

minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by February 21, 2002.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### Drafting Information

The principal author of these regulations is Paul F. Handleman, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

Section 1.45D-1 also issued under 26 U.S.C. 45D(i); \* \* \*

**Par. 2.** Section 1.45D-1 is added to read as follows:

##### § 1.45D-1 New markets tax credit.

[The text of proposed § 1.45D-1 is the same as the text of § 1.45D-1T published elsewhere in this issue of the **Federal Register**].

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*  
[FR Doc. 01-31529 Filed 12-21-01; 8:45 am]

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#### DEPARTMENT OF THE INTERIOR

#### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 918

[SPATS No. LA-021-FOR]

#### Louisiana Regulatory Program

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

**ACTION:** Proposed rule; reopening and extension of public comment period on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of revisions to a previously proposed amendment to the Louisiana regulatory program (Louisiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The revisions concern valid existing rights. Louisiana intends to revise its program to be consistent with the corresponding Federal regulations.

**DATES:** We will accept written comments until 4 p.m., c.s.t., January 10, 2002.

**ADDRESSES:** You should mail or hand deliver written comments to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

You may review copies of the Louisiana program, the amendment, 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 OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547, Telephone: (918) 581-6430  
Department of Natural Resources, Office of Conservation, Injection and Mining Division, 625 N. 4th Street, P. O. Box 94275, Baton Rouge, LA 70804, Telephone: (225) 342-5540

**FOR FURTHER INFORMATION CONTACT:** Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581-6430.

#### SUPPLEMENTARY INFORMATION:

##### I. Background on the Louisiana 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 approved the Louisiana program on October 10, 1980. You can find background information on the Louisiana program, including the Secretary's findings and the disposition of comments in the October 10, 1980, **Federal Register** (45 FR 67340). You can find later actions concerning the Louisiana program at 30 CFR 918.15 and 918.16.

##### II. Discussion of the Proposed Amendment

By letter dated August 3, 2001 (Administrative Record No. LA-366.04), Louisiana sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Louisiana sent the amendment in response to our letters dated August 23, 2000, and March 14, 2001 (Administrative Record Nos. LA-366 and LA-366.03, respectively), that we sent to Louisiana under 30 CFR 732.17(c).

We announced receipt of the amendment in the September 20, 2001, **Federal Register** (66 FR 48393) and invited public comment on its adequacy. The public comment period closed October 22, 2001.

During our review of the amendment, we identified concerns about the proposed amendment. We notified Louisiana of these concerns by letter dated November 14, 2001 (Administrative Record No. LA-366.08). By letter dated November 20, 2001, Louisiana sent us a revised amendment (Administrative Record No. LA-366.09).

Louisiana submitted additional revisions for the following provisions of the amendment:

##### A. Section 105, Definition of Valid Existing Rights

Louisiana proposes to add a provision at paragraph c.4 of its proposed definition to provide that a person who claims valid existing rights to use or construct a road across the surface of protected lands may demonstrate that valid existing rights exist under § 105. Valid Existing Rights a and b.

*B. Section 1105, Areas Where Mining Is Prohibited or Limited*

Louisiana proposes to revise the introductory language of this section to read as follows:

No surface coal mining operation shall be conducted on the following lands unless the applicant has either valid existing rights, as determined under § 2323, or qualifies for the exception under § 1109.

*C. Section 1107, Procedures*

1. Louisiana proposes to add a new § 1107.B to provide that the office will reject any portion of a permit application that would locate surface coal mining operations on lands protected under § 1105 unless (1) the site qualifies for the exception for existing operations under § 1109; (2) a person has valid existing rights for the land, as determined under § 2323; (3) the applicant obtains a waiver or exception from the prohibitions of § 1105 in accordance with § 1107.C or D; or (4) for lands protected by § 1105.a.3, both the office and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with § 1107.E.

2. Louisiana proposes to redesignate existing § 1107.B as new § 1107.C, and revise it to read as follows:

1. If the office is unable to determine whether the proposed operation includes land within an area specified in § 1105.A.1. or is located closer than the limits provided in § 1105.A.6 or 7, the office shall transmit a copy of the relevant portions of the permit application to the federal, state, or local government agency with jurisdiction over the protected land, structure, or feature for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it must respond within 30 days of receipt of the request. The notice must specify that another 30 days is available upon request, and that the office will not necessarily consider a response received after the comment period provided. If no response is received within the 30-day period or within the extended period granted, the office may make the necessary determination based on the information it has available.

3. Louisiana proposes to redesignate existing § 1107.C as new § 1107.D, and add a sentence at the beginning that states that the provisions of § 1107.D do not apply to lands for which a person has valid existing rights, as determined under § 2323; lands within the scope of the exception for existing operations in § 1109; or access or haul roads that join a public road, as described in § 1105.A.4.b.

4. Louisiana proposes to redesignate existing § 1107.D as new § 1107.E, and add a sentence at the beginning that

states that the provisions of § 1107.E do not apply to lands for which a person has valid existing rights, as determined under § 2323; lands within the scope of the exception for existing operations in § 1109; or access or haul roads that connect with an existing public road on the side of the public road opposite the dwelling, as provided in § 1105.A.5.

5. Louisiana proposes to redesignate existing § 1107.E as new § 1107.F, and revise it to read as follows:

1. Where the office determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the office shall transmit to the federal, state, or local agency with jurisdiction over the park or place a copy of applicable parts of the permit application, together with a request for the agency's approval or disapproval of the operation, and a notice to that agency that it has 30 days from receipt of the request within which to respond. The notice must specify that another 30 days is available upon request, and that failure to interpose a timely objection will constitute approval. The office may not issue a permit for a proposed operation subject to the provisions of this paragraph unless all affected agencies jointly approve.

2. § 1107.F does not apply to lands for which a person has valid existing rights, as determined under § 2323 or lands within the scope of the exception for existing operations in § 1109.

6. Finally, Louisiana proposed to delete existing § 1107.F and G.

*D. Section 1109, Exception for Existing Operations*

Louisiana proposes to add this new section to provide that the prohibitions of § 1105 do not apply to surface coal mining operations for which a valid permit, issued under Subpart 3 of the Louisiana Surface Mining Regulations, exists when the land comes under the protection of § 1105. This exception applies only to lands within the permit area as it exists when the land comes under the protection of § 1105.

*E. Section 2323, Valid Existing Rights Determination*

1. Louisiana proposes to add new § 2323.A to describe when the office is responsible for making valid existing rights determinations.

2. Louisiana proposes to redesignate proposed § 2323.A as new § 2323.B, and revise it to describe what an applicant must submit when a request for a valid existing rights determination relies on the various standards described in § 105.Valid Existing Rights.b, b.i, b.ii, and c.

3. Louisiana proposes to redesignate proposed § 2323.B as new § 2323.C, and

correct references throughout to reflect the changes made in this proposed rule.

4. Louisiana proposes to redesignate proposed § 2323.C as new § 2323.D, delete the sentence at new § 2323.D.1 that provides that OSM will publish a public notice in the **Federal Register**, and correct references throughout new § 2323.D to reflect the changes made in this proposed rule.

5. Louisiana proposes to redesignate proposed § 2323.D as new § 2323.E, correct references throughout to reflect the changes made in this proposed rule, and replace the phrases "agency responsible for making the determination of valid existing rights," "responsible agency," and "agency" with the word "office." Louisiana also proposes to delete the sentence at new § 2323.E.5.b that provides that OSM will publish its determination, along with an explanation of appeal rights and procedures, in the **Federal Register**.

6. Louisiana proposes to redesignate proposed § 2323.E and F as new § 2323.F and G, and correct references throughout to reflect the changes made in this proposed rule. Louisiana also proposes to replace the phrases "agency responsible for processing a request subject to notice and comment under § 2323.C," "agency, when acting as the regulatory authority," and "agency" with the word "office."

*F. Miscellaneous Changes*

Finally, Louisiana proposes to make a number of cross-reference changes in §§ 1105.A.4.b, 2311.B, 2731.A.2, 2733, 3103.A.5, and 3115.A.4.c to reflect the changes made in this proposed rule. Louisiana also proposes to correct a typographical error in § 2111.

**III. Public Comment Procedures**

We are reopening the comment period on the proposed Louisiana program amendment to provide you an opportunity to reconsider the adequacy of the amendment in light of the additional materials sent to us. Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Louisiana program.

*Written Comments:* If you submit written 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**).

*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 OSM's Tulsa Field Office (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative 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 12630—Takings*

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

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

This rule is exempted 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. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

##### *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 governmental 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 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 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 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 did not impose an unfunded mandate.

##### **List of Subjects in 30 CFR Part 918**

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 10, 2001.

**Charles E. Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

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