



December 16, 2009

VIA ELECTRONIC SUBMISSION

The Honorable Joseph Pizarchik
Director, Office of Surface Mining Reclamation and Enforcement
1951 Constitution Avenue, NW
Washington, D.C. 20240
www.regulations.gov
Docket ID: OSM-2009-0009

Re: Advanced Notice of Proposed Rulemaking, “Stream Buffer Zone and Related Rules; notice of intent to prepare a supplemental environmental impact statement”¹

Dear Director Pizarchik:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) is pleased to submit these comments to the Office of Surface Mining Reclamation and Enforcement (OSMRE) regarding its Advanced Notice of Proposed Rulemaking (ANPRM). Advocacy appreciates OSMRE’s efforts to involve the public early in its effort to revise its regulations concerning the conduct of mining activities in or near streams and looks forward to working with OSMRE to address the concerns of small businesses that may be affected by the rule.

The Office of Advocacy

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within SBA, so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),² as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant

¹ 74 Fed. Reg. 62664 (November 30, 2009), available at www.regulations.gov RIN 1029-AC63.

² 5 U.S.C. § 601 et seq.

³ *Small Business Regulatory Enforcement Fairness Act of 1996*, Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.) (*SBREFA*).

economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

Background

On December 12, 2008, OSMRE published a final rule modifying the circumstances under which mining activities may be conducted in or near perennial or intermittent streams. At that time OSMRE certified that the rule would not have a significant economic impact on a substantial number of small entities, pursuant to section 605(b) of the RFA.⁴ OSMRE concluded that while a substantial number of small entities would be affected by the rule, the rule would not have a significant economic impact on those entities.⁵

This ANPRM is OSMRE's first step toward revising the 2008 rule in order to further reduce the impacts of Appalachian surface coal mining operations on streams. In the ANPRM, OSMRE has asked for public comments regarding ten alternatives for revising the 2008 stream buffer zone rule and related rules. The ANPRM was published on November 30, 2009 and the public comment period closes on December 30, 2009.

Request for an Extension of the Public Comment Period

Following publication of this ANPRM, representatives of small businesses engaged in surface coal mining operations contacted Advocacy to express their concerns that the comment period provided by OSMRE does not provide an adequate amount of time for members of the interested public to address the alternatives presented in the ANPRM. These individuals noted that some of the alternatives present a significant departure from the existing stream buffer zone rules and may have a significant economic impact on a substantial number of small entities.

Because the alternatives presented in the ANPRM could present significant regulatory changes, Advocacy believes that they warrant serious consideration and input from members of the regulated small business community. Advocacy respectfully requests that OSMRE extend the public comment period for another sixty days, allowing small businesses adequate time to thoroughly assess the ten alternatives and provide meaningful feedback to OSMRE. Furthermore, Advocacy believes that providing small businesses with more time to address the ANPRM will assist OSMRE in developing the requisite RFA analysis when it publishes its proposed rule.

Conclusion

Advocacy encourages OSMRE to extend the public comment period to allow sufficient time for small businesses to provide meaningful feedback to OSMRE. Advocacy

⁴ See Final Rule, "Excess Spoil, Coal Mine Waste, and Buffers for Perennial and Intermittent Streams", 73 *Fed. Reg.* 75814, 75866 (December 12, 2008)

⁵ *Id.*

appreciates OSMRE's efforts to engage the public early on in the rulemaking process by publishing an ANPRM for its stream buffer zone rule revisions, and looks forward to assisting OSMRE with its RFA compliance. Please do not hesitate to contact me or Jamie Belcore Saloom at (202) 205-6890.

Sincerely,

//signed//

Susan Walthall
Acting Chief Counsel for Advocacy

//signed//

Jamie Belcore Saloom
Assistant Chief Counsel for Advocacy

cc: The Honorable Cass Sunstein, Administrator, Office of Information and Regulatory Affairs
Dennis Rice, Division of Regulatory Support, Office of Surface Mining Reclamation and Enforcement