imposing specific written loan underwriting criteria; and

(B) Requires the CDE to purchase the loan within 30 days after the date the loan is made.

(ii) Example. The application of paragraph (d)(8)(i) of this section is illustrated by the following example:

Example. (i) X is a partnership and a CDE that has received a new markets tax credit allocation from the Secretary. On October 1, 2004, Y enters into a legally enforceable written agreement with W. Y and W are corporations but only Y is a CDE. The agreement between Y and W provides that Y will purchase loans (or portions thereof) from W within 30 days after the date the loan is made by W, and that Y will approve the making of the loans.

(ii) On November 1, 2004, W makes a $825,000 loan to Z pursuant to the agreement between Y and W. Z is a qualified active low-income community business under paragraph (d)(4) of this section. On November 15, 2004, Y purchases the loan from W for $840,000. On December 31, 2004, X purchases the loan from Y for $850,000.

(iii) Under paragraph (d)(8)(i) of this section, the loan to Z is treated as made by Y. Y’s loan to Z is a qualified low-income community investment under paragraph (d)(1)(i) of this section. Accordingly, under paragraph (d)(1)(i)(A) of this section, Y’s purchase of the loan from Y is a qualified low-income community investment in the amount of $850,000.

Supplementary Information:

I. Background on the Maryland 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 State 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 conditionally approved the Maryland program on December 1, 1980. You can find background information on the Maryland program, including the Secretary’s findings, the disposition of comments, and conditions of approval in the December 1, 1980, Federal Register (45 FR 79430). You can also find later actions concerning Maryland’s program and program amendments at 30 CFR 920.12, 920.15 and 920.16.

II. Submission of the Proposed Amendment
By letter dated September 16, 2003, Maryland sent us a proposed amendment to its program (Administrative Record No. MD–585–00) under SMCRA (30 U.S.C. 1201 et seq.). Maryland sent the amendment to include changes made at its own initiative. The provisions of COMAR that Maryland proposes to revise are as follows: COMAR, 26.20.03.07 Augering, A and B; 26.20.03.11 Lands Eligible for Remining, A, B, (1), (2), C, and D; 26.20.05.01 Required Written Findings, A, B, C, L, (1), (2), and (3); and 26.20.25.02 Topsoil Handling, D. The specific amendments to COMAR are identified below in the “OSM Findings” section.

We announced receipt of the proposed amendment in the October 27, 2003, Federal Register (68 FR 61172). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment’s adequacy. We did not hold a hearing or meeting because no one requested one. The public comment period ended on
November 21, 2003. We received comments from one citizen, the U.S. Environmental Protection Agency (EPA) and the Natural Resources Conservation Service (NRCS).

III. OSM’s Findings

The following findings are made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes. The full text of the changes can be found below and in the October 27, 2003, Federal Register (68 FR 61172).

26.20.03.07 Augering

Maryland proposes to revise this section by recoding section A and adding section B to read as follows: “No permit shall be issued for any augering operations unless the Bureau [Bureau of Mines] finds, in writing, that the operation meets all other requirements of this subtitle and will be conducted in compliance with COMAR 26.20.24.01.”

This revision was prompted by a recommendation included in OSM’s Evaluation Year (EY) 2000 topical study entitled “Maryland Permit Findings.” Maryland’s proposed revisions to COMAR make its regulatory program no less effective than 30 CFR 785.25(c) by requiring a written finding before augering operations may be conducted. Therefore, we are approving the amendment.

26.20.03.11 Lands Eligible for Remining

Maryland proposes to add this new section consisting of the following subsections:

A. This regulation applies to any person who conducts or intends to conduct a surface coal mining operation on lands eligible for remining.

B. Any application for a permit under this regulation shall be made according to all requirements of this subtitle applicable to surface coal mining and reclamation operations. In addition, the application shall—

1. To the extent not otherwise addressed in the permit application, identify potential environmental and safety problems related to prior mining activities at the site that could be reasonably anticipated to occur; and

2. With regard to potential environmental and safety problems referred to in section B (1) of this regulation, describe the mitigative measures that will be taken to ensure that the applicable reclamation requirements of the Regulatory Program can be met.

C. The identification of the environmental and safety problems required under section B (1) of this regulation shall include visual observations at the site, a record review of past mining at the site, and environmental sampling tailored to current site conditions.

D. The requirements of the regulation shall not apply after September 30, 2004. This revision was prompted by a recommendation included in OSM’s EY 2001 topical study entitled “Maryland Remining.” Maryland’s proposed revision is substantively identical to the Federal requirements contained in 30 CFR 785.25. Therefore, we are approving the amendment.

26.20.05.01 Required Written Findings

This section is being revised to delete “A,” “may not,” and “that,” and now reads: “No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the Bureau finds, in writing, on the basis of information set forth in the application, or information otherwise available and documented in the approval under COMAR 26.20.04.11(A), the following”—

A. “Complies” is deleted and the subsection now reads: “The permit application is complete and accurate and the applicant has complied with all requirements of the regulatory program.”

B. The words “Surface coal mining and” as well as “mining and” are deleted and the subsection is revised to read: “The applicant has demonstrated that reclamation operations as required by the Regulatory Program can be feasibly accomplished under the reclamation plan contained in the application;”

C. The phrase “has been made” has been deleted and the subsection has been revised to read: “The Bureau has made an assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance and has determined that the operations proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area;”

D. K. (text unchanged)

L. The sentence, “The activities are conducted so as to reasonably maximize the use of coal, while using the best available technology currently available to maintain environmental integrity, so that the probability of re-affecting the land in the future by strip or underground mining operations is minimized” is deleted and the Subsection has been revised to read: “For permits issued under COMAR 26.20.03.11, the permit application must contain:

1. Land eligible for remining;

2. An identification of the potential environmental and safety problems related to the prior mining activities which could reasonably be anticipated to occur at the site; and

3. Mitigation plans to sufficiently address these potential environmental safety problems so that reclamation as required by the applicable requirements of the Regulatory Program can be accomplished.”

These revisions were prompted by a recommendation included in OSM’s EY 2001 topical study entitled “Maryland Remining.” In the past, Maryland’s regulatory program did not include the specific requirements for permit written findings related to remining operations that are being added by this revision. Maryland’s proposed revisions adopt language that is substantively identical to the Federal regulations at 30 CFR 773.15(a), (b), (e), and (m). Therefore, we are approving the amendment.

Maryland proposes to revise section 26.20.25.02 (Topsoil Handling) as follows:

In subsection D, the word “topsoil”, the phrase “in the amounts determined by soil tests”, the phrase “**surface soil layer so that it supports the approved post mining land use and meets the revegetation requirements,” and the sentence “All soil tests shall be performed by a qualified laboratory or person using standard methods approved by the Bureau” have been deleted. The revised subsection D, entitled “Nutrients and Soil Amendments,” now reads “Nutrients and soil amendments shall be applied to the initially redistributed material when necessary to establish the vegetative cover.”

Maryland’s proposed revisions to this section are intended to eliminate the requirement to have soil tested by a qualified laboratory prior to redistributing the topsoil during the reclamation of the operation. There is no Federal counterpart to this deleted requirement. However, the revised subsection is identical to the Federal regulations at 30 CFR 816.22(d)(4). Therefore, we are approving the amendment.
IV. Summary and Disposition of Comments

Public Comments

We received a letter dated November 25, 2003, by a citizen (Administrative Record No. MD–585–06). The individual objected to Maryland revising COMAR 26.20.25.02 by deleting the requirement for topsoil testing. As discussed in the finding above, there is no Federal counterpart to this deleted provision. OSM cannot require a State to adopt or maintain regulatory requirements that are more stringent than the Federal regulations. However, as revised, the Maryland provision is identical to the Federal regulations at 30 CFR 816.22(d)(4), and is therefore approved.

Federal Agency Comments

Under 30 CFR 732.17(h)(1)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Maryland program (Administrative Record No. MD–585–01). We received comments from the NRCS, which expressed concerns about the proposed deletion of soil testing being performed by a qualified laboratory. As discussed in the finding above, there is no Federal counterpart to this deleted provision. OSM cannot require a State to adopt or maintain regulatory requirements that are more stringent than the Federal regulations. However, as revised, the Maryland provision is identical to the Federal regulations at 30 CFR 816.22(d)(4), and is therefore approved.

NRCS also stated that, with respect to determinations of no material damage to the hydrologic balance outside the proposed permit area, it had concerns that changes were needed in the application of Hydrologic Soil Groups and development of runoff curve numbers to more accurately reflect hydrologic impacts outside the permit area. NRCS stated that these concerns were based on experiences from flood events over the last several years, coupled with results from recent studies by the Appalachian Environmental Lab in Frostburg, Maryland. In this vein, NRCS offered to provide “on-site” hydrologic soil group assessments for permit areas, until updated surveys are completed for Allegany and Garrett Counties in Maryland, to assist the State in making an assessment of the probable cumulative impacts to prevent material damage to the hydrologic balance outside the permit area. In response, and as noted above, we have found the State’s regulation that requires a written finding with respect to material damage to the hydrologic balance outside the proposed permit area to be substantively identical to the counterpart Federal regulations. While the NRCS’s concerns do not bear upon our decision to approve this amendment, we will forward these concerns to the State for consideration.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(1)(i), we requested comments on the amendment from EPA (Administrative Record No. MD–585–01).

Under 30 CFR 732.17(h)(1)(ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.). This amendment does not contain provisions that relate to air or water quality standards and, therefore, concurrence by the EPA is not required. EPA, Region III, submitted a letter dated November 6, 2003, in which it indicated that there are no apparent inconsistencies between the amendment and the Clean Water Act or other statutes under the EPA’s jurisdiction. (Administrative Record No. MD–585–04).

V. OSM’s Decision

Based on the above findings, we are approving the amendment that Maryland forwarded to us on September 16, 2003.

To implement this decision, we are amending the Federal regulations at 30 CFR part 920, which codify decisions concerning the Maryland program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that Maryland’s program demonstrate that it has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires that Maryland and Federal standards.

VI. 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 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 impact 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 government 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 that 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.

Original amendment submission date Date of final publication Citation/description
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September 16, 2003 March 11, 2004 COMAR 26.20.03.07.A, B; 26.20.03.11; 26.20.05.01, A, B, C, and L; and 26.20.25.02.D.
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SUMMARY: The Copyright Office of the Library of Congress is announcing interim regulations specifying notice and recordkeeping requirements for use of sound recordings under two statutory licenses under the Copyright Act. Electronic data format and delivery requirements for records of use as well as regulations governing prior records of use shall be announced in future Federal Register documents.

EFFECTIVE DATE: The interim notice and recordkeeping regulations shall be effective beginning April 12, 2004. Updated notices of intent to use the statutory licenses under sections 112 and 114 are due July 1, 2004.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70077, Southwest Station, Washington, DC 20024–0977. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

I. Overview

Digital audio services provide copyrighted sound recordings of music for the listening enjoyment of the users of those services. In order to provide these sound recordings, however, a digital audio service must license the copyrights to each musical work, as well as...