

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 920****[MD-053-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 Annotated Code of Maryland as contained in House Bill 893. The amendment requires the Department of the Environment to take action for permit applications, permit revisions, and revised applications within certain time periods. The amendment is intended to require the timely review of applications for open-pit mining permits.

**DATES:** We will accept written comments on this amendment until 4 p.m. (local time), on April 12, 2004. If requested, we will hold a public hearing on the amendment on April 5, 2004. We will accept requests to speak at a hearing until 4 p.m. (local time), on March 26, 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) 537-3000, 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 January 7, 2004 (Administrative Record Number MD-586-00), Maryland sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Maryland sent the amendment to include changes made at its own initiative. The amendment consists of Maryland House Bill 893, which was enacted for the purpose of requiring the Department of the Environment to review an application for an open-pit mining permit in a timely manner. The bill revises the Annotated Code of Maryland, and requires the Department of the Environment to take action for permit applications, permit revisions, and revised applications within certain time periods. 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 the Annotated Code of Maryland.

At section 15-505(d)(6), the words “in a timely manner” are added to the end of the provision as follows:

(6) The Department shall review all aspects of the application, including information pertaining to any other permit required from the Department for the proposed strip mining operation in a timely manner.

Section 15-505(d)(7) is amended by adding new (7)(I)(1), (7)(I)(2), (7)(I)(2)(A), (7)(I)(2)(B), and (7)(III). As amended, section 15-505(d)(7) provides as follows:

(7)(I) Upon completion of the review required by paragraph (6) of this subsection, the Department shall grant, require modification of, or deny the application for a permit and notify the applicant and any participant to a public informational hearing, in writing, of its decision:

1. Within 90 days after the date the Department determines that an application for a new permit or an application for permit revision that proposes significant alterations in the permit is complete; or

2. Within 45 days after receiving:

A. A revised application for a new permit; or

B. An application for a permit revision that does not propose significant alterations in the permit.

(II) The applicant for a permit shall have the burden of establishing that the application is in compliance with all of the requirements of this subtitle and the rules and regulations issued under this subtitle.

(III) The Department may provide for one extension of the deadlines in subparagraph (I) of this paragraph for up to 30 days by notifying the applicant in writing prior to the expiration of the original deadlines.

**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 Maryland program.

**Written Comments**

Send your written or electronic 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. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see DATES*). We will make every attempt to log all comments into the

administrative record, but comments delivered to an address other than the Appalachian Regional Coordinating Center may not be logged in.

#### *Electronic Comments*

Please submit Internet comments as an ASCII, Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS NO. MD-053-FOR" 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 Appalachian Regional Coordinating Center at (412) 937-2153.

#### *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 inspection 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. (local time), on March 26, 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 a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the 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.

#### *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 will be 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 regulation.

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

This rule is exempt 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. The basis for this determination is that 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 948**

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 24, 2004.

**Tim L. Dieringer,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 04-5498 Filed 3-10-04; 8:45 am]

**BILLING CODE 4310-05-P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 100**

**[CGD09-03-233]**

**RIN 1625-AA08 [Previously AA00]**

#### **Special Local Regulations; Head of the Cuyahoga Regatta, Cleveland, OH**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** On July 16, 2003, the Coast Guard published a notice of proposed rulemaking (NPRM) requesting comments on the proposed safety zone for the annual Head of the Cuyahoga Rowing Regatta in Cleveland, Ohio. The Coast Guard received four letters with several substantive comments. Based upon the comments, a new final rule is being proposed under 33 CFR part 100, in lieu of a safety zone under part 165. **DATES:** Comments and related material must reach the Coast Guard on or before April 26, 2004.

**ADDRESSES:** You may mail comments and related material to Coast Guard Marine Safety Office Cleveland (CGD09-03-233), 1055 East Ninth Street, Cleveland, Ohio, 44114. Marine Safety Office Cleveland maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and available for inspection or copying at Coast Guard MSO Cleveland between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Allen Turner, U.S. Coast Guard Marine Safety Office Cleveland, at (216) 937-0128.

#### **SUPPLEMENTARY INFORMATION:**

##### **Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09-03-233), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please include a stamped, self-addressed postcard or

envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

##### **Public Meeting**

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard MSO Cleveland at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### **Background and Purpose**

On July 16, 2003, the Coast Guard published an NPRM in the **Federal Register** proposing a safety zone for the annual Head of the Cuyahoga Rowing Regatta event (68 FR 41982). The proposed safety zone was introduced to control vessel traffic within the immediate location of the regatta to ensure the safety of life and property on the navigable waters of the United States during the event. The Coast Guard received four comments in response to the July 16, 2003 NPRM.

The first comment addressed the appropriate use of a safety zone for this event. The proposed safety zone restricted commercial vessel traffic on the Cuyahoga River during the event, with the exception of a two-hour window to allow for commercial transits. We agree that the use of a safety zone to restrict vessel traffic in the vicinity of a regatta is not the most appropriate type of waterway regulation for this event. Therefore, the safety zone will not be implemented. Alternatively, a proposal to manage vessel traffic using special local regulations under 33 CFR part 100 is presented below.

The second comment addressed the two-hour window intended to facilitate commercial vessel traffic during the event. Commercial entities have determined that the two-hour window was insufficient for safe passage. We concur with this statement, and the two-hour window will be withdrawn. The event will now run continuous from 8 a.m. until 3 p.m. The Coast Guard will provide sufficient notice to the public so commercial entities will have ample opportunity to schedule around the event.

The third comment addressed the necessity of a Final Rule for this event, stating that a recurring temporary final rule would be advantageous to all parties involved because it would allow for comments each year. We disagree. There is no need to initiate a separate rulemaking process every time for this annual event. Since 1996, this event has