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June 2, 2004	September 14, 2004	IC 14-34-19-15.

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

**SUMMARY:** We are approving an amendment to the Maryland regulatory program (the Maryland 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 (VER). The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** September 14, 2004  
**FOR FURTHER INFORMATION CONTACT:** George Rieger, Telephone: (412) 937-2153. Internet: [grieger@osmre.gov](mailto:grieger@osmre.gov).

**SUPPLEMENTARY INFORMATION**

I. Background on the Maryland Program

- II. Submission of the Proposed Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. 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. Submission 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.

We announced receipt of the proposed amendment in the July 19, 2004, **Federal Register** (69 FR 42943). 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 public hearing or meeting because no one requested one. The public comment period ended on August 18, 2004. We received responses from one Federal Agency.

**III. OSM's Findings**

Following are the findings we 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 we do not specifically discuss below concern nonsubstantive wording or editorial changes and are approved here without discussion.

*[a] Revisions to Maryland's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations*

Maryland proposed revisions to the following rules containing language that is substantively identical to the corresponding sections of the Federal regulations.

State rule	Subject	Federal counterpart
26.20.10.01B.(7)(a) and (b)	Definition of Valid Existing Rights	30 CFR 761.5(a), (b)(1), (c) (Definition of Valid Existing Rights).
26.20.10.01-1	Demonstration Standards	30 CFR 761.5(b)(2) (Definition of Valid Existing Rights).
26.20.10.02 and .02C	Prohibition	30 CFR 761.11, and 761.11(d)(1), (d)(2), (d)(2)(ii).
26.20.10.03A, B, C, D(2), and (H)	Determination of Limits and Prohibitions	30 CFR 761.11(d)(2)(i), 761.17(a), (b), (c) and (d)(1).
26.20.10.04	Exception for Existing Operations	30 CFR 761.12(a).
26.20.10.05A, B, B(1) through B(7), B(9), C, D, and E	Submission of Valid Existing Rights Determination.	30 CFR 761.16(b), (b)(1) through (b)(4).
26.20.10.06A through C, D, D(2) through D(8), D(10), E, and F.	Review of Valid Existing Rights Request	30 CFR 761.16(c) and (d).
26.20.10.07	Decision on Valid Existing Rights	30 CFR 761.16(e) and (f).

Because these proposed rules contain language that is substantively identical to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations and can be approved.

*[b] Revisions to Maryland's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations*

1. COMAR 26.20.10.05B(8) is amended to provide as follows:

(8) Documentation that, if the coal interests have been severed from other property interests, that the owners of other property interests in the land to which the request pertains have been notified and provided an opportunity to comment on the validity of the property rights claimed in the request within 30 days of the notice.

The counterpart Federal provision at 30 CFR 761.16(b)(1)(viii) does not provide a specific time limit for the comment period on the validity of the property rights claimed. Rather, 30 CFR 761.16(b)(1)(viii) provides for "a reasonable opportunity" for the owners of other property interests in the land to which the request pertains to comment on the validity of the property rights claims. We find that Maryland's proposed 30-day comment period is reasonable and is, therefore, no less effective than the Federal regulations at 30 CFR 761.16(b)(1)(viii) and can be approved.

2. COMAR 26.20.10.06D is amended to provide that upon receipt of the Bureau notification that the request for a VER determination is complete, the requestor shall cause a notice to appear in a newspaper of general circulation in the county in which the land is located. The notice shall contain, at D.(1), "A heading of 'Notice of Request for Valid Existing Rights Determination.'" The Federal regulations at 30 CFR 761.16(d)(1) provide the requirement that a notice be published in a newspaper to inform the public of the submittal of a complete application for a VER determination and requesting public comment. The Federal regulations at 30 CFR 761.16(d)(1) also specify the minimum requirements of the notice. There is no Federal counterpart to the proposed Maryland provision at 26.20.10.06D(1). However, we find that proposed 26.20.10.06D(1) is not inconsistent with the Federal regulations at 30 CFR 761.16(d)(1) and can be approved.

3. COMAR 26.20.10.06D is amended to provide that upon receipt of the Bureau notification that the request for a VER determination is complete, the requestor shall cause a notice to appear in a newspaper of general circulation in

the county in which the land is located. The notice shall contain, at D.(9), "[a] statement that interested persons may obtain a 30 day extension of the comment period upon written request to the bureau." The counterpart Federal provision at 30 CFR 761.16(d)(1)(vii) provides that the notice shall contain a statement that interested persons may obtain a 30-day extension of the comment period upon request. The Federal provision at 30 CFR 761.16(d)(1)(vii) does not provide that such a request be in writing. However, we find that Maryland's requirement that such requests be in writing is reasonable and does not render the Maryland program less effective than the Federal regulations at 30 CFR 761.16(d)(1)(vii) and can be approved.

#### IV. Summary and Disposition of Comments

##### *Public Comments*

We asked for public comments on the amendment (Administrative Record Number MD-583-13). There were no comments.

##### *Federal Agency Comments*

Under 30 CFR 732.17(h)(11)(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 Number MD-583-12). We received a response from one Federal agency, which is addressed below.

##### *Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Maryland proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record Number MD-583-12). By letter dated July 29, 2004, EPA stated that it had reviewed the proposed amendment and had determined that there are no apparent inconsistencies with the Clean Water Act or other statutes under the jurisdiction of the EPA and had no comments on the amendment (Administrative Record Number MD-583-14).

#### V. OSM's Decision

Based on the above findings, we are approving the amendment that Maryland forwarded to us on May 4, 2004.

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 consistency of Maryland and Federal standards.

#### VI. Procedural Determinations

##### *Executive Order 12630—Takings*

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights regulations. The takings implications assessment for the Federal valid existing rights rule appears in Part XXIX.E of the preamble to that rule. See 64 FR 70766, 70822-27, December 17, 1999.

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

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

##### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, 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. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

*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 analysis performed under various laws and executive orders for the counterpart Federal regulations.

*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 analysis performed under various laws and executive orders for the counterpart Federal regulations.

**List of Subjects in 30 CFR Part 920**

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 20, 2004.

**Brent Wahlquist,**

*Brent Wahlquist, Regional Director, Appalachian Regional Coordinating Center.*

■ For the reasons set out in the preamble, 30 CFR part 920 is amended as set forth below:

**PART 920—MARYLAND**

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

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

■ 2. Section 920.15 is amended by adding a new entry to the table in chronological order by “Date of final publication” to read as follows:

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

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* * * * * May 4, 2004 .....	* * * * * September 14, 2004 .....	* * * * * COMAR 26.20.10.01B(7)(a) and (b), 01–1, 02, 02C, 03A, B, C, D(2) and H, 04, 05, 06, and 07.

[FR Doc. 04-20663 Filed 9-13-04; 8:45 am]  
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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 943

[Docket No. TX-053-FOR]

#### Texas Regulatory Program

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

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

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposed revisions to its regulations regarding annual permit fees. Texas intends to revise its program to improve operational efficiency.

**EFFECTIVE DATE:** September 14, 2004.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581-6430. E-mail: [mwolfrom@osmre.gov](mailto:mwolfrom@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

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

#### I. Background on the Texas 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 this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this 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 Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the February 27, 1980, *Federal Register* (45 FR 12998). You can

find later actions on the Texas program at 30 CFR 943.10, 943.15, and 943.16.

#### II. Submission of the Amendment

By letter dated June 4, 2004 (Administrative Record No. TX-658), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment at its own initiative.

We announced receipt of the proposed amendment in the July 19, 2004, *Federal Register* (69 FR 42948). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on August 18, 2004. We did not receive any public comments.

During our review of the amendment, we identified a concern about the proposed annual fee. We notified Texas of the concern by letter dated July 26, 2004 (Administrative Record No. TX-658.03). By letter dated August 3, 2004 (Administrative Record No. TX-658.04), Texas sent us additional explanatory information to its proposed program amendment. Because the additional information merely clarified certain provisions of Texas' amendment, we did not reopen the public comment period.

#### III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

##### *16 Texas Administrative Code (TAC) Section 12.108 Permit Fees*

In paragraph (b), Texas proposed to increase the annual permit fee from \$300.00 per acre to \$390.00 per acre. Permittees must pay the fee to the Railroad Commission of Texas for each acre of land within the permit area on which the permittees actually conducted operations for the removal of coal and lignite during the calendar year. Because this increased fee has an effective date of September 1, 2004, Texas also proposed how it is to be calculated for calendar year 2004 only. For the period January 1, 2004, through August 31, 2004, the annual permit fee is \$300.00 per acre and for the period September 1, 2004, through December 31, 2004, the fee is \$390.00 per acre.

The Federal regulations at 30 CFR 777.17, concerning permit fees, provide

that applications for surface coal mining permits must be accompanied by a fee determined by the regulatory authority. The Federal regulations also provide that the fees may be less than, but not more than the actual or anticipated cost of reviewing, administering, and enforcing the permit. In its letter dated August 3, 2004 (Administrative Record No. TX-658.04), Texas advised us that the proposed fee increase complies with the requirements of 30 CFR 777.17. We find that Texas' proposed annual permit fees are reasonable and consistent with the discretionary authority provided by the regulations at 30 CFR 777.17.

#### IV. Summary and Disposition of Comments

##### *Public Comments*

We asked for public comments on the amendment, but did not receive any.

##### *Federal Agency Comments*

On June 10, 2004, under 30 CFR 732.17(h)(11)(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 Texas program (Administrative Record No. TX-658.01). We did not receive any comments.

##### *Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Texas proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on June 10, 2004, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. TX-658.01). The EPA did not respond to our request.

##### *State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On June 10, 2004, we requested comments on Texas' amendment (Administrative Record No. TX-658.01), but neither responded to our request.