

**DEPARTMENT OF LABOR****Mine Safety and Health Administration****30 CFR Chapter I****Review of Existing Regulations**

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** MSHA is conducting a comprehensive review of its existing safety and health regulations. The Agency invites mine operators, miners, manufacturers, and other interested parties to identify regulations that are unnecessary or need to be updated. MSHA specifically requests help in identifying obsolete requirements and conflicting or duplicate provisions.

**DATES:** Submit written comments on or before May 1, 1995.

**ADDRESSES:** Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203. Commenters are encouraged to send comments on a computer disk along with their original comments in hard copy.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, phone 703-235-1910.

**SUPPLEMENTARY INFORMATION:** MSHA is conducting a comprehensive review of all its existing regulations which are in chapter I of title 30 of the Code of Federal Regulations. The primary purpose of this review is to improve the effectiveness of the Agency's existing safety and health regulations, without reducing the protection provided to miners. This review is consistent with the goals of Executive Order 12866, the Regulatory Flexibility Act, the Paperwork Reduction Act, and the Federal Mine Safety and Health Act of 1977. It also is consistent with the President's government-wide regulatory reform efforts to reduce overly burdensome and paperwork intensive requirements where possible.

In reviewing its existing regulations, MSHA is evaluating each standard to determine if it is unnecessary, inaccurate, or outdated. For example, the Agency has identified equipment approval regulations under which no applications have been received in many years. MSHA also is evaluating whether there are standards which duplicate, are inconsistent with, or conflict with other MSHA or Federal requirements. For example, MSHA is considering combining the safety and

health standards for surface and underground metal and nonmetal mines into a single part to eliminate unnecessary repetition.

MSHA considers timely public participation to be an integral part of any process to improve the effectiveness of its safety and health regulations. The Agency, therefore, urges the mining community and other interested parties to submit their suggestions for improving the Agency's existing regulations.

Dated: March 31, 1995.

**J. Davitt McAtee,**

*Assistant Secretary for Mine Safety and Health.*

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**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 901 and 924****Alabama and Mississippi Regulatory Programs**

**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 Alabama and Mississippi 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 Alabama and Mississippi's regulatory programs (hereinafter referred to as the "Alabama program" and "Mississippi program") currently have adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations.

After consultation with Alabama and Mississippi and consideration of public comments, OSM will decide whether initial enforcement in Alabama and Mississippi 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., C.S.T. on April 30, 1995. If requested, OSM will hold a public hearing on April 25, 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 Alabama and Mississippi. Requests to speak at the hearing must be received by 4:00 p.m., C.S.T. on April 15, 1995.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand-delivered to Jesse Jackson, Jr., Director, Birmingham Field Office at the address listed below. Office of Surface Mining, 135 Gemini Circle, Suite 215, Birmingham, Alabama 35209.

Copies of the applicable parts of the Alabama and Mississippi programs, SMCRA, the implementing Federal regulations, information provided by Alabama and Mississippi 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. Jesse Jackson, Jr., Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Birmingham, Alabama 35209, Telephone: (205) 290-7282.

**FOR FURTHER INFORMATION CONTACT:** Jesse Jackson, Jr., Director, Birmingham Field Office, Telephone: (205) 290-7282.

**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).

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 29, 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) and 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 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.*

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## **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