

#### 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 (OMB) 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, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

##### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-

recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Indiana program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Indiana program has no effect on Federally-recognized Indian tribes.

##### *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 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, 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 914**

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 17, 2004.

**Charles E. Sandberg,**

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

[FR Doc. 04–16290 Filed 7–16–04; 8:45 am]

**BILLING CODE 4310–05–P**

#### **DEPARTMENT OF THE INTERIOR**

#### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 917**

[KY–247–FOR]

#### **Kentucky Regulatory Program**

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We are announcing receipt of an amendment to the Kentucky regulatory program (the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky proposes to revise its statutes regarding easements of necessity and submitted the amendment at its own initiative.

This document gives the times and locations that the Kentucky program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., e.s.t., August 18, 2004. If requested, we will hold a public hearing on the amendment on August 13, 2004. We will accept requests to speak until 4 p.m., e.s.t., on August 3, 2004.

**ADDRESSES:** You may submit comments, identified by "KY-247-FOR/Administrative Record No. 1624" by any of the following methods:

- E-mail: [bkovacic@osmre.gov](mailto:bkovacic@osmre.gov).
- Mail/Hand Delivery: William J. Kovacic, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859) 260-8400.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**Instructions:** All submissions received must include the agency docket number "KY-247-FOR/Administrative Record No. KY-1624" for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" section in this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

**Docket:** You may review copies of the Kentucky program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at OSM's Lexington Field Office at the address listed above during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Lexington Field Office.

In addition, you may receive a copy of the amendment during regular business hours at the following location: Department for Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940.

**FOR FURTHER INFORMATION CONTACT:** William J. Kovacic, Telephone: (859) 260-8400. Internet: [bkovacic@osmre.gov](mailto:bkovacic@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Kentucky Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

**I. Background on the Kentucky 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 conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

**II. Description of the Proposed Amendment**

By letter dated May 14, 2004, Kentucky sent us an amendment to its program, ([KY-247-FOR], administrative record No. KY-1624), under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky submitted House Bill (HB) 537 promulgated by the 2004 Kentucky General Assembly. It amends the Kentucky Revised Statutes (KRS) at Section 1 of 350.280. A summary of the amended language follows.

**Subsection (1)(b)**—the following quoted language is deleted from the conditions under which an easement of necessity is recognized if a notice or order directing abatement of a violation on the basis of imminent danger to

health or safety of the public or significant imminent environmental harm: "and the violation involves an order of cessation and immediate compliance or an order to abate and alleviate in which the cabinet directs the permittee or operator to begin immediate abatement of the violation."

**Subsection(1)(b)1**—the following quoted language is added to the existing provisions to specify that an easement of necessity becomes effective and a permittee or operator is authorized to enter a property to take immediate action to abate a violation if he/she provides: "a plan of action reasonably calculated to result in abatement of the violation, repair of the damage, and restoration of the property, and provides proof of liability insurance and workers' compensation insurance covering any accidents or injuries occurring on the property during the remedial work."

**Subsection (1)(b)3**—this subsection has been revised to require, in part, that a permittee or operator "diligently pursue abatement of the violation" and obtain an appraisal completed by a real estate appraiser "certified under KRS Chapter 324A" of damages that have resulted from the violation. The original language describing the damages "as abated, and those that are likely to occur to the property when the permittee or operator enters the property in order to abate the violation" is deleted. The appraisal must be completed and provided to the property owner or legal occupant within three days of abatement of the violation.

**Subsection(1)(c)**—the following quoted language is deleted from the description of the appraisal of damages: "that will result from the violation, as abated, and those that are likely to occur to the property when the permittee or operator enters the property in order to abate the violation."

**Subsection(1)(c)1**—this subsection requires that an appraiser be certified and that the appraisal be completed and submitted to the property owner or legal occupant within three days of "abatement of the violation" (originally "entry on the property").

**Subsection(1)(c)2**—this subsection requires that the property owner or legal occupant shall accept or reject the appraisal in writing within seven days of receipt of the completed appraisal (originally three days).

**Subsection (1)(c)3**—this subsection requires that a real estate appraiser hired by the property owner of legal occupant be certified under KRS Chapter 324A and that the appraisal "be completed and provided to the permittee or operator within thirty days of receipt of the permittee's or operator's

completed appraisal." Deleted is a requirement that the appraisal include the damages, including loss of use, from the violation "as abated, and those that are likely to occur to the property if the permittee or operator is allowed to enter the property in order to abate the violation."

*Subsection (1)(c)4*—this subsection requires that if the property owner or legal owner "accepts the permittee's or operator's appraisal, the permittee or operator shall promptly pay the property owner or legal occupant the amount of damages reflected therein." The original language (now deleted) required that if the property owner or legal occupant has the appraisal done, it shall be completed and provided to the permittee or operator within seven days of receipt of the permittee's or operator's completed appraisal.

*Subsection(1)(e)*—this subsection specifies that if the property owner or legal occupant does not accept or reject the permittee's or operator's appraisal and offer of funds for damages "within the time specified in subparagraph 2 of paragraph (c) of this subsection, the appraisal and offer shall be deemed accepted." The original requirement that the operator or permittee pay the appraised damages to the circuit court within three business days of the nonacceptance, with the funds placed in an interest-bearing account until resolution, is deleted.

*Subsection (1)(f)*—this new subsection requires that "the appraiser shall calculate the damages to the property, including loss of use, that have resulted from the violation which the owner or the legal occupant shall be entitled to under this subsection as the difference between the fair market value of the property before the violation and after the abatement of the violation, plus the reasonable rental value of the property during the period of time between the effective date of the easement of necessity and the date of the abatement of the violation."

*Subsection 2*—this subsection pertains to violations other than those described in subsection (1), and requires that a real estate appraiser be certified under KRS Chapter 324. He/she will appraise damages that "likely" will result from a violation. This replaces the original language that the appraiser appraise damages that will result from the violation "as abated, and those that are likely to occur to the property if the permittee or operator is allowed to enter the property in order to abate the violation." The same language is replaced in subsection (3)(a)4.

*Subsection (3)(a)*—this subsection clarifies that the referenced appraisal

pertains to that specified in subsection (2).

*Subsection (3)(a)4*—this subsection requires that the operator or permittee pay the property owner or legal occupant an entry fee "calculated as one-half of the amount of the appraisal or the sum of five hundred dollars, whichever is greater, for the privilege to enter the property and conduct" the appraisal.

*Subsection (3)(b)*—this new subsection requires that "upon payment of the entry fee by the permittee or operator, an easement of necessity shall be recognized on behalf of the permittee or operator for limited purposes of abating the violation and the operator or permittee shall be authorized to enter the property to undertake immediate action to abate the violation, provided that the landowner has been provided a plan of action reasonably calculated to result in abatement of the violation, repair of the damage, and restoration of the property, and the permittee or operator provides proof of liability insurance and workers' compensation covering any accidents or injuries occurring on the property during the remedial work."

*Subsection (3)(c)*—this subsection states that "following the effective date of the easement of necessity to abate the violation, the procedures set forth in subsection (1)(c) through (f) of this section shall apply. The entry fee shall be deducted from any subsequent payment deemed due the property owner or legal occupant as a result of the post-abatement appraisal or appraisals. If the entry fee exceeds the amount of all appraisals, the property owner or legal occupant shall be entitled to retain the entry fee in its entirety." The original language, "when the easement takes effect, the property owner or legal occupant shall allow access for the permittee's or operator's certified real estate appraiser or other qualified appraiser to conduct the appraisal," has been deleted.

*Subsection (4)*—this subsection specifies that "nothing in this section shall affect any person's right to bring a civil suit action for damages, including punitive and compensatory damages, or other appropriate relief." The original language in subsections (4), (5), (6), (7), and (8) has been deleted. These subsections pertained to procedures for the appraisal of damages addressed in this amendment in revised subsection (1)(c).

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

### III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the program.

#### Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Lexington Field Office.

#### Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: KY-247-FOR/Administrative Record No. KY-1624" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Lexington Field Office at (859) 260-8400.

#### Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

#### Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on August 3, 2004. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an

opportunity to speak, we will not hold the hearing. To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard. If you are disabled and need a special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### *Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

#### **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 regulations.

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

This rule is exempted from review by the Office of Management and Budget (OMB) 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, to the extent allowable 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 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 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian Tribes.

##### *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*

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

##### *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 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 that 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. 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 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, geographic regions, or Federal, State or local governmental agencies; 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 a cost of \$100 million or more in any given year on any governmental entity or the private sector.

### List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 3, 2004.

**George J. Rieger,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 04-16286 Filed 7-16-04; 8:45 am]

BILLING CODE 4310-05-P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 920

[MD-054-FOR]

#### Maryland Regulatory Program

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendments.

**SUMMARY:** We are announcing receipt of a proposed amendment to the Maryland regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the Code of Maryland Regulations (COMAR) concerning valid existing rights. The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations.

**DATES:** We will accept written comments on this amendment until 4 p.m. (local time), on August 18, 2004. If requested, we will hold a public hearing on the amendment on August 13, 2004. We will accept requests to speak at a hearing until 4 p.m. (local time), on August 3, 2004.

**ADDRESSES:** You should mail or hand-deliver written comments and requests to speak at the hearing to Mr. George Rieger at the address listed below.

You may review copies of the Maryland program, this amendment, a listing of any scheduled public hearings, 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 the Appalachian Regional Coordinating Center.

Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937-2153. E-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov).

Mr. C. Edmon Larrimore, Program Manager, Mining Program, 1800 Washington Boulevard, Baltimore, Maryland 21230, Telephone: (410) 537-3557 or 1-800-633-6101.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Rieger, Telephone: (412) 937-2153. Internet: [grieger@osmre.gov](mailto:grieger@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Maryland Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

#### 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 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 79431). You can also find later actions concerning Maryland’s program and program amendments at 30 CFR 920.12, 920.15, and 920.16.

#### II. Description of the Proposed Amendment

By letter dated May 4, 2004 (Administrative Record Number MD-583-11), Maryland sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment revises COMAR provisions concerning valid existing rights.

The full text of the program amendment is available to you to read at the locations listed above under **ADDRESSES**. Specifically, Maryland proposes the following amendments to COMAR.

#### 1. COMAR 26.20.10.01.B(7) Definition of Valid Existing Rights

This definition is amended at paragraph (7)(a)(i) by deleting the phrase “on August 3, 1977” and by adding in its place the words “at the time the land came under the protection of Environment Article, § 15-505(b)(2), Annotated Code of Maryland or Regulation .02 of the chapter.”

Subparagraph (7)(a)(ii) is amended by several deletions and additions of language as follows. In the first sentence, the phrase “these lands either had” is revised to read “the land had.” The following words are added immediately following the revised phrase “the land had:” “obtained all permits and other authorizations required to conduct surface coal mining operations or had.” Further along in the first sentence, “good faith efforts” is amended to be “good faith effort.” Also in the first sentence, the words “State and federal permits” are deleted. The words “permits and authorizations” are added immediately before the words “to conduct the operations.” The word “those” is deleted and replaced by the word “the.” The words “lands, on or before” are revised to read “land before.” The date “August 3, 1977” is deleted, and the following words are added in their place: “the land came under the protection of Environment Article, § 15-505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter and at a minimum had submitted an application for any permit required under this subtitle.” The word “coal” is being deleted following the phrase “to the Bureau that the” and the word “land” is added in its place. The word “both” is deleted from the phrase “is both needed for.” The words “an on-going” are being deleted immediately following the words “adjacent to.” The words “obtained before August 3, 1977” are being deleted at the end of the sentence, and those words are being replaced by the following words:

And other authorizations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made before the land came under the protection of Environment Article § 15-505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter.

As amended, COMAR 26.20.10.01.B(7)(a)(ii) provides as follows:

(ii) The person proposing to conduct surface coal mining operations on the land had obtained all permits and other authorizations required to conduct surface coal mining operations or had made a good faith effort to obtain all necessary permits and authorizations to conduct the operations