

Dated: April 10, 2001.

**Mary A. Ryan,**

*Assistant Secretary for Consular Affairs,  
Department of State.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 920

[MD-046-FOR]

#### Maryland Regulatory Program

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

**ACTION:** Final rule.

**SUMMARY:** OSM is approving an amendment to the Maryland regulatory program (Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, as amended. The amendment revises portions of the Maryland regulations regarding a definition of previously mined area, termination of jurisdiction, permitting requirements, bond release requirements and performance standards for inspections. The amendment is intended to revise the Maryland program to be no less effective than the corresponding Federal regulations.

**EFFECTIVE DATE:** June 18, 2001.

#### FOR FURTHER INFORMATION CONTACT:

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Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone: (301) 689-4136

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Maryland Program
- II. Submission of the Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision

#### I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the

conditions of approval in the February 18, 1982, **Federal Register** (47 FR 7214). You can find subsequent actions concerning the conditions of approval and program amendments at 30 CFR 920.15 and 920.16.

#### II. Submission of the Amendment

By letter dated September 14, 1999 (Administrative Record No. 577-04), Maryland provided an informal amendment to OSM regarding a definition of previously mined area, termination of jurisdiction, permitting requirements, bond release requirements and performance standards for inspections. Maryland submitted the informal amendment in response to requests made by OSM as required under 30 CFR 732.17(d) in letters dated July 8, 1997, and August 11, 1999 (Administrative Record Nos. 577-01 and 577-03, respectively). OSM completed its review of the informal amendment and submitted comments to Maryland in a letter dated March 20, 2000 (Administrative Record No. 577-05). By letter dated April 11, 2000 (Administrative Record No. MD-577-06), Maryland submitted its response to OSM's comments in the form of a proposed amendment to the Code of Maryland Regulations (COMAR). The proposed amendments were announced in the April 28, 2000, **Federal Register** (65 FR 24897). The public comment period closed on May 30, 2000. However, OSM's review determined that the proposed revisions to COMAR 26.20.31.02H the inspection frequency on reclaimed bond forfeiture sites were inconsistent with 30 CFR 840.11 and 700.11(d). As a result, a letter requesting clarification was sent to Maryland dated August 17, 2000 (Administrative Record No. MD-577-12). Maryland responded in its letter dated August 31, 2000 (Administrative Record No. MD 577-13) with a new revision to COMAR 26.20.31.02H regarding the inspection frequency on reclaimed bond forfeiture sites. Therefore, OSM reopened the public comment period regarding the proposed amendments to Maryland's regulatory program. The proposed rulemaking was published in the October 4, 2000, **Federal Register** (65 FR 59150). The public comment period closed on October 19, 2000. No one requested an opportunity to speak at a public hearing, so no hearing was held. OSM's review of this submission determined that the proposed revision to COMAR 26.20.31.02 J(3) was not as effective as the Federal counterpart at 30 CFR 840.11(h)(1)(iii). To be as effective as the corresponding Federal regulation involved only the addition of a few words to make the proposed rule

identical to the corresponding Federal regulation. Maryland agreed to make the change, and by a fax dated February 20, 2001, submitted the revision to OSM. This change is explained later in this document.

#### III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendments to the Maryland permanent regulatory program.

##### 1. COMAR 26.20.01.02B Definitions

Maryland is adding item (72-1) to the definitions as follows: "Previously Mined Area" means land affected by surface coal mining operations prior to August 3, 1977 that have not been reclaimed to the standards of this subtitle. The Director finds that the definition described above is substantively identical to and therefore no less effective than the definition of "previously mined area" found at 30 CFR 701.5.

##### 2. COMAR 26.20.02.01 Scope

Maryland is adding new paragraphs C. and D. as follows:

C. The Bureau may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation or increment thereof, when the Bureau determines, in writing, that under the regulatory program, all requirements imposed under the applicable regulatory program have been successfully completed or, where a performance bond was required, the bureau has made a final decision in accordance with this subtitle to fully release the performance bond.

D. Following a termination under section C. of this regulation, the Bureau shall reassert jurisdiction under the regulatory program over a site if it is demonstrated that the bond release or written determination referenced in section C. of this regulation was based upon fraud, collusion, or misrepresentation of a material fact.

The Director finds that the additions described above are substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 700.11(d)(1)(ii) and (2).

##### 3. COMAR 26.20.02.13 Description of Proposed Mining Operations

Maryland is modifying paragraph M. by inserting the phrase "Except as provided in COMAR 26.20.26.01B," before the existing text. This section will now read as "Except as provided in COMAR 26.20.26.01B, maps, plans and

cross sections required under Sections K and L of this regulation shall be prepared by, or under the direction of and certified by, a qualified registered professional engineer or professional geologist." The federal rule at 30 CFR 780.14(c) requires cross sections, maps and plans under 780.14(b)(4), (b)(5), (b)(6), (b)(10) and (b)(11) to be prepared by or under the direction of and certified by a qualified registered professional engineer or a professional geologist. Section 780.14(c) also provides exceptions to these requirements, one of which is for fill and appurtenant structures. Likewise, Maryland's proposed language creates an exception to the requirements of 30 CFR 780.14(c) for fill and appurtenant structures. Accordingly, since Maryland's language creates an exception, which is allowed under 30 CFR 780.14(c), the Director finds that the change described above is no less effective than 30 CFR 780.14(c).

#### 4. COMAR 26.20.03.05 Prime Farmlands

Maryland is modifying paragraph I. by adding new subsection (5) as follows:

The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the Bureau and the consent of all affected property owners within the permit area must be obtained.

The Director finds that the changes described above are substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 785.17(e)(5).

#### 5. COMAR 26.20.14.09 Procedures for Release of Bonds

Maryland is modifying paragraph A., Application for Release, by adding new subsection (5) as follows:

The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of Environmental Article, Title 15, Subtitle 5, Annotated Code of Maryland, the Regulatory Program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

The Director finds that the changes described above are substantively identical to and therefore no less

effective than the Federal Regulations at 30 CFR 800.40(a)(3).

#### 6. COMAR 26.20.31.02 Inspections

Maryland is deleting the existing paragraph H. in its entirety and substituting the following new paragraph H:

H. An abandoned site means a surface coal mining and reclamation operation for which the Bureau has found in writing that:

(1) All surface and underground coal mining and reclamation activities at the site have ceased;

(2) At least one notice of violation has been issued and the notice could not be served in accordance with Regulation .08 of this chapter or the notice was served and has progressed to a failure-to-abate cessation order;

(3) Action is being taken to ensure that the permittee and the operator, and owners and controllers of the permittee and the operator, will be precluded from receiving future permits while the violations continue at the site;

(4) Action is being taken in accordance with the requirements of the Regulatory Program to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it is concluded that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(5) Where the site is or was permitted and bonded and the permit has either expired or been revoked, the forfeiture of any available performance bond is being diligently pursued or has been forfeited.

Maryland is also adding new paragraph I. as follows:

I. Instead of the inspection frequency required in Sections A. and B. of this regulation, the Bureau shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site. However, in no case shall the inspection frequency be set at less than one complete inspection per calendar year.

Maryland is also adding new paragraph J. as follows:

J. The Bureau shall conduct a complete inspection of the abandoned site and provide the public notice required under Section K. of this regulation in order to select an alternative inspection frequency authorized under Section I. of this regulation. Following the inspection and public notice the Bureau shall prepare and maintain for public review

a written finding that justifies the selected alternative inspection frequency. The written finding shall justify the new inspection frequency by addressing in detail all of the following criteria:

(1) How the site meets each of the criteria under the definition of abandoned site under Section H of this regulation and thereby qualifies for a reduction in inspection frequency;

(2) Whether there exists on the site, and to what extent, impoundments, earthen structures, or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health and safety of the public or significant environmental harms to land, air, or water resources;

(3) The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

(4) The degree to which erosion and sediment control is present and functioning;

(5) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools, and other public or commercial buildings and facilities;

(6) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and

(7) Based on a review of the complete and the partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions can be expected to progressively deteriorate.

Maryland is also adding new paragraph K. as follows:

K. Public Notice:

(1) The Bureau shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments concerning the alternative inspection frequency.

(2) The public notice shall contain the:

(a) Permittee's name and permit number;

(b) Precise location of the land affected.

(c) Inspection frequency proposed.

(d) General reasons for reducing the inspection frequency;

(e) Bond status of the permit;

(f) Telephone number and address of the Bureau where written comments on

the reduced inspection frequency may be submitted; and

(g) Closing date of the comment period.

When originally submitted, COMAR 26.20.31.02 J(3) did not include the words “and certified” after the words “were constructed”, with the result that it was not as effective as the Federal counterpart at 30 CFR 840.11(h)(1)(iii). In order to be as effective as the Federal regulation, these words must be included in the Maryland regulation. Maryland was informed of this in a telephone call by the OSM Oversight and Inspection Office, Pittsburgh, PA, and Maryland agreed to make the change. The change was submitted in a facsimile transmission on February 20, 2001 (Administrative Record No. 577-14). The Director thus finds that the changes described above are substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 840.11(g) and (h).

#### IV. Summary and Disposition of Comments

##### *Federal Agency Comments*

On April 19, 2000, we asked for comments from various Federal agencies who may have an interest in the Maryland amendment (Administrative Record Number MD-577-06). We solicited comments in accordance with section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations. Both the Mine Safety and Health Administration and the Natural Resources Conservation Service responded that they had no comments in letters dated April 27, 2000 and May 8, 2000, respectively. (Administrative Records Numbers MD-577-09 and MD-577-10).

##### *Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated 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.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary. OSM did, however, request comments from EPA by letter dated April 19, 2000, and EPA responded in its letter dated May 24, 2000 (Administrative Record Number MD-577-11) that the amendment was in compliance with the Clean Water Act.

##### *Public Comments*

No comments were received in response to our request for public comments.

#### V. Director's Decision

Based on the findings above we are approving the amendments to the Maryland program. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

##### *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 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

##### *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 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 allowed 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 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.

##### *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 (NEPA) (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 the Office of Management and Budget 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 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. 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, federal, state, or local government agencies, or geographic regions.

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 920**

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 23, 2001.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations 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 in the table by adding a new entry 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
* * April 11, 2000 .....	* * 6/18/01	* * COMAR 26.20.01.02B(72-1), 26.20.02.01C and D, 26.20.02.13M, 26.20.03.05I(5), 26.20.14.09A(5), 26.20.31.02H, I, J, & K.

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**DEPARTMENT OF THE TREASURY**

**31 CFR Part 103**

**Extension of Grant of Conditional Exception to Bank Secrecy Act Regulations Relating to Orders for Transmittal of Funds by Financial Institutions**

**AGENCY:** Financial Crimes Enforcement Network ("FinCEN"), Treasury.

**ACTION:** Extension of a grant of conditional exception; request for comments.

**SUMMARY:** FinCEN extends for another two years a conditional exception to a Bank Secrecy Act requirement. The exception, which would otherwise expire on May 31, 2001, permits financial institutions to comply more efficiently with the requirement for inclusion of certain information in orders for transmissions of funds.

**DATES:** Effective June 1, 2001. Written comments on the question raised in this document must be received on or before December 1, 2001.

**ADDRESSES:** Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, Virginia 22182, *Attention:* Travel Rule—Extension of CIF Exception. Comments also may be submitted by electronic mail to the following internet address—

*regcomments@fincen.treas.gov*—using the caption described in the previous sentence. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room at the Franklin Court Building, 14th and L Streets, Washington, DC. Persons wishing to inspect the comments submitted should request an appointment by telephoning (202) 354-6400.

**FOR FURTHER INFORMATION CONTACT:** David K. Gilles, Chief, Financial Institutions Program, FinCEN, (202) 354-6400, or Albert R. Zarate, Senior Regulatory Counsel, Office of Chief Counsel, FinCEN, (703) 905-3590.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In 1998, FinCEN granted a conditional exception (the "CIF Exception") to the strict operation of 31 CFR 103.33(g) (the "Travel Rule"). See FinCEN Issuance 98-1, 63 FR 3640 (January 26, 1998). The Travel Rule requires a financial institution to include certain information in transmittal orders relating to transmittals of funds of \$3,000 or more. The CIF Exception addressed computer programming problems in the banking and securities industries by relaxing the Travel Rule's requirement that a customer's true name and street address be included in a funds transmittal order, so long as alternate steps, described in FinCEN Issuance 98-1 and designed to prevent avoidance of the Travel Rule, were satisfied. By its terms, the CIF Exception to the Travel Rule was to expire on May 31, 1999; however, FinCEN extended the CIF Exception so that it would

expire instead on May 31, 2001. See FinCEN Issuance 99-1, 64 FR 41041 (July 29, 1999).

The basis for the CIF Exception and its extension remain valid—namely, that relaxing the strict operation of the Travel Rule is appropriate to meet the continuing programming problems in the banking and securities industry, so long as complete information about funds transfers can be made available efficiently to law enforcement officials. FinCEN specifically invites comments as to whether the terms of the CIF Exception should be permanently incorporated into the Travel Rule.

**II. FinCEN Issuance 2001-1**

By virtue of the authority contained in 31 CFR 103.55(a) and (b), which has been delegated to the Director of FinCEN, the effective period of the CIF Exception, as such Exception is set forth (as part of FinCEN Issuance 98-1, 63 FR 3640 (January 26, 1998)) under the heading "Grant of Exceptions" (63 FR 3641) is extended so that the CIF Exception will expire, on May 31, 2003 (if not revoked or modified with respect to such expiration date prior to that time), for transmittals of funds initiated after that date.

Signed this 30th day of May, 2001.

**James F. Sloan,**

*Director, Financial Crimes Enforcement Network.*

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