imposing specific written loan underwriting criteria; and

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

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

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

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

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

* * * * *

(g) * * *

(3) *Other Federal tax benefits*—(i) *In general.* Except as provided in paragraph (g)(3)(ii) of this section, the availability of Federal tax benefits does not limit the availability of the new markets tax credit. Federal tax benefits that do not limit the availability of the new markets tax credit include, for example:

(A) The rehabilitation credit under section 47;

(B) All depreciation deductions under sections 167 and 168, including the additional first-year depreciation under section 168(k), and the expense deduction for certain depreciable property under section 179; and

(C) All tax benefits relating to certain designated areas such as empowerment zones and enterprise communities under sections 1391 through 1397D, the District of Columbia Enterprise Zone under sections 1400 through 1400B, renewal communities under sections 1400E through 1400J, and the New York Liberty Zone under section 1400L.

(ii) *Low-income housing credit.* This paragraph (g)(3) does not apply to the low-income housing credit under section 42.

(4) *Bankruptcy of CDE.* The bankruptcy of a CDE does not preclude a taxpayer from continuing to claim the new markets tax credit on the remaining credit allowance dates under paragraph (b)(2) of this section.

(h) *Effective dates*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, this section applies on or after December 26, 2001, and expires on December 23, 2004.

(2) *Exception for certain provisions.* Paragraphs (c)(3)(ii), (c)(3)(iii), (c)(5)(vi), (d)(1)(ii), (d)(1)(iv), (d)(4)(iv), (d)(6)(ii)(B), (d)(6)(ii)(C), (d)(8), (g)(3), and (g)(4) of this section, the fourth sentence in paragraph (c)(5)(i) of this section, the last sentence in paragraph (d)(4)(i)(A) of this section, and the last sentence in paragraph (d)(4)(i)(C) of this section apply on or after March 11, 2004, and may be applied by taxpayers before March 11, 2004. The paragraphs of this section that apply before March 11, 2004 are contained in § 1.45D–1T as in effect before March 11, 2004 (see 26 CFR part 1 revised as of April 1, 2003).

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: March 3, 2004.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–5560 Filed 3–10–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–051–FOR]

Maryland 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 Maryland regulatory program (the ''Maryland program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment includes changes to the Code of Maryland Regulations (COMAR) to incorporate various revisions related to: augering, lands eligible for remining, required written findings, and topsoil handling.

EFFECTIVE DATE: March 11, 2004.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: 412–937–2153. Internet: *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 State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Maryland program on December 1, 1980. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 1, 1980, **Federal Register** (45 FR 79430). You can also find later actions concerning Maryland's program and program amendments at 30 CFR 920.12, 920.15 and 920.16.

II. Submission of the Proposed Amendment

By letter dated September 16, 2003, Maryland sent us a proposed amendment to its program (Administrative Record No. MD–585–00) under SMCRA (30 U.S.C. 1201 *et seq.*). Maryland sent the amendment to include changes made at its own initiative.

The provisions of COMAR that Maryland proposes to revise are as follows: COMAR, 26.20.03.07 Augering, A and B; 26.20.03.11 Lands Eligible for Remining, A, B, (1), (2), C, and D; 26.20.05.01 Required Written Findings, A, B, C, L, (1), (2), and (3), and 26.20.25.02 Topsoil Handling, D. The specific amendments to COMAR are identified below in the ''OSM Findings'' section.

We announced receipt of the proposed amendment in the October 27, 2003, **Federal Register** (68 FR 61172). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on

November 21, 2003. We received comments from one citizen, the U.S Environmental Protection Agency (EPA) and the Natural Resources Conservation Service (NRCS).

III. OSM's Findings

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

26.20.03.07 Augering

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

This revision was prompted by a recommendation included in OSM's Evaluation Year (EY) 2000 topical study entitled ''Maryland Permit Findings.'' Maryland's proposed revisions to COMAR make its regulatory program no less effective than 30 CFR 785.20(c) by requiring a written finding before augering operations may be conducted. Therefore, we are approving the amendment.

26.20.03.11 Lands Eligible for Remining

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

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

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

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

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

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

D. The requirements of the regulation shall not apply after September 30, 2004.

This revision was prompted by a recommendation included in OSM's EY 2001 topical study entitled ''Maryland Remining.'' Maryland's proposed revision is substantively identical to the Federal requirements contained in 30 CFR 785.25. Therefore we are approving the amendment.

26.20.05.01 Required Written Findings

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

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

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

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

D.–K. (text unchanged)

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

(1) Land eligible for remining;

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

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

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

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

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

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

IV. Summary and Disposition of Comments

Public Comments

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

Federal Agency Comments

Under 30 CFR 732.17(h)(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 No. MD–585–01). We received comments from the NRCS, which expressed concerns about the proposed deletion of soil testing being performed by a qualified laboratory. As discussed in the finding above, there is no Federal counterpart to this deleted provision. OSM cannot require a State to adopt or maintain regulatory requirements that are more stringent than the Federal regulations. However, as revised, the Maryland provision is identical to the Federal regulations at 30 CFR 816.22(d)(4), and is therefore approved.

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

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. MD–585–01).

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). This amendment does not contain provisions that relate to air or water quality standards and, therefore, concurrence by the EPA is not required. EPA, Region III, submitted a letter dated November 6, 2003, in which it indicated that there are no apparent inconsistencies between the amendment and the Clean Water Act or other statutes under the EPA's jurisdiction. (Administrative Record No. MD–585–04).

V. OSM's Decision

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

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

VI. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 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 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

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 that is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

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 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 11, 2004.

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 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
*	*	*
September 16, 2003	March 11, 2004	COMAR 26.20.03.07.A, B; 26.20.03.11; 26.20.05.01, A, B, C, and L; and 26.20.25.02.D.

[FR Doc. 04–5499 Filed 3–10–04; 8:45 am]

BILLING CODE 4310–05–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 270

[Docket No. RM 2002–1E]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulations.

SUMMARY: The Copyright Office of the Library of Congress is announcing interim regulations specifying notice and recordkeeping requirements for use of sound recordings under two statutory licenses under the Copyright Act. Electronic data format and delivery requirements for records of use as well as regulations governing prior records of use shall be announced in future **Federal Register** documents.

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

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

I. Overview

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