

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 28, 2000.

Donald L. Riggan,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD-046-FOR]

Maryland Regulatory Program

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

ACTION: Proposed rule; reopening of comment period.

SUMMARY: OSM is reopening the public comment period on a proposed amendment to the Maryland permanent regulatory program (Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Maryland regulations regarding a definition of previously mined area, termination of jurisdiction, permitting requirements, bond release requirements and performance standards for inspections. The amendment is intended to revise the Maryland program to be no less effective than the corresponding Federal regulations.

DATES: If you submit written comments, they must be received by 4 p.m., E.D.T., October 19, 2000.

ADDRESSES: Mail or hand-deliver your written comments to Mr. George Rieger, Manager, Oversight and Inspection Office, at the address listed below. You may review copies of the Maryland program, the proposed 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 proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Manager, Oversight and Inspection Office, Appalachian Regional Coordinating Center, Office

of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh PA 15220, Telephone: (412) 937-2153, E-mail: grieger@osmre.gov.

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone: (301) 689-4136.

FOR FURTHER INFORMATION CONTACT:

George Rieger, Manager, Oversight and Inspection Office, Appalachian Regional Coordinating Center, Telephone: (412) 937-2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the February 18, 1982, **Federal Register** (47 FR 7214). You can find subsequent actions concerning the conditions of approval and program amendments at 30 CFR 920.15 and 920.16.

II. Description of the Proposed Amendment

By letter dated September 14, 1999 (Administrative Record No. 577-04), Maryland provided an informal amendment to OSM regarding a definition of previously mined area, termination of jurisdiction, permitting requirements, bond release requirements and performance standards for inspections. Maryland submitted the informal amendment in response to requests made by OSM as required under 30 CFR 732.17(d) in letters dated July 8, 1997, and August 11, 1999 (Administrative Record Nos. 577-01 and 577-03, respectively). OSM completed its review of the informal amendment and submitted comments to Maryland in a letter dated March 20, 2000 (Administrative Record No. 577-05). By letter dated April 11, 2000 (Administrative Record No. MD-577-06), Maryland submitted its response to OSM's comments in the form of a proposed amendment to the Code of Maryland Regulations (COMAR). The proposed amendments were announced in the April 28, 2000, **Federal Register** (65 FR 24897). However, OSM's review determined that the proposed revisions to COMAR 26.20.31.02H regarding the inspection frequency on reclaimed bond forfeiture sites were inconsistent with 30 CFR 840.11 and 700.11(d). As a result, a letter requesting clarification was sent to Maryland dated August 17, 2000 (Administrative Record No. MD-

577-12). Maryland responded in its letter dated August 31, 2000 (Administrative Record No. MD 577-13) with a new revision to COMAR 26.20.31.02H regarding the inspection frequency on reclaimed bond forfeiture sites. Therefore, OSM is reopening the public comment period regarding the following proposed amendments to Maryland's regulatory program:

1. COMAR 26.20.31.02 Inspections.

Maryland proposes to delete the existing paragraph H. in its entirety and substitute the following new paragraph H:

H. An abandoned site means a surface coal mining and reclamation operation for which the Bureau has found in writing that:

(1) All surface and underground coal mining and reclamation activities at the site have ceased;

(2) At least one notice of violation has been issued and the notice could not be served in accordance with Regulation .08 of this chapter or the notice was served and has progressed to a failure-to-abate cessation order;

(3) Action is being taken to ensure that the permittee and the operator, and owners and controllers of the permittee and the operator, will be precluded from receiving future permits while the violations continue at the site;

(4) Action is being taken in accordance with the requirements of the Regulatory Program to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it is concluded that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(5) Where the site is or was permitted and bonded and the permit has either expired or been revoked, the forfeiture of any available performance bond is being diligently pursued or has been forfeited.

Maryland also proposes to add new paragraph I. as follows:

I. Instead of the inspection frequency required in § A and B of this regulation, the Bureau shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site. However, in no case shall the inspection frequency be set at less than one complete inspection per calendar year.

Maryland also proposes to add new paragraph J. as follows:

J. The Bureau shall conduct a complete inspection of the abandoned

site and provide the public notice required under § K of this regulation in order to select an alternative inspection frequency authorized under § I of this regulation. Following the inspection and public notice the Bureau shall prepare and maintain for public review a written finding that justifies the selected alternative inspection frequency. The written finding shall justify the new inspection frequency by addressing in detail all of the following criteria:

- (1) How the site meets each of the criteria under the definition of abandoned site under § H of this regulation and thereby qualifies for a reduction in inspection frequency;
- (2) Whether there exists on the site, and to what extent, impoundments, earthen structures, or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health and safety of the public or significant environmental harms to land, air, or water resources;
- (3) The extent to which existing impoundments or earthen structures were constructed in accordance with prudent engineering designs approved in the permit;
- (4) The degree to which erosion and sediment control is present and functioning;
- (5) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools, and other public or commercial buildings and facilities;
- (6) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and
- (7) Based on a review of the complete and the partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions can be expected to progressively deteriorate.

Maryland also proposes to add new paragraph K. as follows:

K. Public Notice

- (1) The Bureau shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments concerning the alternative inspection frequency.
- (2) The public notice shall contain the:
 - (a) Permittee's name and permit number;

(b) Precise location of the land affected.

(c) Inspection frequency proposed.

(d) General reasons for reducing the inspection frequency;

(e) Bond status of the permit;

(f) Telephone number and address of the Bureau where written comments on the reduced inspection frequency may be submitted; and

(g) Closing date of the comment period.

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. Specifically, OSM is seeking comments on the revisions to the State's regulations that were submitted on August 31, 2000 (Administrative Record No. MD-577-13). Comments should address whether the proposed amendment with these revisions satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Maryland program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 15-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic comments: Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. MD-046-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: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your

name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous 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.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

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 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, 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

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget 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.

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.
- 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 fact that the state submittal which is the

subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

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 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 22, 2000.

Michael K. Robinson,

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 946

[VA-119-FOR]

Virginia 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 Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The program amendment consists of changes to the Virginia Surface Mining Reclamation Regulations concerning letters of credit. The amendment is intended to revise the Virginia program to be consistent with the corresponding Federal regulations.

DATES: If you submit written comments, they must be received on or before 4 p.m. (local time), on November 3, 2000. If requested, a public hearing on the proposed amendment will be held on October 30, 2000. Requests to speak at the hearing must be received by 4:00 p.m. (local time), on October 19, 2000.

ADDRESSES: Mail or hand-deliver your written comments and requests to speak at the hearing to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the address listed below.

You may review copies of the Virginia program, the proposed amendment, a

listing of any scheduled hearings, and all written comments received in response to this document at the addresses below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Big Stone Gap Field Office.

Mr. Robert A. Penn, Director, Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, 1941 Neeley Road, Suite 201, Compartment 116,

Big Stone Gap, Virginia 24219, Telephone: (540) 523-4303, E-mail: rpenn@osmre.gov.

Virginia Division of Mined Land Reclamation, P. O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (540) 523-8100, E-mail: whb@mme.state.va.us.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office; Telephone: (540) 523-4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the December 15, 1981, **Federal Register** (46 FR 61085-61115). You can find later actions concerning the conditions of approval and program amendments at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of the Proposed Amendment

By letter dated September 22, 2000 (Administrative Record Number VA-1008) the Virginia Department of Mines, Minerals and Energy (DMME) submitted an amendment to the Virginia program. In its letter, the DMME stated that the program amendment changes the Virginia program rules at 4 VAC 25-130-700.5 and 4 VAC 25-130-800.21 in response to amendments required by OSM in the May 3, 1999, **Federal Register** (64 FR 23542).

On May 3, 1999, OSM approved an amendment to the Virginia program which amended the Virginia Coal Surface Mining Control and Reclamation Act by adding "letter of credit" as an acceptable form of collateral bond to satisfy the performance bonding requirements of the Virginia Act. In our approval of the Virginia amendment, we required that the Virginia program regulations be