

for operations conducted after October 24, 1992.

#### *C. Enforcement in Alabama*

By letter to Alabama dated December 14, 1994, OSM requested information from Alabama that would help OSM decide which approach to take in Alabama to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. AL-520). By letter dated January 1, 1995, Alabama responded to this OSM request (Administrative Record No. AL-521).

Alabama stated that ten underground coal mines were active in Alabama after October 24, 1992. Alabama stated that the Alabama program does not fully authorize enforcement of the requirements of section 720(a) of SMCRA and the implementing Federal regulations. Alabama's regulations are silent on the issue of replacement of water supplies damaged by subsidence but do contain a "to the extent required by State law" limitation on repair of material damage to structures. Alabama has not determined whether a change to the State Act is necessary to implement regulation change which would be required under the Energy Policy Act (EPACT). Further analysis will be necessary by the State legal staff before a determination can be made of the need for statutory revisions.

Alabama has assumed since the passage of EPACT that the retroactive enforcement of its provisions by Alabama would be possible until regulatory changes can be made due to the proposal to supersede State program provisions. Alabama has in fact adopted the position that since the effective date of EPACT they have had enforcement authority of its provisions.

Since October 24, 1992, Alabama has had only one citizen complaint where alleged damage to structures from subsidence has existed. This complaint covered a church and several houses. No complaints have been received alleging damage to water supplies due to subsidence.

#### *D. Enforcement in Mississippi*

By letter to Mississippi dated December 14 1994, OSM requested information from Mississippi that would help OSM decide which approach to take in Mississippi to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administration Record No. MS-328). Mississippi has not responded to the December 14, 1994, letter requesting information on underground coal mines.

Mississippi has had no surface nor underground coal mining operations since October 24, 1992. At the present time, Mississippi is in the process of completely revising its approved regulatory program.

## **II. Public Comment Procedures**

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Alabama and Mississippi to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

### *A. Written Comments*

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Birmingham Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

### *B. Public Hearing*

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., C.S.T. on April 15, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public 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.

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**.

### *C. Public Meeting*

If only a few persons request 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 recommendations on how OSM and Alabama and Mississippi should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, 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 locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

Dated: April 4, 1995.

**David G. Simpson,**

*Acting Assistant Director, Eastern Support Center.*

[FR Doc. 95-8754 Filed 4-7-95; 8:45 am]

BILLING CODE 4310-05-M

## **30 CFR Part 938 and 920**

### **Pennsylvania and Maryland Regulatory Program**

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

**ACTION:** Announcement of public comment period and opportunity for public hearing.

**SUMMARY:** OSM is requesting public comment that would be considered in deciding how to implement in Pennsylvania and Maryland, underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Pennsylvania and the Maryland regulatory programs (hereinafter referred to as the "Pennsylvania Program" and the "Maryland Program") currently have adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with

Pennsylvania and Maryland and consideration of public comments, OSM will decide whether initial enforcement in Pennsylvania and Maryland will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

**DATES:** Written comments must be received by 4:00 p.m., E.D.T. on May 10, 1995. If requested, OSM will hold a public hearing on May 5, 1995 concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Pennsylvania and Maryland. Requests to speak at the hearing must be received by 4:00 p.m., E.D.T. on April 25, 1995.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand-delivered to Robert J. Biggi, Director, Harrisburg Field Office at the address listed below.

Copies of the applicable parts of the Pennsylvania and Maryland State programs, SMCRA, the implementing Federal regulations, information provided by Pennsylvania and Maryland concerning their authority to implement State counterparts to SMCRA and the implementing Federal regulations, 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 address listed below during normal business hours, Monday through Friday, excluding holidays. Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Biggi, Director, Harrisburg Field Office, Telephone: (717) 782-4036.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

###### **A. The Energy Policy Act**

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102-486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage

includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

###### **B. The Federal Regulations Implementing the Energy Policy Act**

On March 31, 1995, OSM promulgated regulations at 30 CFR part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722-16751).

30 CFR 817.121(c)(2) requires in part that:

The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. \* \* \* The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are

counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later

than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5

for operations conducted after October 24, 1992.

### *C. Enforcement in Pennsylvania*

By letter to Pennsylvania dated December 13, 1994, OSM requested information from Pennsylvania that would help OSM decide which approach to take in Pennsylvania to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. PA 835.00). By letter dated January 24, 1995, Pennsylvania responded to this OSM request (Administrative record No. PA 835.01).

Pennsylvania stated that 120 bituminous underground coal mines are permitted and that 60 of those are currently producing coal. In the anthracite field, there are approximately 115 permitted underground mining operations of which 50 to 75 operations are currently producing coal. Pennsylvania stated that Act 54, amending the Pennsylvania Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) became effective on August 21, 1994. This amendment to BMSLCA does address water supply replacement and subsidence damage repair or compensation, but certain provisions do not mirror the Federal Energy Policy Act of 1992 portions establishing Section 720 of SMCRA.

Specifically, Pennsylvania stated in the January 24, 1995, response that BMSLCA does not include water replacement and repair or subsidence damage in the following situations.

#### *Water Supply Replacement*

- \* Cases where water supplies were impacted between October 24, 1992, and August 21, 1994.

- \* Cases where affected water supplies are located in the anthracite coal fields.

- \* Cases where landowners entered voluntary agreements allowing their supplies to be impacted.

- \* Cases where impacts occurred more than three years after completion of coal extraction.

- \* Cases where affected water sources are used to supply agricultural irrigation systems constructed after August 20, 1994.

- \* Cases where the property owner failed to report the water supply problem within two years of its occurrence.

- \* Cases where the mine operator was denied access to conduct a pre-mining or post-mining survey of the water supply and no pre-mining quality and quantity information is available.

- \* Cases where a mine operator purchased the property or compensated the property owner rather than replace the supply.

#### *Repair or Compensate for Subsidence Damage*

- \* Cases where dwellings were constructed after April 27, 1966, and damaged prior to August 21, 1994.

- \* Cases where dwellings constructed after August 21, 1994, are damaged prior to the time when coverage commences under BMSLCA (dwellings which are built after August 21, 1994, and between permitting actions are not covered by repair/compensation requirements until the next permit renewal).

- \* Cases where the mine operator was denied access to conduct a pre-mining or post-mining survey of the damaged structure.

- \* Cases involving noncommercial buildings where the damaged buildings were not used by the public, accessible to the public or used for certain agriculture purposes.

The Pennsylvania Department of Environmental Resources (PADER) states that it has authority to investigate complaints of structure damage and water loss caused by underground mining operations conducted after October 24, 1994. Limitations, as discussed above, provide authority to provide repair or compensation for subsidence related structural damage and water supply replacement for bituminous coal field residents after August 21, 1994. Pennsylvania does not have the authority to fully implement section 720(a), in the anthracite coal field or for bituminous coal field for time period October 24, 1992 through August 21, 1994. Pennsylvania will require at least one year to make the necessary statutory changes.

Pennsylvania has investigated 91 citizen complaints alleging subsidence-related structure damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. To date, Pennsylvania has completed review and made final determination on 87 with 4 pending further study. PADER has determined that 2 complaints regarding structural damage were unrelated to underground mining and the remaining 19 were the result of subsidence due to mining conducted after October 24, 1992. PADER reports that investigations of 70 water supply complaints resulted in finding that 60 were unrelated to underground mining conducted after October 24, 1992 and 6 water supplies were determined to have been affected by mining. Four water supply complaints are currently under

review with no determination as to impacts from underground mining.

#### *D. Enforcement in Maryland*

By letter to Maryland dated December 13, 1994, OSM requested information from Maryland that would help OSM decide which approach to take in Maryland to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. MD 570.0). By letter dated March 29, 1995, Maryland responded to this OSM request (Administrative Record No. MD 570.1).

Maryland stated that four underground coal mines were active in Maryland after October 24, 1992. Maryland indicated that existing State program provisions at Maryland Natural Resources Article 7, Subtitle 5A, § 7-5A-05.1, § 7-5A-05.2 and COMAR 08.20.13.09B, 08.20.13.09C are adequate State counterparts to section 720(a) of SMCRA and the implementing Federal regulations. Maryland explained that it will enforce these State program provisions in accordance with Maryland Natural Resources Article 7 effective October 24, 1992. Maryland has investigated eight citizen complaints alleging subsidence-caused structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. To date, Maryland has made determinations that the single structural damage complaint was unrelated to subsidence and that two water supply complaints were not impacted by the mining operations. In the five other water supply complaints Maryland determined the water supplies were impacted by underground mining and the mining company satisfactorily replaced these supplies.

## **II. Public Comment Procedures**

OSM is requesting public comment to assist OHM in making its decision on which approach to use in Pennsylvania and Maryland to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

#### *A. Written Comments*

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Harrisburg Field Office will not necessarily be

considered in OSM's final decision or included in the Administrative Record.

#### *B. 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., E.D.T. on April 25, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public 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.

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**.

#### *C. Public Meeting*

If only a few persons request 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 recommendations on how OSM and Pennsylvania and Maryland should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, 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 locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

Dated: April 4, 1995.

**David G. Simpson,**

*Acting Assistant Director, Eastern Support Center.*

[FR Doc. 95-8753 Filed 4-7-95; 8:45 am]

BILLING CODE 4310-05-M

## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

#### **32 CFR Part 247**

[RIN 0790-AG16]

### **Department of Defense Newspapers and Civilian Enterprise Publications**

**AGENCY:** Office of the Secretary of Defense, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** This rule revises and provides DoD policy and updates procedures to meet changed circumstances for publishing DoD internal command information newspapers and civilian enterprise publications. It has minimal impact on some civilian printers who are contracted to print the publications.

**DATES:** Written comments on this proposed rule must be received by June 9, 1995.

**ADDRESSES:** Forward comments to American Forces Information Service, Attn: Print Media Policy, 601 N. Fairfax St., Alexandria, Virginia 22314-2007.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Colonel Frank Theising, USA, (703) 274-4868.

#### **SUPPLEMENTARY INFORMATION:**

#### **Executive Order 12866, "Regulatory Planning and Review"**

It has been determined that 32 CFR part 247 is not a significant regulatory action. The rule does not:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

#### **Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)**

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.