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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 800

[Docket ID: OSM-2016-0006; S1D1S SS08011000 SX064A000 167S180110; S2D2S SS08011000 SX064A000 16XS501520]

Petition to Initiate Rulemaking; Ensuring that Companies with a History of Financial Insolvency, and their Subsidiary Companies, are not Allowed to Self-Bond Coal Mining Operations

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

ACTION: Notice of availability of petition to initiate rulemaking and request for comments on the petition.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), seek comments concerning a petition, submitted pursuant to the Surface Mining Control and Reclamation Act (SMCRA or the Act), requesting that we amend our self-bonding regulations to ensure that companies with a history of financial insolvency, and their subsidiary companies, are not allowed to self-bond coal mining operations. We are requesting comments on the merits of the petition and the rule changes suggested in the petition. Comments received will assist the Director of OSMRE in making the decision whether to grant or deny the petition.

DATES: Electronic or written comments: We will accept written comments on the petition on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. The petition has been assigned Docket ID: OSM-2016-0006. Please follow the online instructions for submitting comments.

Mail/Hand-Delivery/Courier: Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252 SIB, 1951 Constitution Avenue, N.W., Washington, DC 20240. Please include the Docket ID: OSM-2016-0006.

FOR FURTHER INFORMATION CONTACT: Michael Kuhns, Division of Regulatory Support, 1951 Constitution Ave., N.W., Washington, DC 20240; Telephone: 202-208-2860; E-mail: mkuhns@osmre.gov.

SUPPLEMENTARY INFORMATION:

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I. How does the petition process operate?

Section 201(g) of SMCRA, 30 U.S.C 1201(g), provides that any person may petition the Director of OSMRE to initiate a proceeding for the issuance, amendment, or repeal of any regulation adopted under SMCRA. It also specifies that the Director shall either grant or deny the petition within 90 days after receipt. OSMRE's regulations at 30 CFR 700.12 further implement this statutory provision.

Under 30 CFR 700.12(c), the Director is required to determine if the petition sets forth facts, technical justification and law which may provide a reasonable basis for issuance, amendment or repeal of a regulation. If the Director determines that the petition has a reasonable basis, a notice shall be published in the Federal Register seeking comments from the public on the proposed change specified in the petition. This Federal Register document is the notice required by the regulations.

At the close of the comment period, the Director decides to either grant or deny the petition, in whole or in part. We will publish notice of that decision in the Federal Register. If the Director grants the petition, we will then initiate rulemaking proceedings in which we again seek public comment before adopting a final rule. If the Director denies a petition, we notify the petitioner of the reasons for the decision not to initiate any rulemaking action pursuant to the petition. In accordance with 30 CFR 700.12(d), the Director's decision on a petition is a final decision for the Department, which means that the petitioner is not entitled to review by the Office of Hearings and Appeals.

II. What action does the petition request that we take?

On March 3, 2016, we received from WildEarth Guardians a petition for rulemaking requesting that OSMRE amend its self-bonding regulations at 30 CFR

800.23 to ensure that companies with a history of financial insolvency, and their subsidiary companies, are not allowed to self-bond coal mining operations. The petition claims that current rules allow regulatory authorities to accept self-bond guarantees from subsidiary companies that are technically insolvent due to the financial status of their parent corporations, potentially shifting the financial burden for substantial mine reclamation costs to American taxpayers in the event the companies do not have the financial resources to complete their mine reclamation obligations.

In its petition, WildEarth Guardians provides draft regulatory language that it alleges will ensure that any entity, including non-parent corporate guarantors, will be subject to appropriate financial scrutiny before being allowed to self-bond. Specifically, WildEarth Guardians requests that we revise our self-bonding regulations to define *ultimate parent corporation*, limit the total amount of present and proposed self-bonds to not exceed twenty-five (25) percent of the ultimate parent corporation's tangible net worth in the United States, and require that both the self-bonding applicant and its parent corporation meet any self-bonding financial conditions in 30 CFR 800.23, including the requirement that neither have filed for bankruptcy in the last five (5) years.

III. How may I view the petition and exhibits?

The petition and exhibits can be viewed and downloaded at <http://www.regulations.gov>. The petition has been assigned Docket ID: OSM-2016-0006. The petition and exhibits also are available for inspection at the location listed under **ADDRESSES**.

IV. How do I submit comments on the petition?

General guidance

We are seeking comment on the merits of the petition and the requested rule changes. The energy industry is in the midst of a major transformation. Low domestic and global demand for coal, plentiful low-cost shale gas and fuel switching and coal power plant retirements by utilities, the highest coal stockpile inventories in 25 years, unsuccessful business decisions, and projections of declining coal demand have created significant challenges for the coal industry.

SMCRA allows States to accept self-bonds, but requires that the bond be sufficient to assure the completion of the reclamation plan if the work had to be performed by the regulatory authority in the event of forfeiture. 30 U.S.C. 1259(a). Eighteen States allow self-bonding under their regulations and eleven states currently have self-bonded sites. According to the most recent data from the States, outstanding self-bond obligations total approximately \$3.86 billion, much of which involves non-parent guarantees.

Several large coal companies have filed for bankruptcy protection. These companies provided, and several States elected to accept, over \$2.4 billion in self-bonds to ensure that lands and waters impacted by coal mining were restored. Several large coal mining companies have recently filed for bankruptcy, raising concerns for State regulators, OSMRE, the Department of the Interior, Members of Congress, citizens and many other stakeholders.

There is a concern about whether disturbed coal mines will be reclaimed by the bankrupt companies; whether the bankrupt companies will abandon their legal

obligations to restore impacted lands and waters; whether the costs to restore the land and water will be shifted to taxpayers; and, whether the existing regulations are adequate to protect people, communities, and the environment as envisioned by Congress when it enacted SMCRA.

OSMRE will evaluate whether the changes proposed in the rulemaking petition are necessary or adequate to address deficiencies in the current regulations and practices. We ask all States, stakeholders and the public to consider whether the changes proposed by petitioners, or other changes beyond what the petitioners have proposed, should be made. We also request you articulate what those changes should be and why they should be made.

We will review and consider all comments submitted to the addresses listed above (see **ADDRESSES**) by the close of the comment period (see **DATES**).

Please include the Docket ID “OSM-2016-0006” at the beginning of all written comments. We cannot ensure that comments received after the close of the comment period (see **DATES**) or at locations other than those listed above (see **ADDRESSES**) will be included in the docket or considered in the development of a proposed rule.

Public availability of comments

Before including your address, phone number, 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.

Public Hearing

We will not hold a public hearing on the petition. The petitioner did not request a hearing and we have determined under 30 CFR 700.12(c) that no hearing is necessary.

V. Procedural Matters and Required Determinations.

This notice of availability is not a proposed or final rule, policy, or guidance. Therefore, it is not subject to the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, the Paperwork Reduction Act, the Unfunded Mandates Reform Act, or Executive Orders 12866, 13563, 12630, 13132, 12988, 13175, and 13211. We will

conduct the analyses required by these laws and executive orders only if we decide to grant the petition and develop a proposed rule.

In developing this notice of availability, we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106-554, section 15).

This notice of availability is not subject to the requirement to prepare an Environmental Assessment or Environmental Impact Statement under the National Environmental Policy Act (NEPA), 42 U.S.C. 4332(2)(C), because no proposed action, as described in 40 CFR 1508.18(a) and (b), yet exists. This notice of availability only seeks public comment on whether the Director should grant the petition and initiate

rulemaking. If the Director ultimately grants the petition, we will prepare the appropriate NEPA compliance documents as part of the rulemaking process.

List of Subjects

30 CFR Part 800

Environmental protection, Bonding and Insurance requirements, Surface coal mining, Reclamation

Dated: May 9, 2016.

Joseph G. Pizarchik,

Director, Office of Surface Mining Reclamation and Enforcement.

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