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Dated: April 26, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Parts 780, 784, 816, and 817

RIN 1029-AC63

#### Stream Protection Rule; Environmental Impact Statement

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

**ACTION:** Proposed rule; notice of intent to prepare an environmental impact statement.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), intend to prepare an environmental impact statement (EIS) under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) to analyze the effects of potential rule revisions under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) to improve protection of streams from the adverse impacts of surface coal mining operations. We are requesting comments for the purpose of determining the scope of the EIS.

**DATES:** To ensure consideration, we must receive your electronic or written comments on June 1, 2010.

**ADDRESSES:** You may submit comments by any of the following methods, although we request that you use electronic mail if possible:

- *Electronic mail:* Send your comments to [sra-eis@osmre.gov](mailto:sra-eis@osmre.gov).
- *Mail, hand-delivery, or courier:*

Send your comments to Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252-SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** John Craynon, Chief, Division of Regulatory Support, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., MS 202-SIB, Washington, DC 20240; Telephone 202-208-2866.

#### SUPPLEMENTARY INFORMATION:

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#### I. Why are we planning to revise our rules?

On December 12, 2008 (73 FR 75814-75885), we published a final rule modifying the circumstances under which mining activities may be conducted in or near perennial or intermittent streams. That rule, which this document refers to as the 2008 rule, took effect January 12, 2009. A total of nine organizations challenged the validity of the rule in two complaints filed on December 22, 2008, and January 16, 2009 (amended complaint filed February 17, 2009): *Coal River Mountain Watch, et al. v. Salazar*, No. 08-2212 (D.D.C.) (“*Coal River*”) and *National Parks Conservation Ass’n v. Salazar*, No. 09-115 (D.D.C.) (“*NPCA*”). Under the terms of a settlement agreement signed by the parties on March 19, 2010, we agreed to use best efforts to sign a proposed rule by February 28, 2011, and a final rule by June 29, 2012. We also agreed to consult with the Fish and Wildlife Service pursuant to the Endangered Species Act, as appropriate, prior to signing the final action. On April 2, 2010, the court granted the parties’ motion to hold the judicial proceedings in abeyance.

However, we had already embarked on that course following the change of Administrations on January 20, 2009. On June 11, 2009, the Secretary of the Department of the Interior, the Administrator of the U.S. Environmental Protection Agency (EPA), and the Acting Assistant Secretary of the Army (Civil Works) entered into a memorandum of understanding<sup>1</sup> (MOU) implementing an interagency action plan designed to significantly reduce the harmful environmental consequences of surface coal mining operations in six Appalachian states, while ensuring that future mining remains consistent with Federal law. Among other things, the MOU committed us to consider revisions to key provisions of our rules, including the 2008 rule and approximate original contour requirements, to better protect the environment and public health from the impacts of Appalachian surface coal mining.

Consequently, on November 30, 2009, we published an advance notice of proposed rulemaking (ANPRM) soliciting comments on ten potential rulemaking alternatives. See 74 FR

62664-62668. In addition, consistent with the MOU, we invited the public to identify other rules that we should revise. We also announced our intent to prepare a supplement to the EIS developed in connection with the 2008 rule.

We received approximately 32,750 comments during the 30-day comment period that closed December 30, 2009. After evaluating those and other comments, we determined that development of a comprehensive stream protection rule (one that is much broader in scope than the 2008 rule) would be the most appropriate and effective method of achieving the goals set forth in the MOU and the ANPRM. We believe that this holistic approach will better protect streams and related environmental values. The broader scope of the stream protection rule means that we will need to prepare a new environmental impact statement rather than the supplement to the 2008 EIS that we originally intended to prepare.

#### II. What is the proposed federal action?

The proposed Federal action consists of revisions to various provisions of our rules to improve protection of streams from the impacts of surface coal mining operations nationwide. We do not believe that it would be fair, appropriate, or scientifically valid to apply the new protections only in central Appalachia, as some commenters on the ANPRM advocated. Streams are ecologically significant regardless of the region in which they are located. Principal elements of the proposed action include—

- Adding more extensive and more specific permit application requirements concerning baseline data on hydrology, geology, and aquatic biology; the determination of the probable hydrologic consequences of mining; and the hydrologic reclamation plan; as well as more specific requirements for the cumulative hydrologic impact assessment.

- Defining the term “material damage to the hydrologic balance outside the permit area.” This term is critically important because, under section 510(b)(3) of SMCRA, the regulatory authority may not approve a permit application unless the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. This term includes streams downstream of the mining operation.

- Revising the regulations governing mining activities in or near streams, including mining through streams.

<sup>1</sup>The MOU can be viewed online at <http://www.osmre.gov/resources/ref/mou/ASCM061109.pdf>.

- Adding more extensive and more specific monitoring requirements for surface water, groundwater, and aquatic biota during mining and reclamation.

- Establishing corrective action thresholds based on monitoring results.
- Revising the backfilling and grading rules, excess spoil rules, and approximate original contour restoration requirements to incorporate landform restoration principles and reduce discharges of total dissolved solids.

- Limiting variances and exceptions from approximate original contour restoration requirements.

- Requiring reforestation of previously wooded areas.

- Requiring that the regulatory authority coordinate the SMCRA permitting process with Clean Water Act permitting activities to the extent practicable.

- Codifying the financial assurance provisions of OSM's March 31, 1997, policy statement<sup>2</sup> on correcting, preventing, and controlling acid/toxic mine drainage and clarifying that those provisions apply to all long-term discharges of pollutants, not just pollutants for which effluent limitations exist.

- Updating the definitions of perennial, intermittent, and ephemeral streams.

We are in the process of developing alternatives for the proposed Federal action. Comments received in response to this notice will assist us in that process.

We will prepare a draft EIS after we complete the initial stages of scoping and identify which rulemaking alternatives will be analyzed in detail. Following release of the draft EIS, we anticipate publishing a notice of proposed rulemaking, unless we select an alternative that makes rulemaking unnecessary.

### III. How do I submit comments?

Consistent with 43 CFR 46.235, we invite all interested persons, organizations, and agencies to provide comments, suggestions, and any other information relevant to the scope of the EIS, the scope of the proposed Federal action, potential alternatives for the proposed Federal action, and studies and impacts that the EIS should address. See **ADDRESSES** for the methods by which we will accept comments. We do not anticipate conducting any meetings dedicated to scoping.

Before including your address, phone number, e-mail address, or other

personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments that we receive after the close of the comment period (*see DATES*) or sent to an address other than those listed in **ADDRESSES** may not be considered.

If you previously submitted comments in response to the ANPR, you do not need to resubmit them. We will consider all ANPR comments as part of this EIS scoping process.

### IV. How do I request to participate as a cooperating agency?

Consistent with 43 CFR 46.225, we, the lead agency, invite eligible Federal, state, tribal, and local governmental entities to indicate whether they have an interest in being a cooperating agency in the preparation of the EIS. Qualified entities are those with jurisdiction by law, as defined in 40 CFR 1508.15, or special expertise, as defined in 40 CFR 1508.26. Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and make the necessary resources available in a timely manner, as discussed in the document entitled "Factors for Determining Cooperating Agency Status,"<sup>3</sup> which is Attachment 1 to the Council on Environmental Quality's January 30, 2002, Memorandum for the Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act. We will not be able to provide financial assistance to cooperating agencies.

If you have an interest in participating as a cooperating agency, please contact the person listed in **FOR FURTHER INFORMATION CONTACT** and identify those aspects of the EIS process in which you are interested in participating. The regulations at 43 CFR 46.230 and Items 4 through 6 in the document discussed in the preceding paragraph list the activities in which cooperating agencies may wish to participate.

Dated: April 16, 2010.

**Sterling Rideout,**

*Assistant Director, Program Support.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2009-0890]

RIN 1625-AA09

### Drawbridge Operation Regulation; Chambers Creek, Steilacoom, WA, Schedule Change

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking; withdrawal.

**SUMMARY:** The Coast Guard is withdrawing its notice of proposed rulemaking (NPRM) concerning the drawbridge operation regulation for the Burlington Northern Santa Fe Railroad Bridge across Chambers Creek, mile 0.0, at Steilacoom, Washington, by which two-hour notice would have been required for openings from 3:30 p.m. to 7 a.m. every day. The NPRM is being withdrawn because of multiple objections to the proposed change from users of that waterway.

**DATES:** The notice of proposed rulemaking is withdrawn on April 30, 2010.

**ADDRESSES:** The docket for this withdrawn rulemaking is available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2009-0890 in the "Keyword" box and then clicking "Search".

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or e-mail Austin Pratt, Chief, Bridge Section, Waterways Management Branch, Thirteenth Coast Guard District; telephone 206-220-7282, e-mail address [william.a.pratt@uscg.mil](mailto:william.a.pratt@uscg.mil). If you have questions on viewing materials in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

### SUPPLEMENTARY INFORMATION:

#### Background

On December 8, 2009, we published an NPRM entitled "Drawbridge Operation Regulation; Chambers Creek, Steilacoom, WA, Schedule Change" in the *Federal Register* (74 FR 64641). The

<sup>2</sup> See the document entitled "Acid Mine Drainage Policy" at [http://www.osmre.gov/guidance/significant\\_guidance.shtm](http://www.osmre.gov/guidance/significant_guidance.shtm).

<sup>3</sup> See <http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagencyfactors.html>.