately following the words “Bureau shall reject.” In addition, the words “if the applicant has no valid existing rights for the area, or if the operation did not exist on August 3, 1977” are deleted and replaced by new language. As amended, Subparagraph 26.20.10.03.B. provides as follows:

B. If the proposed operation is to be located on any lands where surface coal mining is prohibited, the Bureau shall reject any portion of the application that would locate surface coal mining operations on land protected under Regulation .02 of this chapter unless:

(1) The site qualifies for an exception for existing operations under Regulation .04 of this chapter;

(2) The applicant has valid existing rights for the land as determined under Regulation .07 of this chapter;

(3) The applicant obtains a waiver or exception from the prohibitions of Regulation .02C, D, and E of this chapter in accordance with § D, E, and F of this regulation; or

(4) For land protected by Regulation .02B of this chapter, both the Bureau and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with § H of this regulation.

Subparagraph 26.20.10.03.C. is amended by revising the following regulation citations: “.02E and F” is changed to “.02F and G.”

Subparagraph 26.20.10.03.D(2) is amended by adding the words “or close” immediately following the words “would relocate.” In addition, the words “and provide a public comment period and opportunity to request a public hearing” are added at the end of this provision. As amended, Subparagraph 26.20.10.03.D(2) provides as follows:

(2) Shall require the applicant to specifically advertise that the proposed surface mining operation would relocate, or close a public road or would be conducted within 100 feet of the right-of-way of a public road; and provide a public comment period and opportunity to request a public hearing;

Subparagraph 26.20.10.03.H. is amended by deleting the word “public” immediately following the words “adversely affect any” and adding in its place, the words “publicly owned.” In addition, the words “publicly owned” are deleted immediately before the words “places included on.”

#### *5. COMAR 26.20.10.04 Exception for Existing Operations*

This provision is new and provides as follows:

##### **.04 Exception for Existing Operations**

The prohibitions and limitations of Regulation .02 of this chapter do not apply to surface coal mining operations for which a permit issued by the Bureau under the Regulatory Program exists when the land comes under the protection of Regulation .02 of this chapter. This exception only applies to lands within the permit area as it exists when the land comes under the protection of Regulation .02 of this chapter.

#### *6. COMAR 26.20.10.05 Submission of Valid Existing Rights Determination*

This provision is new and provides as follows:

##### **.05 Submission of Valid Existing Rights Determination**

A. A person that intends to conduct surface coal mining operations on the basis of valid existing rights under Regulation .02 of this chapter shall submit a request for a valid

existing rights determination to the Bureau. This request may be submitted before preparing and submitting an application for a permit for the land.

B. A request for a valid existing rights determination that relies on the good faith/ all permits standard or the needed for and adjacent standard in Regulation .01B(7)(a)(ii) of this chapter shall provide a property rights demonstration. The demonstration shall include:

(1) A legal description of the land to which the request pertains;

(2) Complete documentation of the character and extent of the requestor's current interests in the surface and mineral estates of the land to which the request pertains;

(3) A complete chain of title for the surface and mineral estates of the land to which the request pertains;

(4) A description of the nature and effect of each title instrument that forms the basis of the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities;

(5) A description of the type and extent of surface coal mining operations that the requestor claims the right to conduct, including the method of mining, any mining-related surface activities and facilities and an explanation of how these operations would be consistent with State property law;

(6) Complete documentation of the nature and ownership, as of the date that the land came under the protection of Environment Article, § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter, of all property rights for the surface and mineral estates of the land to which the request pertains;

(7) Names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains;

(8) Documentation that, if the coal interests have been severed from other property interests, that the owners of other property interests in the land to which the request pertains have been notified and provided an opportunity to comment on the validity of the property rights claimed in the request within 30 days of the notice; and

(9) Any comments received in response to the notification required by paragraph (8) of this section.

C. A request for a valid existing rights determination that relies on the good faith/ all permits standard in Regulation .01B(7)(a)(ii) of this chapter shall contain:

(1) All of the information required by § B of this regulation;

(2) Approval and issuance dates and identification numbers for any permits, licenses, and authorizations that were obtained before the land came under the protection of Environment Article, § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter;

(3) Application dates and identification numbers for any permits, licenses, and authorizations for which applications were submitted before the land came under the protection of Environment Article, § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter; and

(4) An explanation of any other good faith effort made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of Environment Article, § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter.

D. A request for a valid existing rights determination that relies upon the needed for and adjacent standard in Regulation .01B(7)(a)(ii) of this chapter shall contain:

(1) All of the information required by § B of this regulation; and

(2) An explanation of how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including the demonstration required by Regulation .01–1 of this chapter that prohibiting expansion of the operation onto the land would unfairly impact the viability of the operation as originally planned before the land came under the protection of Environment Article, § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter.

E. A request for a valid existing rights determination that relies upon one of the standards for roads in Regulation .01B(7)(b) of this chapter shall contain satisfactory documentation that:

(1) The road existed when the land on which it is located came under the protection of Environment Article, § 15–505(b)(2) or Regulation .02 of this chapter and the requestor has a legal right to use the road for surface coal mining operations;

(2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of Environment Article, § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter and under the document creating the right of way or easement and under any subsequent conveyances the requestor has a legal right to use or construct a road across that right of way or easement to conduct surface coal mining operations; or

(3) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of Environment Article, § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter.

#### *7. COMAR 26.20.10.06 Review of Valid Existing Rights Request*

This provision is new and provides as follows:

##### **.06 Review of Valid Existing Rights Request**

A. Upon receipt of a request for a valid existing rights determination, the Bureau shall complete an initial review to determine if the request includes all applicable requirements of Regulation .05 of this chapter. If the request does not include all of the applicable information, the Bureau shall return the request with notification of the missing information.

B. If the request is not returned to the Bureau within 30 days after receipt of the notification in § A of this regulation, the Bureau shall issue a determination that valid existing rights has not been demonstrated in accordance with Regulation .07 of this chapter.

C. When the Bureau determines that a request for a valid existing rights determination is complete, the Bureau shall:

(1) Notify the requestor, in writing, that the application is complete and require the requestor to publish the notice required by § D of this regulation; and

(2) Provide a copy of the notice required by § C(1) to:

(a) The Bureau of Mines,  
(b) All reasonably locatable owners of surface and mineral estates in the land included in the request, and

(c) The owner of the feature causing the land to come under the protection of Regulation .02 of this chapter, and when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of Regulation .02 of this chapter.

D. Upon receipt of the Bureau notification that the request is complete, the requestor shall cause a notice to appear in a newspaper of general circulation in the county in which the land is located. The notice shall contain:

(1) A heading of "Notice of Request for Valid Existing Rights Determination";  
(2) The name and address of the requestor;  
(3) The location of the land to which the request pertains;

(4) A description of the type of surface coal mining operations planned;

(5) A reference to and brief description of the applicable standard(s) under the definition of valid existing rights in Regulation .01B(7) of this chapter that contains the information required by § E of this regulation;

(6) A statement that the Bureau will not make a decision on the merits of the request if, by the close of the comment period of the notice, a person with a legal interest in the land initiates appropriate legal action to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the claim for valid existing rights if the request relies upon one or more of the standards in Regulation .01B(7)(a)(ii) and .01B(7)(b)(i) and (ii) of this chapter;

(7) A description of the procedures the Bureau will follow in processing the request;

(8) The closing date of a comment period that is a minimum of 30 days after publication of the notice;

(9) A statement that interested persons may obtain a 30 day extension of the comment period upon written request to the Bureau; and

(10) The name and address of the Bureau office where a copy of the request is available for public inspection and where comments and requests for extension of the comment period may be sent.

E. The reference and description required by § D(5) of this regulation shall include a:

(1) Description of the property rights claimed and the basis for the claim if the request relies upon the good faith/all permits standard or the needed for and adjacent standard in Regulation .01B(7)(a)(ii) of this regulation;

(2) Description of the basis for the claim that the road existed when the land came under the protection of Environment Article,

§ 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter and that a legal right exists to use the road for surface coal mining operations if the request relies upon the standard in Regulation .01B(7)(b)(ii) of this chapter; or

(3) Description of the basis for the claim that a properly recorded right of way or easement for a road in that location existed when the land came under the protection of Environment Article, § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter and under the document creating the right of way or easement and under any subsequent conveyances a legal right exists to use or construct a road across the right of way or easement to conduct surface coal mining operations, if the request relies upon the standard in Regulation .01B(7)(b)(i) of this regulation.

F. The notice required by § C(2) of this regulation shall provide a 30 day comment period starting from the date of service and specify that an additional 30 days is available upon written request. The Bureau may grant additional time for good cause upon request and may not necessarily consider comments received after the closing date of the comment period.

#### **8. COMAR 26.20.10.07 Decision on Valid Existing Rights**

This provision is new and provides as follows:

##### **.07 Decision on Valid Existing Rights**

A. The Bureau shall review the information submitted under Regulation .05 of this chapter, the comments received under Regulation .06 of this chapter, and any other reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request for valid existing rights. The Bureau shall notify the applicant, in writing, if it determines the record is inadequate providing an explanation of the inadequacy and requesting the submittal of additional information that is necessary to complete the record. The request shall require the requested information to be submitted within 30 days from receipt of the request.

B. When the record is complete and adequate, the Bureau shall determine whether the request submitted under Regulation .05 of this chapter has demonstrated valid existing rights. The Bureau's decision shall be in writing and contain findings of fact and conclusions sufficient to justify the decision.

C. The Bureau shall issue a determination that valid existing rights has not been demonstrated if the property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The determination shall be made without prejudice. The request may be refilled when the property rights dispute is finally adjudicated. The section only applies to legal action that is initiated as of the closing date of the comment period under Regulation .06D and F of this chapter.

D. If the record of the request indicates disagreement as to the accuracy of the

property rights claims, but is not the subject of any pending litigation, the Bureau shall evaluate the merits of the information in the record and determine whether a demonstration of valid existing rights has been made. The Bureau shall issue a decision in accordance with § B of this regulation.

E. The Bureau shall issue a determination that valid existing rights have not been demonstrated if any of the information requested under § A of this regulation is not submitted within 30 days from receipt of the request. This determination is made without prejudice and a revised request may be refilled at any time.

F. After making a determination under this regulation, the Bureau shall:

(1) Require the person requesting the determination to publish notice in a newspaper of general circulation in the county in which the land is located and provide a copy of the published notice to the Bureau; and

(2) Provide a copy of the determination and an explanation of appeal rights to:

(a) The person requesting the determination;

(b) The owner or owners of the land to which the determination applies;

(c) The owners of the feature causing the land to come under the protection of Regulation .01B(7) of this chapter; and

(d) When applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of Regulation .01B(7) of this chapter.

G. A determination by the Bureau on valid existing rights is subject to administrative and judicial review under COMAR 26.20.06.

### **III. Public Comment Procedures**

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Maryland program.

#### **Written Comments**

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see DATES*). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Appalachian Regional Coordinating Center may not be logged in.

#### **Electronic Comments**

Please submit Internet comments as an ASCII, Word file avoiding the use of special characters and any form of encryption. Please also include "Attn:

SATS NO. MD-054-FOR” and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Appalachian Regional Coordinating Center at (412) 937-2153.

#### *Availability of Comments*

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

#### *Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on August 3, 2004. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

#### *Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please 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, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

#### **IV. Procedural Determinations**

##### *Executive Order 12630—Takings*

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights. The takings implications assessment for the Federal valid existing rights rule appears in Part XXIX.E of the preamble to that rule. See 64 FR 70766, 70822-27, December 17, 1999.

##### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

##### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that 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 because each 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 the Federal regulations at 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.

##### *Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in

accordance with” the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

##### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination in our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

##### *Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

##### *National Environmental Policy Act*

This rule does not require an environmental impact statement because 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 certifies 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. 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.

#### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

#### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

#### **List of Subjects in 30 CFR Part 920**

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 27, 2004.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 04-16285 Filed 7-16-04; 8:45 am]

BILLING CODE 4310-05-P

## **DEPARTMENT OF THE INTERIOR**

### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 943**

[Docket No. TX-053-FOR]

#### **Texas Regulatory Program**

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

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

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposes revisions to its regulations regarding annual permit fees. Texas intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Texas program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., c.d.t., August 18, 2004. If requested, we will hold a public hearing on the amendment on August 13, 2004. We will accept requests to speak at a hearing until 4 p.m., c.d.t. on August 3, 2004.

**ADDRESSES:** You may submit comments, identified by Docket No. TX-053-FOR, by any of the following methods:

- E-mail: [mwolffrom@osmre.gov](mailto:mwolffrom@osmre.gov).

Include "Docket No. TX-053-FOR" in the subject line of the message.

- Mail/Hand Delivery: Michael C. Wolf from, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547.
- Fax: (918) 581-6419.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**Instructions:** All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to review copies of the Texas program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office. Michael C. Wolf from, 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, E-mail: [mwolffrom@osmre.gov](mailto:mwolffrom@osmre.gov).

In addition, you may review a copy of the amendment during regular business hours at the following location: Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, Capitol Station, P.O. Box 12967, Austin, Texas 78711-2967, Telephone (512) 463-6900.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Wolf from, Director, Tulsa Field Office. Telephone: (918) 581-6430. E-mail: [mwolffrom@osmre.gov](mailto:mwolffrom@osmre.gov).

#### **SUPPLEMENTARY INFORMATION:**

- Background on the Texas Program
- Description of the Proposed Amendment
- Public Comment Procedures
- Procedural Determinations

#### **I. Background on the Texas Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program in the February 27, 1980, **Federal Register** (45 FR 12998). You can also find later actions concerning the Texas program and program amendments at 30 CFR 943.10, 943.15 and 943.16.

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

By letter dated June 4, 2004 (Administrative Record No. TX-658), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment that revises the Railroad Commission of Texas' (Commission) rules at its own initiative. Below is the full text of the proposed revised regulation.

##### *Section 12.108 Permit Fees*

(a) Each application for a surface coal mining and reclamation permit or