



Memorandum

Coal Subcommittee

Coal Policy Task Force

State Associations

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OSMRE Proposes Recission of Ten-Ten Day Notice Regulations

The Office of Surface Mining Reclamation and Enforcement (OSMRE) this week published a [proposed rule](#) to rescind its Ten-Day Notice (TDN) regulations that were finalized in 2024. OSMRE [announced](#) this rulemaking just days before, stating that 2024 Rule "added unnecessary and confusing definitions, created rigid deadlines, and ignored the clear intent of the Surface Mining Control and Reclamation Act of 1977 [(SMCRA)], which gives states the lead role in regulating mining on their own lands."

If finalized as proposed, OSMRE contends that the regulations would streamline the process for coordination with state regulatory authorities and minimize duplicative efforts on the administration of SMCRA. OSMRE also asserts that the proposed rescission would align the regulations with the single, best meaning of the statutory language in SMCRA. **OSMRE provided only a 30-day comment period with comments due July 16, 2025.** We will host a Teams meeting on Wednesday, June 26 at 3:00 p.m. (Eastern) to discuss our comment strategy. Click [here](#) to add the meeting to your calendar.

Background

First Trump Administration

OSMRE [proposed](#) significant improvements to its TDN regulations in May 2020 to reduce the abuse of TDNs and restore state primacy under SMCRA. The National Mining Association (NMA) engaged directly with Department of the Interior (DOI) officials to outline specific reforms necessary to end the duplication of efforts that often resulted from the TDN process as well as the weaponization of TDNs instituted by the Obama administration. The NMA also submitted [comments](#) strongly supporting OSMRE's proposed reforms while raising specific additional steps the agency should take to fully restore the authority of SMCRA primacy states.

In Nov. 2020, OSMRE finalized its TDN [rule](#) (2020 rule) that revised the TDN process to minimize duplicate inspections, enforcement, and the administration of SMCRA by OSMRE and state regulatory authorities. The 2020 rule also clarified that the TDN enforcement process generally applies to site specific violations of SMCRA, and not state regulatory program issues.

Biden Administration

After a change in administrations, in 2023 OSMRE published a [proposed rule](#) to overhaul the TDN process by, among other things, eroding state primacy under SMCRA, and allowing *all* citizen complaints to be considered a request for federal inspection by OSMRE. See the NMA's May 5, 2023, memorandum summarizing the proposed rule [here](#).

The NMA submitted [comments](#) outlining our significant concerns with the proposed rule, and how it would largely revert back to the way OSMRE enforced SMCRA TDN violations prior to 2020 by severely eroding state primacy under SMCRA, and without proper justification of why the revisions are needed. Further, NMA's comments stressed the implementation uncertainties created by OSMRE's proposed interpretation that permit defects should be considered a violation of SMCRA. NMA's comments also highlighted the impacts of collateral attacks on permitting and state regulatory authorities, in contravention of longstanding policies of OSMRE and congressional intent under SMCRA. Despite these arguments, OSMRE finalized the [rule](#) in 2024 (2024 Rule).

Litigation on the 2024 Rule

Last year, a coalition of 14 states and state agencies filed a [petition](#) for

judicial review in the U.S. District Court of the District of Columbia challenging OSMRE's 2024 Rule as eroding state primacy under SMCRA. See the NMA's June 21, 2024, [memorandum](#) outlining the States' arguments. The state coalition subsequently filed a [motion](#) to stay or preliminarily enjoin the 2024 Rule. See NMA's Sept. 13, 2024, [memorandum](#) summarizing the states stay motion.

The NMA filed an [amicus brief](#) supporting a coalition of states challenging the 2024 Rule. Our brief argued that the TDN rule is "an unlawful expansion of agency authority and a fundamental threat to the surface mining industry's ability to operate effectively under SMCRA's cooperative federalism framework." More specifically, we asserted that the rule: (1) unlawfully transforms TDN from a compliance tool into a punitive mechanism against operators who follow state law; (2) unlawfully creates a new federal channel for collateral attacks on state decisions; and (3) violates basic requirements of reasoned decision-making in reversing longstanding policy. On Dec. 26, 2024, the court formally accepted our amicus brief for good cause shown.

On Dec. 24, 2024, the District Court [denied](#) the state coalition's stay motion. The court found that the states failed to demonstrate irreparable harm absent the grant of a preliminary injunction. The court also dismissed the states claimed injuries resulting from increased burdens on state regulatory authorities, finding the states declarations lacking in supporting claims of imminent, irreparable harm. Finally, the court found that the states claimed injuries from anticipated delays in permits were too speculative to support a claim of irreparable harm because the states did not provide concrete evidence that economic harm to mining operators and electricity consumers would occur.

On April 30, 2025, following additional subsequent filings from the parties on the merits of the case, DOI and OSMRE filed a [motion to stay](#) the case and vacate all briefing deadlines while the government reconsidered the 2024 Rule. The government cited to President Trump's [Executive Order 14154](#) on "Unleashing American Energy" and the [Executive Order 14241](#) on "Reinvigorating America's Beautiful Clean Coal Industry and Amending Executive Order 14241," [Secretarial Order 3418](#), and DOI's [public commitment](#) to undertake a rulemaking process to revise the 2024 Rule. The government requested that the parties file joint status reports every 120 days to apprise the court of any regulatory developments, and a status

report 14 days after any agency action. The government included a [declaration](#) from James Tyree, OSMRE's Chief of the Division of Regulatory Support, stating that OSMRE was "targeting publication of a proposed rule that suspends, revises, or rescinds the 2024 TDN Rule by the end of August 2025." The states declined to consent to the proposed stay of the case, filing a separate [response](#) opposing the government's request.

During a motion hearing on June 12, 2025, the court granted the government's motion to vacate all pending deadlines in the case and ordered the parties to appear before the court for a status conference on Aug. 21, 2025. The court denied without prejudice the parties' motions for summary judgment, stating that if "the forthcoming rulemaking process does not moot this case, the parties may request that the Court reinstate the pending cross-motions for summary judgment" and "request that the Court set a briefing schedule for the remaining replies by the [government] and intervenors."

2025 Proposed Rule

In DOI's announcement in April that it would reconsider the 2024 Rule, it stated that it would be undertaking a rulemaking to revise the rule to "largely revert back to the 2020 version of the rule, while keeping certain portions of the 2024 rule." However, OSMRE has decided to propose a complete rescission of the 2024 Rule and to return to the 2020 regulations that were in effect immediately before the promulgation of that rule. A summary of those changes is outlined below.

Reason to Believe Determination

OSMRE states that the 2024 Rule arbitrarily limited the types of information that OSMRE can consider before issuing a TDN to: (i) "information received from a citizen complaint"; (ii) "information available in OSMRE files at the time that OSMRE is notified of the possible violation"; (iii) "and publicly available electronic information." 30 CFR 842.11(b)(1)(i). OSMRE now believes that the 2024 Rule narrowed its investigatory sources in a manner inconsistent with the best reading of SMCRA, in light of the U.S. Supreme Court's ruling in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). OSMRE is proposing to return to the language prior to the 2024 Rule that implements the best reading of SMCRA.

Definition of Citizen Complaint and TDN

OSMRE is proposing to remove references to the phrase "citizen complaint" from its regulations because it is not used anywhere in SMCRA. This removal would return text back to 2020 language that did not include the filing of citizen complaints. OSMRE's reasoning is that when the automatic treatment of all citizen complaints as requests for a federal inspection is read together with the 2024 Rule's restriction on the type of information OSMRE can consider whether to issue a TDN, the 2024 Rule violates the principles of cooperative federalism and is inconsistent with SMCRA. OSMRE also proposes to rescind the definition of a TDN because it is unnecessary and would be in line with this administration's deregulatory agenda.

Persons subject to a TDN

OSMRE believes that the 2024 Rule's treatment of a state regulatory authority as a "person" is inconsistent with and goes beyond the text of SMCRA, which excludes a state regulatory authority from its definition of a "person." OSMRE reasons that in order to trigger a TDN a state regulatory authority can only be a "person" that could be "in violation of any requirement of the Act" if the state is acting as a business organization of some type, such as a permit holder operating a surface coal mining operation. Pointing to the recent decision in *Loper Bright*, OSMRE is proposing to return to its prior understanding of who can be found in violation of SMCRA and its implementing regulations for the purposes of a TDN.

Types of TDN Violations

Similarly, OSMRE states that the TDN process is not a permissible way under SMCRA for OSMRE to review actions of a state regulatory authority. Instead, a separate enforcement process for programmatic violations under SMCRA exists when the violations of all or any part of an approved state program result from a failure of the state to enforce such program effectively, also known as defective permits. Therefore, OSMRE proposes that to the extent the 2024 Rule subjected a state regulatory authority to the TDN process for violations of any or all part of an approved state program, it was inconsistent with SMCRA and offends principles of cooperative federalism by funneling

such process to OSMRE instead of the state regulatory authority as the correct avenue for correction.

Time Frames

The 2024 Rule created deadlines for OSMRE to develop and approve an action plan after identifying a state regulatory program issue and issued a deadline for states as well. In the proposed rule, OSMRE notes that the department normally does not regulate its bureaus and offices in its regulations, and it is unnecessary to do so. OSMRE also contends that the time frames are too restrictive because some state regulatory program issues could be of a type where the timeframes are not long enough to take necessary action. OSMRE cites to Parkinson's Law, the theory that work expands to fill the time available for its completion, to assert that OSMRE and the state will use all the time allotted and may even inhibit the end-goal of the processes.

Similar Possible Violations

The 2024 Rule codified the longstanding practice of OSMRE issuing a single TDN for a group of substantively similar possible violations. In the proposed rule, and in line with this administration's agenda, OSMRE does not believe it is necessary to include the longstanding practice in the regulations because nothing in SMCRA or the pre-2024 Rule prohibits OSMRE from grouping similar violations into a single TDN if it is more effective to do so, even without a regulatory provision. Therefore, OSMRE proposes to remove this language.

Citizen Justification for Possible Violation

The 2024 Rule removed language requiring a person who requests a federal inspection to include in the statement a basis for the person's assertion that the state regulatory authority had not taken action with respect to the possible violation. OSMRE now states that the 2024 Rule preamble mischaracterized the pre-existing language. OSMRE is proposing to require a person to provide the basis for the assertion that the state regulatory had not taken action with respect to a possible violation.

Action Plans as Appropriate Action

The 2024 TDN Rule removed corrective action plans associated with a State regulatory program issue as a possible "appropriate action" in response to a TDN, asserting that an action plan to remedy a state regulatory program issue does not remedy violations. OSMRE now finds that is a misstatement. To avoid confusion or uncertainty for the regulated community, state regulatory authorities, and the public at large, the proposed rule seeks to remove ambiguity and definitively states that "appropriate action" may include corrective action to resolve state regulatory program issues.

Next Steps

The NMA is drafting comments on this proposed rulemaking in support of state primacy and reversion to the 2020 rule. **We will host a Teams meeting on Wednesday, June 26 at 3:00 p.m. (Eastern) to discuss our comment strategy.** Click [here](#) to add the meeting to your calendar. In the meantime, if you have any questions on this matter, please contact me at kmills@nma.org.

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