

witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Finally, access to the records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an enormous administrative burden by requiring investigations to be continuously reinvestigated.

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 920

[MD-045-FOR]

#### Maryland Regulatory Program

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving a proposed amendment to the Maryland regulatory program (hereinafter referred to as the "Maryland program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Maryland proposed revisions to its regulations regarding the right to administrative review of final decisions and award of costs decisions. The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations and SMCRA.

**EFFECTIVE DATE:** April 13, 1999.

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Program Manager, OSM, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220. Telephone: (412) 937-2153.

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Maryland Program.
- II. Submission of the Proposed Amendment.
- III. Director's Findings.
- IV. Summary and Disposition of Comments.
- V. Director's Decision.
- VI. Procedural Determinations.

#### I. Background on the Maryland Program

On December 1, 1980, the Secretary of the Interior conditionally approved the Maryland program. Background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 1, 1980, **Federal Register** (45 FR 79449). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 920.12, 920.15, and 920.16.

#### II. Submission of the Proposed Amendment

By letter dated August 25, 1998, (Administrative Record No. MD-580-00), Maryland submitted a proposed amendment to its program pursuant to SMCRA in response to required amendments at 30 CFR 920.16(a). Maryland is revising the Code of Maryland Regulations (COMAR) at section COMAR 26.20.34.06G (titled Procedure after Testimony is Concluded), COMAR 26.20.34.09G (titled Award of Costs). Additionally Maryland is proposing to delete COMAR 26.20.06.02 (titled Administrative Appeal). Specifically, the proposed changes delete the right to appeal to the Board of Review a final decision of the Water Management Director or an award of costs decision. Now, these decisions are subject to judicial review in accordance with the State Government Article, § 10-222 of the Annotated Code of Maryland. In Maryland's initial request for this program amendment, the State Government Article was incorrectly cited as § 10-215 of the Annotated Code of Maryland. The proposed rule also cited this section. On February 5, 1999, Maryland submitted revised copies of the proposed amendment that contain the correct citation to § 10-222, Annotated Code of Maryland (Administrative Record No. MD-580-03). Maryland is also deleting COMAR 26.20.06.02, which allowed an appeal to the Board of Review for permit decisions.

OSM announced receipt of the proposed amendment in the September 21, 1998, **Federal Register** (63 FR 50176), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 21, 1998.

Maryland originally proposed these changes and deletions in 1990. OSM approved these changes and deletions on April 28, 1991 (56 FR 19280, 19282).

However, Maryland had incorrect citations to the Annotated Code of Maryland. OSM required Maryland to amend its regulations to correct the citation. This requirement was codified at 30 CFR 920.16(a). Maryland submitted another amendment on May 7, 1991, to satisfy the requirements of 30 CFR 920.16(a). The 1991 proposed amendment resulted in a final rule published in the **Federal Register** on January 10, 1992, (57 FR 1104) approving the revisions. The final rule indicated that 30 CFR 920.16(a) was removed and reserved because the Director found that the proposed amendment was not inconsistent with the Federal hearing and appeals regulations at 43 CFR part 4. However, Maryland did not promulgate the revisions nor the deletion which were previously approved by OSM and 30 CFR 920.16(a) was not removed. Since January 10, 1992, the Bureau of Mines has been transferred from the Department of Natural Resources to the Department of the Environment and COMAR has been recodified, resulting in different numbering from those in the 1990 amendment. These events required the submission of the current amendment to satisfy the requirements of 30 CFR 920.16(a).

Since the Board of Review was abolished in 1990, appeals of final decisions of the Director of Water Management and the award of costs decisions are now subject to judicial review instead of administrative review by the Board of Review. Judicial review is authorized by § 10-222 of the State Government Article. As a result, Maryland proposed, in the letter of August 25, 1998, to amend COMAR 26.20.34.06G, titled Procedure after Testimony is Concluded and COMAR 26.20.34.09G, titled Award of Costs to reflect the change. The letter also proposed to delete COMAR 26.20.06.02, titled Administrative Appeal to reflect the abolishment of the Board of Review.

#### III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

1. *COMAR 26.20.34.06 Procedure after Testimony is Concluded.* In Section G. Maryland proposed to delete the phrase, "may appeal the decision to the Board of Review pursuant to COMAR 08.16.01," and replace it with the phrase, "is entitled to judicial review in accordance with State Government Article, § 10-222, Annotated Code of Maryland."

The Director finds the abolition of the Board of Review makes this change necessary. As stated in the April 26, 1991 findings (56 FR 19281), which are incorporated and adopted herein by reference, the Director finds the change in accordance with 525 of SMCRA and that the change satisfies the requirement of 30 CFR 920.16(a).

2. *COMAR 26.20.34.09 Award of Costs.* In Section G. Maryland proposed to delete the phrase, "may appeal to the Board of Review pursuant to COMAR 08.16.01," and replace it with the phrase, "is entitled to judicial review in accordance with State Government Article, § 10-222, Annotated Code of Maryland." As with item 1. above, the Director finds the abolition of the Board of Review makes this change necessary. As stated above, the Director adopts and incorporates by reference the April 26, 1991 findings (56 FR 19281). Accordingly, the Director finds the change in accordance with 525 of SMCRA and that the change satisfies the requirement of 30 CFR 920.16(a).

3. *COMAR 26.20.06.02 Administrative Appeal.* This section was proposed to be deleted. The Director finds the above changes to COMAR 26.20.34.06, Procedure after Testimony is Concluded and COMAR 26.20.34.09, Award of Costs render this section unnecessary. The Director adopts and incorporates by reference the April 26, 1991 findings (56 FR 19281) and finds that the deletion of the section will not render the Maryland program less stringent than section 525 of SMCRA or less effective than the federal regulations.

#### IV. Summary and Disposition of Comments

##### Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No comments were received and because no one requested an opportunity to speak at a public hearing, no hearing was held.

##### Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Maryland program. The U.S. Department of the Army, Army Corps of Engineers, concurred without comment.

##### Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed

program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Maryland proposed to make in this amendment pertains to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

#### V. Director's Decision

Based on the above findings, the Director approves Maryland's proposed amendment as submitted on August 25, 1998, and revised on February 5, 1999. As discussed in the Director's Findings 1 and 2, the Director is removing the required amendment at 30 CFR 920.16(a).

The Federal regulations at 30 CFR Part 920, codifying decisions concerning the Maryland program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

#### VI. Procedural Determinations

##### Executive Order 12866

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

##### Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) 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

No environmental impact statement is required for this rule since 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 has determined that this rule will 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 corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a submittal 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 corresponding Federal regulations.

#### Unfunded Mandates

This rule will not impose a cost of \$ 100 million of 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: March 31, 1999.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

#### PART 920—MARYLAND

1. The authority citation for Part 920 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 920.15 is amended in the table by adding a new entry in

chronological order by "Date of Final Publication" to read as follows:

**§ 920.15 Approval of Maryland regulatory program amendments.**  
\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
August 25, 1998	April 13, 1999	COMAR 26.20.34.06G, 26.20.34.09G, deletion of 26.20.06.02.

**§ 920.16 [Amended]**

3. Section 920.16 is amended by removing and reserving paragraph (a).  
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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 935**

[OH-244-FOR]

**Ohio Regulatory Program**

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving a proposed amendment to the Ohio regulatory program (Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio is proposing revisions to section 1513-3-21 of the Ohio Administrative Code (OAC) as it relates to awards of costs and expenses, including attorney's fees, arising in connection with appeals heard by the Reclamation Commission. The amendment is intended to revise the Ohio program to be consistent with its statute at Ohio Revised Code (ORC) Section 1513.13(E) as well as the corresponding Federal regulations.

**EFFECTIVE DATE:** April 13, 1999.

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh PA 15220. Telephone: (412) 937-2153. Internet: grieger@osmre.gov.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Ohio Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision

VI. Procedural Determinations

**I. Background on the Ohio Program**

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the August 10, 1982, **Federal Register** (47 FR 34688). You can find later actions on conditions of approval and program amendments at 30 CFR 935.11, 935.15, and 935.16.

**II. Submission of the Proposed Amendment**

By letter dated January 21, 1999 (Administrative Record No. OH-2177-00) Ohio submitted proposed amendments to its program concerning award of costs and fees in connection with appeals heard by the Reclamation Commission. We announced receipt of the proposed amendment in the February 8, 1999, **Federal Register** (64 FR 6005), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on March 10, 1999.

**III. Director's Findings**

Following, according to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the proposed amendment.

Any revisions that we do not specifically discuss below concern nonsubstantive wording changes or revised cross-references and paragraph notations to reflect organizational changes that result from this amendment.

*OAC 1513-3-21 Award of Costs and Expenses*

(a) Paragraphs (A) and (B) are amended by changing the reference from the "board of review" to the "Reclamation Commission", by changing the scope of the paragraph from proceedings "under Chapter 1513 of the Revised Code" to "proceedings before the Reclamation Commission," and specifically requiring that a petition

for costs and expenses including attorney's fees be submitted in accordance with Section 1513.13(E) and (E)(1)(c) of the ORC.

(b) New paragraph (C) is added to specify that a decision by the Chief of the Division of Mines and Reclamation granting or denying in whole or in part a request for an award of costs and expenses including attorney's fees made under Section 1513.13(E)(1)(a) or 1513.13(E)(1)(b) of the ORC shall be appealable to the commission under Section 1513.13(A) of the ORC.

(c) Existing Paragraph (C) pertaining to the contents of a petition is re-numbered as (D) and further amended by including the specific references to the ORC included in (a) and (b) above.

(d) Existing Paragraphs (D), (E) and (F) are re-numbered as (E), (F), and (G). New paragraphs (F) and (G) are further amended by changing the scope of the paragraphs from proceedings "under Chapter 1513 of the Revised Code" to proceedings "before the Reclamation Commission."

The changes described above revise the OAC to correspond with provisions previously approved in the ORC at Section 1513.13 entitled, Appeal of Violation, Order or Decision to Reclamation Commission. The Director finds that the proposed revisions to the OAC included in this amendment render these provisions consistent with ORC Section 1513.13(E) pertaining to costs and expenses, including attorneys fees, arising from proceedings before the Chief of the Ohio Division of Mines and Reclamation and before the Reclamation Commission. In addition, the revisions do not render OAC Section 1513-3-21 inconsistent with section 525(e) of SMCRA or with the Federal regulations at 43 CFR 4.1294.

**IV. Summary and Disposition of Comments**

*Public Comments*

The Director solicited public comments and provided an opportunity