

## IX. Statutory Basis and Text of Proposed Amendments

### Statutory Basis

Pursuant to Section 17A(g) of the Exchange Act, 15 U.S.C. 78q-1(g), the Commission proposes to amend § 240.17Ad-7 and § 240.17Ad-17 under the Exchange Act in the manner set forth below.

### List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

### Text of the Amendments

In accordance with the foregoing, the Commission proposes to amend part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The general authority citation for part 240 is revised and the following citation is added in numerical order to read as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78mm, 78n, 78n-1, 78o, 78o-4, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78l, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et seq.; 18 U.S.C. 1350; and 12 U.S.C. 5221(e)(3) unless otherwise noted.

\* \* \* \* \*

Section 240.17Ad-17 is also issued under Pub. L. 111-203, § 929W, 124 Stat. 1869 (2010).

\* \* \* \* \*

### § 240.17Ad-7 [Amended]

2. Section 240.17Ad-7(i) is amended by removing “240.17Ad-17(c)” and adding in its place “240.17Ad-17(d)”.

3. Section 240.17Ad-17 is amended by:

- a. Revising the heading.
- b. Revising paragraph (a)(1).
- c. In paragraph (a)(2) adding the phrase “, or broker or dealer” following the word “agent”.
- d. In paragraph (a)(3) introductory text adding the phrase “, or broker or dealer” following the word “agent”.
- e. In paragraph (a)(3)(ii) adding the phrase “or customer security account records of the broker or dealer” following the word “files”.
- f. In paragraph (b)(2)(i) adding the phrase “or customer security account records of a broker or dealer” following the word “file” and adding the phrase “, or broker or dealer” following the phrase “securityholder, the transfer agent”.
- g. In paragraph (b)(2)(ii) adding the phrase “or broker or dealer” following the word “agent”.

h. Redesignating paragraph (c) as paragraph (d), and adding new paragraph (c).

i. Revising newly redesignated paragraph (d).

The revisions and addition read as follows:

### § 240.17Ad-17 Transfer agents', brokers', and dealers' obligation to search for lost securityholders; paying agents' obligation to search for missing securityholders.

(a)(1) Every recordkeeping transfer agent whose master securityholder file includes accounts of lost securityholders and each broker or dealer that holds customer security accounts shall exercise reasonable care to ascertain the correct addresses of such securityholders. In exercising reasonable care to ascertain such lost securityholders' correct addresses, each recordkeeping transfer agent and each broker or dealer shall conduct two data base searches using at least one information data base service. The transfer agent and broker or dealer shall search by taxpayer identification number or by name if a search based on taxpayer identification number is not reasonably likely to locate the securityholder. Such data searches must be conducted without charge to a lost securityholder and with the following frequency:

(i) Between three and twelve months of such securityholder becoming a lost securityholder and

(ii) Between six and twelve months after the transfer agent's or broker's or dealer's first search for such lost securityholder.

\* \* \* \* \*

(c)(1) The paying agent, as defined in paragraph (c)(2) of this section, shall provide not less than one written notification to each missing securityholder stating that such securityholder has been sent a check that has not yet been negotiated. Such notification may be sent with a check or other mailing subsequently sent to the missing securityholder, but must be provided no later than seven (7) months after the sending of the not yet negotiated check.

(2) The term *paying agent* shall include any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that accepts payments from the issuer of a security and distributes the payments to the holder of the security.

(3) The securityholder shall be considered a *missing securityholder* if a check is sent to the securityholder and the check is not negotiated before the earlier of the paying agent's sending the

next regularly scheduled check or the elapsing of six (6) months after the sending of the not yet negotiated check.

(4) A paying agent shall be excluded from any notification requirement where the value of the not yet negotiated check is less than \$25.

(5) The requirements of paragraph (c)(1) of this section shall have no effect on state escheatment laws.

(d) Every recordkeeping transfer agent, broker, or dealer carrying securities for the accounts of customers, and every paying agent shall maintain records to demonstrate compliance with the requirements set forth in this section which shall include written procedures that describe the transfer agent's, or broker's or dealer's, or paying agent's methodology for complying with this section. Such records shall be maintained for a period of not less than three (3) years with the first year in an easily accessible place.

By the Commission.

Dated: March 18, 2011.

**Elizabeth M. Murphy,**  
*Secretary.*

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## AGENCY FOR INTERNATIONAL DEVELOPMENT

### 22 CFR Part 205

RIN 0412 AA-69

### Participation by Religious Organizations in USAID Programs

**AGENCY:** United States Agency for International Development (USAID).

**ACTION:** Proposed rule.

**SUMMARY:** USAID is proposing to amend part 205 to more accurately reflect current Establishment Clause jurisprudence with respect to the use of Federal funds for inherently religious activities.

**DATES:** Comments must be submitted by May 9, 2011.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to: The Center for Faith-Based and Community Initiatives, U.S. Agency for International Development, Room 6.07-023, 1300 Pennsylvania Avenue, NW., Washington, DC 20523. Communications should refer to the “proposed rule.” You may submit your comments by fax to 202-216-0077 or by e-mail to [fbcfci@usaid.gov](mailto:fbcfci@usaid.gov). A copy of each communication submitted will be available for inspection and copying

between 8:30 a.m. and 5:30 p.m. at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ari Alexander, Director, Center for Faith-Based and Community Initiatives, USAID, Room 6.07-023, 1300 Pennsylvania Avenue, NW., Washington, DC 20523; *telephone:* (202) 712-4080 (this is not a toll-free number).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On October 20, 2004, USAID published its final rule (the "Final Rule") on participation by religious organizations in USAID programs (69 FR 61716, codified at 22 CFR parts 202, 205, 211, and 226). The Final Rule implemented Executive Branch policy that, within the framework of constitutional guidelines, religious organizations should be able to compete on an equal footing with other organizations for USAID funding. The Final Rule revised USAID regulations pertaining to grants, cooperative agreements and contracts awarded for the purpose of administering grant programs to ensure their compliance with this policy and to clarify that religious organizations are eligible to participate in programs on the same basis as any other organization, with respect to programs for which such other organizations are eligible.

Among other things, the Final Rule provided that USAID funds could be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures were used for conducting eligible activities under the specific USAID program. Where a structure is used for both eligible and inherently religious activities, the Final Rule clarified that USAID funds could not exceed the cost of those portions of the acquisition, construction, or rehabilitation that were attributable to eligible activities. The Final Rule went on to state that USAID funds could not be used for acquisition, construction, or rehabilitation of sanctuaries, chapels, or any other room that a religious congregation that is a recipient or sub-recipient of USAID assistance uses as its principal place of worship.

##### **II. This Proposed Rule**

Based on further legal review, USAID has concluded that some provisions in the Final Rule go beyond the requirements of the Establishment Clause and other Federal law, are not supported by Establishment Clause jurisprudence, and constrict USAID's ability to pursue the national security and foreign policy interests of the

United States overseas. As such, these provisions unnecessarily and unduly restrict and interfere with the ability of USAID to effectively implement the bilateral foreign assistance programs of the United States. Accordingly, USAID proposes to amend the Final Rule to provide that, in general, nothing in USAID's regulations should be construed to prohibit USAID funds from being used for activities that are permitted under Establishment Clause jurisprudence or otherwise by law and that, in particular, USAID funds may be used for the acquisition, construction, or rehabilitation of structures that are used, in whole or in part, for inherently religious activities, so long as the program for which USAID assistance is provided (i) Is authorized by law and has a secular purpose, (ii) is made generally available to a wide range of organizations and beneficiaries which are defined without reference to religion, (iii) has the effect of furthering a development objective, (iv) the criteria upon which structures are selected for acquisition, construction, or rehabilitation are religiously neutral, and (v) the selection criteria are amenable to neutral application. Examples of programs where USAID funds may be used for the acquisition, construction, or rehabilitation of structures that are used, in whole or in part, for inherently religious activities include, but are not limited to, rehabilitation or reconstruction programs in a defined geographic area following a natural or manmade disaster; rehabilitation or reconstruction programs for schools; cultural or historical preservation of structures that are architectural, artistic, cultural, or historical landmarks; and rehabilitation or reconstruction programs to promote tourism or other related economic activities.

##### **III. Findings and Certifications or Impact Assessment**

###### *Regulatory Planning and Review*

This is not a significant regulatory action and, therefore, is not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

###### *Regulatory Flexibility Act*

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USAID has considered the economic impact of the proposed rule and has determined that its provisions would not have a

significant economic impact on a substantial number of small entities.

##### **List of Subjects of 22 CFR Part 205**

Foreign aid, Grant programs, Nonprofit organizations.

For the reasons stated in the preamble, USAID proposes to amend chapter II of title 22 of the Code of Federal Regulations as follows:

##### **PART 205—PARTICIPATION BY RELIGIOUS ORGANIZATIONS IN USAID PROGRAMS**

1. The authority citation for part 205 continues to read as follows:

**Authority:** 22 U.S.C. 2381(a).

2. Revise § 205.1(d), revise paragraph (d) and add paragraph (j) to read as follows:

###### **§ 205.1 Grants and cooperative agreements.**

\* \* \* \* \*

(d) USAID funds may be used for the acquisition, construction, or rehabilitation of structures that are used, in whole or in part, for inherently religious activities so long as the program for which USAID assistance is provided is authorized by law and has a secular purpose, is made generally available to a wide range of organizations and beneficiaries which are defined without reference to religion, has the effect of furthering a development objective, the criteria upon which structures are selected for acquisition, construction, or rehabilitation are religiously neutral, and the selection criteria are amenable to neutral application. Examples of programs where USAID funds may be used for the acquisition, construction, or rehabilitation of structures that are used, in whole or in part, for inherently religious activities include, but are not limited to, rehabilitation or reconstruction programs in a defined geographic area following a natural or manmade disaster; rehabilitation or reconstruction programs for schools; rehabilitation or reconstruction of structures that are architectural, artistic, cultural, or historical landmarks for cultural or historical preservation; and rehabilitation or reconstruction programs to promote tourism or other related economic activities.

\* \* \* \* \*

(j) Recognizing that USAID pursues the national security and foreign policy interests of the United States overseas, nothing in this Part shall be construed to prohibit USAID funds from being used for activities that are permitted by Establishment Clause jurisprudence or otherwise by law.

Dated: March 4, 2011.

**Ari Alexander,**

*Director, Center for Faith-Based and  
Community Initiatives.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 938

[PA-160-FOR; OSM 2010-0019]

#### Pennsylvania Regulatory Program

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on program amendment.

**SUMMARY:** We are announcing receipt of a proposed amendment to the Pennsylvania regulatory program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). In response to correspondence related to implementation of the approved Pennsylvania program, Pennsylvania has submitted regulatory changes for approval to render its program no less effective than the Federal regulations as they relate to effluent limitations for post-mining discharges that are amenable to passive treatment technology.

This document gives the times and locations that the Pennsylvania program and this submittal are available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments until 4 p.m., local time April 25, 2011. If requested, we will hold a public hearing on April 19, 2011. We will accept requests to speak until 4 p.m., local time on April 11, 2011.

**ADDRESSES:** You may submit comments, identified by "PA-160-FOR; Docket ID: OSM-2010-0019" by either of the following two methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. The proposed rule has been assigned Docket ID: OSM-2010-0019. If you would like to submit comments through the Federal eRulemaking Portal, go to <http://www.regulations.gov> and follow the instructions.

*Mail/Hand Delivery/Courier:* Mr. George Rieger, Chief, Pittsburgh Field

Division, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, 415 Market St., Suite 304, Harrisburg, PA 17101.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* In addition to obtaining copies of documents at <http://www.regulations.gov>, information may also be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Pittsburgh Field Division Office.

George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, 415 Market St., Suite 304, Harrisburg, Pennsylvania 17101, *Telephone:* (717) 782-4036, *E-mail:* [grieger@osmre.gov](mailto:grieger@osmre.gov).  
Thomas Callaghan, P.G., Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, Pennsylvania 17105-8461, *Telephone:* (717) 787-5015, *E-mail:* [tcallaghan@state.pa.us](mailto:tcallaghan@state.pa.us).

**FOR FURTHER INFORMATION CONTACT:** George Rieger, *Telephone:* (717) 782-4036. *E-mail:* [grieger@osmre.gov](mailto:grieger@osmre.gov).

#### **SUPPLEMENTARY INFORMATION:**

- I. Background on the Pennsylvania Program
- II. Description of the Request
- III. Public Comment Procedures
- IV. Procedural Determinations

#### **I. Background on the Pennsylvania 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 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 this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this 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 Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of

approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15, and 938.16.

#### **II. Description of the Request**

By letter dated October 1, 2010, (Administrative Record Number PA 854.03), Pennsylvania sent us a request to approve statutory language and revised regulations related to post-mining pollutional discharges, the use of passive treatment technologies on regulated coal mining sites, and the elimination of manganese effluent limits on certain pollutional discharges under the influence of identified precipitation events. Pennsylvania is requesting approval of the statutory language found at Section 4.2(j) of PA Surface Mining Conservation Reclamation Act (PA SMCRA) and the revised regulations found at: 25 Pa Code Chapters 86.1; 87.102(a) and (e); 88.92(a) and (e); 88.187(a) and (e); 88.292(a) and (e); 89.52(c); and 90.102(a) and (e).

This proposed amendment was initiated by Pennsylvania as a result of a coal mine permit inspection, conducted by OSM, in which a post mining pollutional discharge was observed being treated under the provisions of 87.102(e). Section 87.102(e), Postmining pollutional discharges and corresponding provisions in Chapters 88, 89, and 90, were published in the Pennsylvania Bulletin on November 15, 1997, and have been implemented. To date, these regulations have not been submitted as a program amendment to Pennsylvania's approved regulatory program. Federal regulations at 30 CFR 732.17(g) provide that no change to laws or regulations shall take effect for the purposes of a State program until approved as an amendment. In a letter dated July 7, 2010, OSM notified Pennsylvania that until the regulations are approved by OSM, use of the provisions to approve the construction of new passive treatment facilities at regulated coal mine permits must be discontinued.

*Statutory Changes:* Section 4.2(j) of PA SMCRA is available online at [Regulations.gov](http://Regulations.gov) and in the Administrative Record at the addresses listed above under **ADDRESSES**.

*Regulatory Changes:* Pennsylvania submits the following summary of the proposed regulatory provisions changes at 25 Pa Code: The revision to 86.1 includes the definitions of "Passive Treatment System" and "Post-mining Pollutional Discharge." The revisions to Sections 87.102(a), 88.92(a), 88.187(a),