

the organization's mission, philosophy, policies on participant rights, emergency plan, ethics, the PACE benefit, and any policies related to the job duties of specific staff.

(2) The PACE organization must develop a competency evaluation program that identifies those skills, knowledge, and abilities that must be demonstrated by direct participant care staff (employees and contractors).

(3) The competency program must be evidenced as completed before performing participant care and on an ongoing basis by qualified professionals.

(4) The PACE organization must designate a staff member to oversee these activities for employees and work with the PACE contractor liaison to ensure compliance by contracted staff.

(b) The PACE organization must develop a program to ensure that all staff furnishing direct participant care services meet the following requirements:

(1) Comply with any State or Federal requirements for direct patient care staff in their respective settings.

(2) Comply with the requirements of § 460.68(a) regarding persons with criminal convictions.

(3) Have verified current certifications or licenses for their respective positions.

(4) Are free of communicable diseases.

(5) Have been oriented to the PACE program.

(6) Agree to abide by the philosophy, practices, and protocols of the PACE organization.

#### Subpart F—PACE Services

12. In § 460.102, the following changes are made: a. Paragraph (d)(2) introductory text is republished and (d)(2)(iii) is revised.

b. Paragraph (d)(3) is amended by removing "Except as specified in paragraph (g) of this section".

c. Paragraphs (f) and (g) are removed. The revisions read as follows:

#### § 460.102 Interdisciplinary team.

\* \* \* \* \*

(d) \* \* \*

(2) Each team member is responsible for the following:

\* \* \* \* \*

(iii) Documenting changes of a participant's condition in the participant's medical record consistent with documentation policies established by the medical director.

\* \* \* \* \*

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital

Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 17, 2002.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: September 16, 2002.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 02-24858 Filed 9-27-02; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF THE INTERIOR

### Office of Hearings and Appeals

#### 43 CFR Part 4

**RIN 1090-AA82**

#### Special Rules Applicable to Surface Coal Mining Hearings and Appeals

**AGENCY:** Office of Hearings and Appeals, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Office of Hearings and Appeals is publishing final rules to update addresses and telephone numbers and to conform cross-references and language in existing rules with rules of the Office of Surface Mining Reclamation and Enforcement.

**DATES:** Effective Date: October 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203. Phone 703-235-3750.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The rules governing procedures for hearings and appeals under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201-1328 (2000), that appear in Title 43, Part 4, Subpart L, of the Code of Federal Regulations (CFR) have been adopted by the Office of Hearings and Appeals (OHA) at various times since that statute was enacted. Over the years some of the addresses, phone numbers, cross references, and language of those rules have become out of date. For example, the Office of Surface Mining Reclamation and Enforcement (OSM) adopted final rules in December 2000, 65 FR 79582 (Dec. 19, 2000) in Title 30 CFR. The result is that the language and section numbers in OHA's existing rules in 43 CFR part 4, subpart L, that refer to OSM's rules do not correspond to the language and section numbers in OSM's recent rules. The final rules OHA adopts

today are intended only to make technical amendments to the rules in Subpart L so that they will conform to the rules in 30 CFR and otherwise be up to date.

#### Definitions

Some rules in 43 CFR, Part 4, Subpart L, use the abbreviation "OSM" for the Office of Surface Mining Reclamation and Enforcement and some rules use "OSMRE." As OSM's definition in 30 CFR 700.5 makes clear, the two abbreviations have the same meaning. The definition in 43 CFR 4.1100(e) is revised to correspond to OSM's definition.

#### Jurisdiction of the Board

The cross reference in 43 CFR 4.1101(a) to the jurisdiction of the Board, "as set forth in 43 CFR 4.1(4)," is out of date. In 1982, the Interior Board of Surface Mining and Reclamation Appeals (IBSMA) was abolished and jurisdiction over appeals under SMCRA was transferred to the Interior Board of Land Appeals (IBLA). See 49 FR 7564-7565 (March 1, 1984); 48 FR 22370 (May 18, 1983). IBLA's jurisdiction is now set forth in 4.1(b)(3), so 4.1101(a) is amended to read "as set forth in 43 CFR 4.1(b)(3)."

In addition, the reference in 4.1101(a) to 43 CFR 4.21(c) is out of date. When 4.1101 was adopted in 1978, 4.21(c) dealt with requests for reconsideration. 43 CFR 4.21 was amended in 1993, however, and 4.21(c) became 4.21(d). 58 FR 4939, 4941 (Jan. 19, 1993). The reference in 4.1101(a) is revised to conform to the 1993 amendment of 4.21.

Several rules have been added to Subpart L since that subpart was originally promulgated in August 1978, i.e., sections 4.1350-4.1356, 4.1360-4.1369, 4.1370-4.1377, 4.1380-4.1387, and 4.1390-4.1394. Some subjects covered in the rules that have been added are not specifically included in the list of subjects under the Board's jurisdiction in 4.1101(a)(1)-(7). The subjects not included by the rules that have been added to Subpart L are therefore added to the list in 4.1101(a) as (8)-(11) and previous sections (8) and (9) are renumbered (12) and (13).

#### Service

Some of the jurisdictions, addresses, and telephone numbers of the offices of the Office of the Solicitor that are to receive service of a document under 43 CFR 4.1109(a)(1) and (a)(3) have changed. 4.1109(a)(2) is amended to reflect these changes.

### *Suspension or Revocation of Permits Under Section 521(a)(4) of the Act*

The rules in 4.1190–4.1196 of Subpart L, adopted in 1978, provide procedures to review an OSM order to show cause why a permit should not be suspended or revoked under the rule adopted by OSM in December 1977 for the initial regulatory program. See 30 CFR 722.16. The rules in Subpart L have not been revised since OSM adopted its permanent regulatory program rule governing such proceedings in 1979. 30 CFR 843.13. OSM revised that rule in 1982. The rules in 4.1190–4.1196 are revised to adjust the timing of the filing of an OSM Director's order with OHA (4.1190(a)); to delete references to the initial regulatory program rule (4.1192 and 4.1194); to add a requirement for notice of a hearing contained in 30 CFR 843.13(b) (new 4.1193); and to redesignate former 4.1193, 4.1194, 4.1195, and 4.1196 as 4.1194, 4.1195, 4.1196, and 4.1197.

### *Applications for Review of Alleged Discriminatory Acts Under Section 703 of the Act*

It is 30 CFR Part 865 rather than Part 830 that contains the OSM regulations governing review of alleged discriminatory actions. Therefore, the references in 4.1200 and 4.1204 to the regulations in 30 CFR are amended.

### *Determination on an Application Concerning an Order of Cessation*

The telephone numbers of the OSM field offices that are to receive telephone notice of an application for review under 4.1266(b)(2), and the states served by those field offices, are updated.

### *Appeals to the Board From Decisions or Orders of Administrative Law Judges*

Since Subpart L was adopted in 1978, OSM has added Part 845 to 30 CFR. 43 CFR 4.1270(f) is therefore amended to refer to this part as well as part 723.

43 CFR 4.1276(a), which provides that a party may move for reconsideration of a Board decision, refers to 43 CFR 4.21(c). When 4.21 was amended in 1993, paragraph (c) was redesignated paragraph (d). 58 FR 4939, 4941 (Jan. 19, 1993). 4.1276(a) is therefore amended to refer to subsection (d).

### *Request for Hearing on a Preliminary Finding Concerning a Demonstrated Pattern of Willful Violations Under Section 510(c) of the Act*

In December 2000, OSM adopted 30 CFR 774.11, "Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information." That regulation requires OSM to serve a

"preliminary finding of permanent permit ineligibility" under section 510(c) of the Act if an applicant or operator controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations and the violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, its implementing regulations, the regulatory program, or a permit. In making such a finding OSM will only consider control relationships and violations that would make or would have made the applicant or operator ineligible for a permit under 30 CFR 773.12(a) and (b). 30 CFR 774.11(c), 65 FR 79582, 79667 (Dec. 19, 2000). An applicant or operator may request a hearing on a preliminary finding of permanent permit ineligibility under 43 CFR 4.1350 through 4.1356. 30 CFR 774.11(d).

The OHA rules referred to in 30 CFR 774.11(d) that provide procedures for review of a preliminary finding under section 510(c) of the Act, 4.1350–4.1356, were adopted in 1987 and 1991 and their language does not conform to the language adopted in OSM's more recent rules. OHA's rules in 4.1350, 4.1351, 4.1352, and 4.1355 are therefore amended to do so.

### *Review of an OSM Notice That an Applicant Is Ineligible for a Permit*

The rules OSM adopted in December 2000 provide that OSM is to provide written notice of its decision that an applicant is ineligible for a permit under section 510(c) of the Act. The notice is to tell the applicant of its appeal rights under 30 CFR Part 775 and 43 CFR 4.1360 through 4.1369. 30 CFR 773.12(e), 65 FR 79582, 79664 (Dec. 19, 2000).

OHA's regulations in 43 CFR 4.1360–4.1369 set forth the procedures for administrative review of OSM decisions concerning permits. 4.1360, however, does not list review of an OSM decision under 30 CFR 773.12 that an applicant is ineligible for a permit. A new subsection (e) is therefore added to 4.1360 to include such a decision.

### *Review of OSM Decisions Proposing To Suspend or Rescind or Suspending or Rescinding Improvidently Issued Permits*

When OSM published its regulations in December 2000, it revised 30 CFR 773.21–773.23 concerning improvidently-issued permits. See 65 FR 79582, 79665–79666 (Dec. 19, 2000). In doing so, OSM changed the subsections under which it would issue

notices of proposed suspension or rescission and notices of suspension or rescission. Therefore, the cross references in 43 CFR 4.1370–4.1372 to OSM's regulations need to be changed to reflect the correct subsections, and 43 CFR 4.1372(a)(1), 4.1374(a) and 4.1376(a) are amended to refer to both types of notices.

### *Review of OSM Decisions Concerning Ownership or Control*

In its December 2000 regulations, OSM eliminated 30 CFR 773.24, revised 30 CFR 773.25, and added 773.26–773.28 concerning challenges to an OSM "ownership or control listing or finding." See 65 FR 79582, 79666–79667 (Dec. 19, 2000). Any person who receives a written decision from OSM in response to a challenge to a listing or finding of ownership or control "and who wishes to appeal that decision, must exhaust administrative remedies under the procedures at 43 CFR 4.1380 through 4.1387 or, when a State is the regulatory authority, the State regulatory program counterparts, before seeking judicial review." 30 CFR 773.28(e).

These changes in OSM's rules require conforming changes in OHA's rules that provide procedures for review of such OSM decisions. 43 CFR 4.1380 and 4.1381(a) are amended accordingly.

### *Review of OSM Determinations Under 30 CFR Part 761*

On December 17, 1999, OSM adopted rules redefining when a person has valid existing rights (VER) to conduct surface coal mining operations on lands listed in section 522(e) of the Act, 30 U.S.C. 1272(e); establishing procedures for submitting requests for VER determinations; modifying the exception from the statutory limitations and prohibitions for existing operations; and revising the procedures for compatibility findings for surface coal mining operations on federal lands in national forests. 64 FR 70766 (Dec. 17, 1999).

OHA's rules for obtaining review of OSM determinations under section 522(e) were adopted in 1987 and 1991. The existing 43 CFR 4.1390 states that those rules "set forth procedures for obtaining review pursuant to 30 CFR 761.12(h) of a determination by OSM that a person holds or does not hold a valid existing right."

The preamble to OSM's December 1999 rules explained that 30 CFR 761.12 was reorganized and recodified. Former 761.12(h) is now 761.16(f). 64 FR 70766, 70804 col. 2 (Dec. 17, 1999). 761.16(f) provides for administrative review of an OSM determination that a person does or does not have valid existing rights.

This rule therefore amends 4.1390 to change the reference from 30 CFR 761.12 to 761.16.

Existing § 4.1390 also states that OHA's rules provide procedures for review of OSM determinations "that surface coal mining operations did or did not exist on the date of enactment of the Act, on lands where operations are prohibited or limited by section 522(e) of the Act."

In December 1999, OSM explained that it removed "the portion of former 30 CFR 761.12(h) that provided for administrative appeals of existing operation determinations":

The exception for existing operations in 30 CFR 761.12 does not require any affirmative action or decision on the part of either the permittee or the regulatory authority. As explained in Part XVI of this preamble, the exception for existing operations merely allows an already permitted operation to continue operating within the permit boundaries in existence at the time that the land comes under the protection of section 522(e) and 30 CFR 761.11. Hence, there is no action or decision to appeal.

64 FR 70766, 70804, col. 2 (Dec. 17, 1999). OSM's explanation in Part XVI states:

[W]hen lands covered by an approved permanent program permit come under the protection of 30 CFR 761.11 and section 522(e) after permit issuance, the permittee has the right to continue to operate on those lands under the exception for existing operations unless the regulatory authority orders the permittee to revise the permit to remove those lands from the permit area in accordance with the procedures and criteria of 30 CFR 774.13. A person who believes that a permit has been improperly issued because a protected feature came into existence before rather than after permit issuance has the option of either filing a timely challenge to approval of the permit application or submitting a complaint to the regulatory authority in accordance with the State program counterpart to 30 CFR 842.12 or to us under 30 CFR 842.12. If the permit is ultimately found to be defective, the regulatory authority must require that the permittee revise the permit in accordance with 30 CFR 774.13.

64 FR 70766, 70803 col. 1 (Dec. 17, 1999). This rule therefore amends 4.1390 to remove the reference to existing operation determinations.

Finally, existing § 4.1390 states that the rules set forth the procedures "for obtaining review pursuant to 30 CFR 761.12(h) of a determination by OSM \* \* \* that surface coal mining operations may be permitted within the boundaries of a national forest in accordance with section 522(e)(2)." This statement was adopted in error. The former 30 CFR 761.12(h) did not refer to such determinations. Under section 522(e)(2), it is the Secretary, not OSM,

who makes a finding "that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations and \* \* \*." See 30 CFR 761.11(b), 761.13. OSM's December 1999 rules make clear that this authority is reserved by the Secretary. 30 CFR 740.4(a)(5), 745.13(p). The IBLA is delegated authority to decide appeals from decisions on behalf of the Secretary; it does not have authority to review decisions made by the Secretary. See *Alamo Ranch Co., Inc.*, 135 IBLA 61, 67-68 (1996). This rule therefore amends 4.1390 to remove the reference to compatibility determinations under 30 CFR 761.11(b), 761.13.

Section 4.1391(a) is revised to reflect the amendments to 4.1390.

A VER determination may either be made independently or in conjunction with a decision on an application for a permit or a permit boundary revision. 30 CFR 716.16(b). It would not be made in connection with an application for a permit renewal or for the transfer, assignment, or sale of permit rights, nor does section 522(e) apply to coal exploration. 64 FR 70766, 70819 (Dec. 17, 1999). Therefore, 4.1391(b)(1) and (2) are revised to delete references to those applications.

Because one need not be a permit applicant to request a VER determination, 4.1394(a) is revised to refer to "a person who requested the determination." 4.1394(b) is revised to reflect the scope of 4.1390, as amended.

## II. Procedural Requirements

### A. Review Under Procedural Statutes and Executive Orders

#### 1. Regulatory Planning and Review (E.O. 12688)

In accordance with the criteria in Executive Order 12866, this document is not a significant rule. The Office of Management and Budget has not reviewed this rule under Executive Order 12866.

a. This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, competition, jobs, the environment, public health or safety, or other units of government. A cost-benefit and economic analysis is not required. These amended rules will have virtually no effect on the economy because they are simply providing updated addresses and phone numbers and correcting references to and quotations from other regulations.

b. This rule will not create inconsistencies with or interfere with other agencies' actions. These rules will conform the rules in 43 CFR part 4,

subpart L, with current information about other agencies, thereby making the rules consistent rather than inconsistent with actions that have been taken by other agencies.

c. This rule does not alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. These rules have to do only with the procedures for hearings and appeals of OSM decisions, not with entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients, and they make no substantive changes in the procedures.

d. This rule does not raise novel legal or policy issues. Because these rules only make technical, conforming changes to details such as addresses and phone numbers applicable to procedures for hearings and appeals, they raise no policy or legal issues, novel or otherwise.

#### 2. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The changes in addresses, phone numbers, citations to and quotations from other rules will have no effect on small entities. A Small Entity Compliance Guide is not required.

#### 3. 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.

a. This rule does not have an annual effect on the economy of \$100 million or more. The changes in phone numbers, addresses, citations, etc., made by these rules should have no effect on the economy.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Updating and correcting the information in the existing rules in 43 CFR part 4, subpart L, will save citizens, individual industries, and government agencies resources that would have been wasted utilizing the outdated information, e.g., phone numbers and addresses.

c. This rule 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. The housekeeping changes in these rules will have no effects, adverse or beneficial, on

competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### 4. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Small governments rarely request hearings or appeals under the Surface Mining Act, and these rules would neither uniquely nor significantly affect them because these rules only bring existing rules up to date by correcting addresses, phone numbers, etc. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*, is not required.

b. This rule does not produce an unfunded Federal mandate of \$100 million or more on State, local, or tribal governments or the private sector in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

#### 5. Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. These amendments to procedural rules have no effect on property rights.

#### 6. Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The only potential effect on states would be that "primacy" states, *i.e.*, those approximately two dozen states with approved state programs under the Surface Mining Act, may have to amend some of their procedural regulations to correspond to the changes made in these rules, and those amendments would not be significant. A Federalism Assessment is not required.

#### 7. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order. These rules, because they bring up to date rules about jurisdiction, agency addresses and phone numbers, and the language and citation of rules, will relieve, not burden, both administrative and judicial tribunals.

#### 8. Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties, and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I has not been prepared and has not been approved by the Office of Policy Analysis. These rules provide the public with updated information concerning hearings and appeals under the Surface Mining Act; they do not require the public to provide information.

#### 9. National Environmental Policy Act

The Department has analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact assessment or environmental impact statement under NEPA is not required. Because of the strictly organizational and procedural contents of this rule, it is categorically excluded from NEPA review under 516 DM.

#### 10. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, the Department of the Interior has evaluated potential effects of these rules on Federally recognized Indian tribes and has determined that there are no potential effects. These rules do not affect Indian trust resources; they provide updated information about procedures for hearings and appeals of decisions of the Office of Surface Mining under the Surface Mining Act.

#### 11. Effects on the Nation's Energy Supply

In accordance with Executive Order 13211, this regulation does not have a significant effect on the nation's energy supply, distribution, or use. The changes of address, telephone numbers, and cross-references to other regulations are simply updating of information and will not affect energy supply or consumption.

#### B. Determination of Good Cause for Immediate Effect

The Department has determined that this rule should be effective immediately because it updates the Code of Federal Regulations to include accurate information. Delaying the effective date by 30 days as required by

5 U.S.C. 553(d) would mean that parties to appeals would not have correct information, resulting in delays and inconvenience. A delayed effective date would also mean that the revisions in this rule would not appear in the soon-to-be published annual revision of title 43 of the Code of Federal Regulations. This would mean that for the next year anyone consulting title 43 Part 4 Subpart L would receive inaccurate information about filing appeals. For these reasons, good cause exists for making this rule effective immediately upon publication under 5 U.S.C. 553(d)(3).

#### C. Determination To Issue Final Rule Without Notice and Comment

The Department has determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply to this rulemaking because the changes made relate solely to matters of agency organization, procedure, and practice. These rules are procedural, not substantive, and they only change addresses, phone numbers, cross references to other rules, and language to conform to language in other rules. They therefore satisfy the exemption from notice and comment rulemaking in 5 U.S.C. 553(b)(A).

#### List of Subjects in 43 CFR Part 4

Administrative practice and procedure; Mines; Public lands; Surface mining.

Dated: September 19, 2002.

**P. Lynn Scarlett,**

*Assistant Secretary—Policy, Management and Budget.*

For the reasons set forth in the preamble, the Office of Hearings and Appeals amends 43 CFR part 4, subpart L, as follows:

#### PART 4—[AMENDED]

#### Subpart L—Special Rules Applicable to Surface Coal Mining Hearings and Appeals

1. The authority for 43 CFR Part 4 Subpart L continues to read as follows:

**Authority:** 30 U.S.C. 1256, 1260, 1261, 1264, 1268, 1271, 1272, 1275, 1293; 5 U.S.C. 301.

2. In § 4.1100, revise paragraph (e) to read as follows:

#### § 4.1100 Definitions.

\* \* \* \* \*

(e) *OSM* and *OSMRE* mean the Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

3. In § 4.1101, revise paragraph (a) introductory text, redesignate

paragraphs (a)(8) and (a)(9) as paragraphs (a)(12) and (a)(13), and add paragraphs (a)(8) through (a)(11) to read as follows:

**§ 4.1101 Jurisdiction of the Board.**

(a) The jurisdiction of the Board, as set forth in § 4.1(b)(3), and subject to §§ 4.21(d) and 4.5, includes the authority to exercise the final decisionmaking power of the Secretary under the act pertaining to—

\* \* \* \* \*

(8) Preliminary findings concerning a demonstrated pattern of willful violations under section 510(c) of the act;

(9) Suspension or rescission of improvidently-issued permits;

(10) Challenges to ownership or control listings or findings;

(11) Determinations under 30 CFR part 761;

(12) Appeals from orders or decisions of administrative law judges; and

(13) All other appeals and review proceedings under the act which are permitted by these regulations.

\* \* \* \* \*

4. In § 4.1109, revise paragraph (a)(2) to read as follows:

**§ 4.1109 Service.**

(a)(1) \* \* \*

(2) The jurisdictions, addresses, and telephone numbers of the applicable officers of the Office of the Solicitor to be served under paragraph (a)(1) of this section are:

(i) For mining operations in Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, Tennessee, Texas, and Virginia: Field Solicitor, U.S. Department of the Interior, 530 S. Gay Street, Room 308, Knoxville, Tennessee 37902; Telephone: (865) 545-4294; FAX: (865) 545-4314.

(ii) For mining operations in Maryland, Massachusetts, Michigan, Ohio, Pennsylvania, Rhode Island, and West Virginia: Field Solicitor, U.S. Department of the Interior, Three Parkway Center, Suite 385, Pittsburgh, Pennsylvania 15220; Telephone: (412) 937-4000; FAX: (412) 937-4003.

(iii) For mining operations in Alaska, Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, including mining operations located on Indian lands within those states: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215; Telephone: (303) 231-5353; FAX: (303) 231-5363 or 231-5360.

(iv) For mining operations in Arizona, California, and New Mexico, including mining operations located on Indian lands within those states except for the challenge of permitting decisions affecting mining operations located on Indian lands in those states: Regional Solicitor, Southwest Region, U.S. Department of the Interior, 505 Marquette Avenue, NW., Suite 1800, Albuquerque, NM 87102; Telephone: (505) 248-5600; FAX: (505) 248-5623.

(v) For the challenge of permitting decisions affecting mining operations located on Indian lands within Arizona, California, and New Mexico: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215; Telephone: (303) 231-5353; FAX: (303) 231-5363 or 231-5360.

\* \* \* \* \*

5. In § 4.1190, revise paragraph (a) to read as follows:

**§ 4.1190 Initiation of proceedings.**

(a) A proceeding on a show cause order issued by the Director of OSM pursuant to section 521(a)(4) of the Act shall be initiated by the Director of OSM filing a copy of such an order with the Hearings Division, OHA, 801 N. Quincy Street, Suite 300, Arlington, VA 22203, promptly after the order is issued to the permittee.

\* \* \* \* \*

6. In § 4.1192, revise paragraph (a) to read as follows:

**§ 4.1192 Contents of answer.**

The permittee's answer to a show cause order shall contain a statement setting forth—

(a) The reasons in detail why a pattern of violations does not exist or has not existed, including all reasons for contesting—

\* \* \* \* \*

**§§ 4.1193–4.1196 [Redesignated]**

7. Redesignate §§ 4.1193 through 4.1196 as §§ 4.1194 through 4.1197, respectively.

8. Add a new § 4.1193 to read as follows:

**§ 4.1193 Notice of hearing.**

If a hearing on the show cause order is requested, or if no hearing is requested but the administrative law judge determines that a hearing is necessary, the administrative law judge shall give thirty days written notice of the date, time, and place of the hearing to the Director, the permittee, the State regulatory authority, if any, and any intervenor.

9. In newly redesignated § 4.1195, revise paragraph (a) to read as follows:

**§ 4.1195 Determination by the administrative law judge.**

(a) Upon a determination by the administrative law judge that a pattern of violations exists or has existed, the administrative law judge shall order the permit either suspended or revoked. In making such a determination, the administrative law judge need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern.

\* \* \* \* \*

10. In § 4.1200, revise paragraphs (a), (b)(2), (b)(3), and (b)(4) to read as follows:

**§ 4.1200 Filing of the application for review with the Office of Hearings and Appeals.**

(a) Pursuant to 30 CFR 865.13, within 7 days of receipt of an application for review of alleged discriminatory acts, OSM shall file a copy of the application in the Hearings Division, OHA, 801 N. Quincy Street, Suite 300, Arlington, VA 22203. OSM shall also file in the Hearings Division, OHA, Arlington, VA, a copy of any answer submitted in response to the application for review.

(b) \* \* \*

(1) \* \* \*

(2) A request is made by OSM for the scheduling of a hearing pursuant to 30 CFR 865.14(a);

(3) A request is made by the applicant for the scheduling of a hearing pursuant to 30 CFR 865.14(a);

(4) A request is made by the applicant for the scheduling of a hearing pursuant to 30 CFR 865.14(b);

\* \* \* \* \*

11. In § 4.1204, revise the introductory text to read as follows:

**§ 4.1204 Determination by administrative law judge.**

Upon a finding of a violation of section 703 of the act or 30 CFR 865.11, the administrative law judge shall order the appropriate affirmative relief, including but not limited to—

\* \* \* \* \*

12. In § 4.1266, revise the section heading and paragraph (b)(2) to read as follows:

**§ 4.1266 Determination on application concerning an order of cessation.**

\* \* \* \* \*

(b) \* \* \*

(2) The application shall include an affidavit stating that telephone notice has been given to the field office of OSM serving the state in which the minesite subject to the order is located. The telephone notice shall identify the mine, the mine operator, the date and number of the order from which relief is

requested, the name of the OSM inspector involved, and the name and telephone number of the applicant. OSM's field offices and their numbers follow:

Albuquerque Field Office (serving Arizona, California, and New Mexico) (505) 248-5070.  
 Big Stone Gap Field Office (serving Virginia) (276) 523-4303.  
 Birmingham Field Office (serving Alabama and Mississippi) (205) 290-7282 (ext. 16).  
 Casper Field Office (serving Idaho, Montana, North Dakota, South Dakota, and Wyoming) (307) 261-6550.  
 Charleston Field Office (serving West Virginia) (304) 347-7158.  
 Columbus Team Office (serving Maryland, Michigan, and Ohio) (412) 937-2153.  
 Harrisburg Field Office (serving Massachusetts, Pennsylvania, and Rhode Island) (717) 782-4036.  
 Knoxville Field Office (serving Georgia, Tennessee, and North Carolina) (865) 545-4103 (ext. 186).  
 Lexington Field Office (serving Kentucky) (859) 260-8402.  
 Mid-Continent Regional Coordinating Center (serving Iowa, Kansas, and Missouri) (618) 463-6460.  
 Olympia Office (serving Washington) (360) 753-9538.  
 Tulsa Field Office (serving Arkansas, Louisiana, Oklahoma, and Texas) (918) 581-6431 (ext. 23).  
 Western Regional Coordinating Center (serving Alaska, Colorado, Oregon, and Utah) (303) 844-1400 (ext. 1424).

\* \* \* \* \*

13. In § 4.1270, revise paragraph (f) to read as follows:

**§ 4.1270 Petition for discretionary review of a proposed civil penalty.**

\* \* \* \* \*

(f) If the petition is granted, the rules in §§ 4.1273 through 4.1277 are applicable and the Board shall use the point system and conversion table contained in 30 CFR part 723 or 845 in recalculating assessments; however, the Board shall have the same authority to waive the civil penalty formula as that granted to administrative law judges in § 4.1157(b)(1). If the petition is denied, the decision of the administrative law judge shall be final for the Department, subject to § 4.5.

14. In § 4.1276, revise paragraph (a) to read as follows:

**§ 4.1276 Reconsideration.**

(a) A party may move for reconsideration under § 4.21(d); however, the motion shall be filed with

the Board within 30 days of the date of the decision.

\* \* \* \* \*

15. Revise § 4.1350 to read as follows:

**§ 4.1350 Scope.**

These rules set forth the procedures for obtaining review of a preliminary finding by OSM under section 510(c) of the Act and 30 CFR 774.11(c) of an applicant's or operator's permanent permit ineligibility.

16. Revise § 4.1351 to read as follows:

**§ 4.1351 Preliminary finding by OSM.**

(a) If OSM determines that an applicant or operator controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations and the violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, its implementing regulations, the regulatory program, or the permit, OSM must serve a preliminary finding of permanent permit ineligibility on the applicant or operator.

(b) OSM must serve the preliminary finding by certified mail, or by overnight delivery service if the applicant or operator has agreed to bear the expense for this service. The preliminary finding must specifically state the violations upon which it is based.

17. Revise § 4.1352 to read as follows:

**§ 4.1352 Who may file; where to file; when to file.**

(a) The applicant or operator may file a request for hearing on OSM's preliminary finding of permanent permit ineligibility.

(b) The request for hearing must be filed with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203 (telephone 703-235-3800), within 30 days of receipt of the preliminary finding by the applicant or operator.

(c) Failure to file a timely request constitutes a waiver of the opportunity for a hearing before OSM makes its final finding concerning permanent permit ineligibility. Any untimely request will be denied.

18. Revise § 4.1355 to read as follows:

**§ 4.1355 Burden of proof.**

OSM shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the existence of a demonstrated pattern of willful violations of such

nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, its implementing regulations, the regulatory program, or the permit.

19. In § 4.1360, in paragraph (c), remove the word "and", revise paragraph (d), and add a new paragraph (e) to read as follows:

**§ 4.1360 Scope.**

\* \* \* \* \*

(d) Applications for coal exploration permits; and

(e) Ineligibility for a permit under section 510(c) of the Act and 30 CFR 773.12.

20. Revise the heading for 43 CFR 4.1370-4.1377 to read:

**Review of OSM Decisions Proposing To Suspend or Rescind or Suspending or Rescinding Improvidently Issued Permits**

21. Revise § 4.1370 to read as follows:

**§ 4.1370 Scope.**

Sections 4.1370 through 4.1377 govern the procedures for review of a written notice of proposed suspension or rescission of an improvidently issued permit issued by OSM under 30 CFR 773.22 and of a written notice of suspension or rescission of an improvidently issued permit issued by OSM under 30 CFR 773.23.

22. In § 4.1371, revise paragraph (a) to read as follows:

**§ 4.1371 Who may file, where to file, when to file.**

(a) A permittee that is served with a notice of proposed suspension or rescission under 30 CFR 773.22 or a notice of suspension or rescission under 30 CFR 773.23 may file a request for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203 (telephone 703-235-3800) within 30 days of service of the notice.

\* \* \* \* \*

23. In § 4.1372, revise paragraphs (a)(1) and (a)(2) to read as follows:

**§ 4.1372 Contents of request for review, response to request, amendment of request.**

(a) \* \* \*

(1) A copy of the notice of proposed suspension or rescission or the notice of suspension or rescission;

(2) Documentary proof, or, where appropriate, offers of proof, concerning the matters in 30 CFR 773.21(a) and (b) or 30 CFR 773.14(c) for a notice of proposed suspension or rescission, or 30

CFR 773.23(a)(1) through (a)(6) for a notice of suspension or rescission, showing that the person requesting review is entitled to administrative relief;

\* \* \* \* \*

24. In § 4.1374, revise paragraph (a) to read as follows:

**§ 4.1374 Burdens of proof.**

(a) OSM shall have the burden of going forward to present a prima facie case of the validity of the notice of proposed suspension or rescission or the notice of suspension or rescission.

\* \* \* \* \*

25. In § 4.1376, revise the section heading and paragraph (a) to read as follows:

**§ 4.1376 Petition for temporary relief from notice of proposed suspension or rescission; appeals from decisions granting or denying temporary relief.**

(a) Any party may file a petition for temporary relief from the notice of proposed suspension or rescission or the notice of suspension or rescission in conjunction with the filing of the request for review or at any time before an initial decision is issued by the administrative law judge.

\* \* \* \* \*

26. Revise the heading for 43 CFR 4.1380–4.1387 to read as follows:

**Review of Office of Surface Mining Written Decisions Concerning Ownership or Control Challenges**

27. Revise § 4.1380 to read as follows:

**§ 4.1380 Scope.**

Sections 4.1380 through 4.1387 govern the procedures for review of a written decision issued by OSM under 30 CFR 773.28 on a challenge to a listing or finding of ownership or control.

28. In § 4.1381, revise paragraph (a) to read as follows:

**§ 4.1381 Who may file; when to file; where to file.**

(a) Any person who receives a written decision issued by OSM under 30 CFR 773.28 on a challenge to an ownership or control listing or finding may file a request for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203 (telephone 703–235–3800) within 30 days of service of the decision.

\* \* \* \* \*

29. Revise § 4.1390 to read as follows:

**§ 4.1390 Scope.**

Sections 4.1391 through 4.1394 set forth the procedures for obtaining

review of an OSM determination under 30 CFR 761.16 that a person does or does not have valid existing rights.

30. In § 4.1391, revise paragraphs (a) and (b) to read as follows:

**§ 4.1391 Who may file; where to file; when to file; filing of administrative record.**

(a) The person who requested a determination under 30 CFR 761.16 or any person with an interest that is or may be adversely affected by a determination that a person does or does not have valid existing rights may file a request for review of the determination with the office of the OSM official whose determination is being reviewed and at the same time shall send a copy of the request to the Interior Board of Land Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, VA 22203 (telephone 703–235–3750). OSM shall file the complete administrative record of the determination under review with the Board as soon as practicable.

(b) OSM must provide notice of the valid existing rights determination to the person who requested that determination by certified mail, or by overnight delivery service if the person has agreed to bear the expense of this service.

(1) When the determination is made independently of a decision on an application for a permit or for a permit boundary revision, a request for review shall be filed within 30 days of receipt of the determination by a person who has received a copy of it by certified mail or overnight delivery service. The request for review shall be filed within 30 days of the date of publication of the determination in a newspaper of general circulation or in the **Federal Register**, whichever is later, by any person who has not received a copy of it by certified mail or overnight delivery service.

(2) When the determination is made in conjunction with a decision on an application for a permit or for a permit boundary revision, the request for review must be filed in accordance with § 4.1362.

\* \* \* \* \*

31. Revise § 4.1394 to read as follows:

**§ 4.1394 Burden of proof.**

(a) If the person who requested the determination is seeking review, OSM shall have the burden of going forward to establish a prima facie case and the person who requested the determination shall have the ultimate burden of persuasion.

(b) If any other person is seeking review, that person shall have the burden of going forward to establish a

prima facie case and the ultimate burden of persuasion that the person who requested the determination does or does not have valid existing rights.

[FR Doc. 02–24417 Filed 9–30–02; 8:45 am]

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**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**44 CFR Parts 201 and 206**

**RIN 3067–AD22**

**Hazard Mitigation Planning and Hazard Mitigation Grant Program**

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Interim final rule.

**SUMMARY:** This rule extends the date by which State and local governments must develop mitigation plans as a condition of grant assistance in compliance with 44 CFR Part 201. The regulations in Part 201 outline the requirements for State and local mitigation plans, which must be completed by November 1, 2003 in order to continue to receive FEMA grant assistance. This interim final rule extends that date to November 1, 2004.

**DATES:** *Effective Date:* October 1, 2002.

*Comment Date:* We will accept written comments through December 2, 2002.

**ADDRESSES:** Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (e-mail) [rules@fema.gov](mailto:rules@fema.gov).

**FOR FURTHER INFORMATION CONTACT:** Terry Baker, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC, 20472, 202–646–4648, (facsimile) 202–646–3104, or (e-mail) [terry.baker@fema.gov](mailto:terry.baker@fema.gov).

**SUPPLEMENTARY INFORMATION:**

**Introduction**

Throughout the preamble and the rule the terms “we”, “our” and “us” refer to FEMA.

On February 26, 2002, FEMA published an interim final rule implementing Section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act or the Act), 42 U.S.C. 5165, enacted under § 104 of the Disaster Mitigation Act of 2000, (DMA 2000) Pub. L. 106–390. This identified the requirements for State and local mitigation plans necessary for FEMA assistance. The critical portion of the current interim