

Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

#### *Unfunded Mandates*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

#### **List of Subjects in 30 CFR Part 925**

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 2, 1997.

**Deborah Watford,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

[FR Doc. 97-15009 Filed 6-9-97; 8:45 am]

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## **DEPARTMENT OF THE INTERIOR**

### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 943**

[SPATS No. TX-033-FOR]

#### **Texas Regulatory Program**

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

**ACTION:** Proposed rule; withdrawal of proposed amendment.

**SUMMARY:** OSM is announcing the withdrawal of a proposed amendment to the Texas regulatory program (hereinafter the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment concerned codification of the Texas Coal Mining Regulations in the Texas Administrative Code at Part 16, Economic Regulation, Chapter 12. Texas is withdrawing the amendment at its own initiative.

**DATES:** The proposed amendment is withdrawn June 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Wolfrom, Director, Tulsa Field Office, Telephone: (918) 581-6430.

**SUPPLEMENTARY INFORMATION:** By letter dated January 30, 1997, (Administrative Record No. TX-633), Texas submitted a proposed amendment to its program pursuant to SMCRA. The amendment concerned codification of the Texas Coal Mining Regulations in the Texas

Administrative Code at Part 16, Economic Regulation, Chapter 12. Texas submitted the proposed amendment at its own initiative.

On February 21, 1997, OSM announced receipt of and solicited public comment on the proposed amendment in the **Federal Register** (62 FR 7965). The public comment period ended on March 24, 1997.

On May 27, 1997 (Administrative Record No. TX-633.05), Texas requested that the proposed amendment be withdrawn. Texas intends to incorporate several recently approved amendments into the withdrawn proposed amendment, and then resubmit the amendment. Therefore, the proposed amendment announced in the February 21, 1997, **Federal Register** is withdrawn.

#### **List of Subjects in 30 CFR Part 943**

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 3, 1997.

**Deborah Watford,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

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## **DEPARTMENT OF THE INTERIOR**

### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 948**

[WV-077-FOR]

#### **West Virginia Permanent Regulatory Program**

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

**ACTION:** Proposed rule.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises both the West Virginia Surface Mining Reclamation Regulations and the West Virginia Surface Mining Code. The amendment mainly concerns changes to implement the standards of the Federal Energy Policy Act of 1992. The amendment is intended to revise the State program to be consistent with the counterpart Federal provisions.

**DATES:** Written comments must be received on or before 4:00 p.m. on June 25, 1997.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

Copies of the proposed amendment, the West Virginia program, and the administrative record on the West Virginia program are available for public review and copying at the addresses below, during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting the OSM Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301 Telephone: (304) 347-7158

West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759-0515.

In addition, copies of the proposed amendment are available for inspection during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291-4004  
Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255-5265.

#### **FOR FURTHER INFORMATION CONTACT:**

Mr. Roger W. Calhoun, Director, Charleston Field Office; Telephone: (304) 347-7158.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background on the West Virginia Program**

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval can be found in the January 21, 1981, **Federal Register** (46 FR 5915-5956). Subsequent actions concerning the West Virginia program and previous amendments are codified at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

##### **II. Discussion of the Proposed Amendment**

By letter dated April 28, 1997 (Administrative Record Number WV-1056), the West Virginia Division of

Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program pursuant to 30 CFR 732.17. By letter dated May 14, 1997 (Administrative Record Number WV-1057), WVDEP submitted some revisions to the original submittal. The amendment contains revisions to the West Virginia Surface Mining Reclamation Regulations (CSR Section 38-2 *et seq.*), and to § 22-3 of the West Virginia Surface Mining Code. The amendment mainly concerns changes to implement the standards of the Federal Energy Policy Act of 1992. The amendment is intended to revise the State program to be consistent with the counterpart Federal provisions.

The proposed amendments are identified below. Minor wording changes and other non-substantive changes are not identified.

### 1. Section 22-3 of the West Virginia Code

§ 22-3-3(u) The definition of "surface mine" is amended by adding three examples which are not encompassed by the definition of "surface mine." The three exceptions are: (1) Coal extraction pursuant to a government financed reclamation contract; (2) coal extraction authorized as an incidental part of development of land for commercial, residential, industrial, or civic use; and the reclamation of an abandoned or forfeited mine by a no cost reclamation contract.

§ 22-3-3(x) is added to define "Unanticipated event or condition."

§ 22-3-3(y) is added to define "Lands eligible for re-mining."

§ 22-3-3(z) is added to define "Replacement of water supply."

§ 22-3-13(b)(20) concerning revegetation performance standards is amended by adding that on lands eligible for re-mining, the revegetation responsibility period will be not less than two growing seasons.

§ 22-3-13(b)(22) is amended by deleting the words "shall" in the last sentence and replacing that word with "may."

§ 22-3-13(c)(3) is amended by adding the postmining land use of fish and wildlife habitat and recreation lands to the list of land uses where the WVDEP Director may grant a permit under the previously specified provisions.

§ 22-3-15(h) is added to provide that the WVDEP Director may provide a compliance conference when requested by the permittee.

§ 22-3-17(b) is amended by adding a paragraph to the end of the subsection concerning the reinstating, within one year, of a revoked permit.

§ 22-3-18(c) is amended by deleting the word "shall" in two locations and replacing those words with "may." With these revisions, a permit "may" not be issued until the applicant submits proof that a violation is being corrected, and a permit "may" not be issued if the applicant is found to be affiliated with a person who has had a permit or bond revoked for failure to reclaim.

§ 22-3-18(f) is added to provide that the prohibition of subsection 22-3-18(c) may not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface coal mine eligible for remaining under a permit held by the applicant.

§ 22-3-28 The title of this provision is amended from special "permits" to special "authorization" for reclamation of existing abandoned coal processing waste piles. In addition, the following is added to the title: coal extraction as an incidental part of development of land for commercial, residential, industrial, or civic; no cost reclamation contract. In addition, throughout this provision, the term "permit" is replaced with "authorization."

§ 22-3-28(b) is amended in the last sentence by changing the validity of a special authorization from "until work permitted is completed" to "for two years." § 22-3-28(c) is amended by changing "shall" to "may." Under this change, anyone who has been issued a special authorization "may" not be issued an additional special authorization unless satisfactory evidence has been submitted to the WVDEP Director.

§ 22-3-28(d) is amended by deleting the words "special permit" and replacing them with the words "reclamation contract." In addition, the second from the last sentence is being deleted. That sentence reads: "The director shall promulgate specific rules for such operations."

§ 22-3-28(e) This new subsection is added to provide that no person may engage in coal extraction pursuant to a government financed reclamation contract without a valid surface mining permit unless such person affirmatively demonstrates that he is eligible to secure special authorization to engage in a government financed reclamation contract authorizing incidental and necessary coal extraction. The new subsection further specifies the criteria under which this provision may be implemented.

### 2. CSR 38-2 of the West Virginia Surface Mining Reclamation Regulations

38-2-2.4 The definition of "acid-producing coal seam" is amended by deleting coal seams commonly

associated with acid-producing minerals. The last sentence is amended by deleting reference to the multiple seams whose names were deleted and to refer instead to single seams.

38-2-2.120 is amended by changing the phrase "land or water resources" to read "land and water resources."

38-2-3.2.e is amended by deleting the last sentence. The deleted language requires that permits that are being renewed or significantly revised and permit applications which are being significantly revised must be advertised in accordance with paragraph 38-2-3.2.b and paragraph (6), subsection (a), section 9 of the Act.

38-2-3.12 concerning subsidence control plans is amended to require that the survey map required by subsection 3.12.a.1 identify the location and type of water supplies. Language has been added to require the survey to identify whether subsidence could contaminate, diminish or interrupt water supplies. Language is also added to authorize, upon the submittal of justifying technical analysis, of an angle of draw other than the specified 30 degrees.

38-2-3.12.a.2 is added to require surveys of water supplies and structures that could be damaged within the applicable angle of draw. Two provisors are added that would allow an exemption or postponement of the pre-subsidence survey requirements for areas of extraction of less than or equal to 60 percent.

In addition, a provision is added to state that if the permittee is denied access to the land or property for the purpose of conducting the pre-subsidence survey, the permittee will notify the owner, in writing, that no presumption of causation will exist.

Survey reports shall be signed by the person or persons who conduct the survey, and a copy shall be provided to the WVDEP Director. Finally, the meaning of the term "non-commercial building" is clarified.

38-2-3.14.b.7 and 14.b.8 are deleted. These provisions require a PHC and a hydrologic reclamation plan.

38-2-3.14.b.12.E is amended by adding that "if requested by the Director" a stability analysis of the existing abandoned coal processing waste pile is required.

38-2-3.14.b.13.B. The existing language is deleted and replaced in its entirety.

This new language provides the requirement and criteria for diverting surface water around or over the refuse disposal piles.

38-2-3.29 concerning incidental boundary revisions (IBR) is amended by adding language to authorize that IBR's

also could include areas where the WVDEP Director determines that limited coal removal on areas immediately adjacent to the existing permit is the only practical alternative to recovery of unanticipated reserves or necessary to enhance reclamation efforts or environmental protection.

38-2-3.35 is added to specify the standards for grade and linear measurements.

38-2-5.5.c is amended to add that for permanent impoundments, the landowner sign a request that the structure be left for recreational or other purposes.

Language is deleted that requires that the operator also sign the request, and that the request assert that the landowner assumes liability for the structure and will provide for sound future maintenance of the structure.

38-2-6.5.a is amended by adding language to allow for blasting on Sunday if the WVDEP Director determines that the blasting is necessary and there has been an opportunity for a public hearing.

38-2-8.2.e is added to encourage and specify the criteria for timber windrowing to promote the enhancement of food, shelter, and habitat for wildlife.

38-2-9.2.i.2 is amended by adding one sentence to specify that an alternate maximum or minimum soil pH may be approved based on the optimum pH for the revegetated species.

38-2-9.3.h.1 is deleted and replaced in its entirety. The revised provision changes the minimum tree stocking rate from 600 trees per acre to no less than 450 stems per acre.

38-2-9.3.h.2 is deleted. This provision specified a minimum percentage of commercial tree species. The criteria for commercial species is now in 38-2-9.3.h.1.

38-2-9.3.h.2 (formerly h.3) is being revised to change the survival rate from 450 trees to 300 trees per acre, or the rate specified in the forest management plan, whichever is greater.

38-2-14.11.e concerning inactive status is amended to delete the three-year limit on inactive status for preparation plants and load-out facilities. Added language authorizes the WVDEP Director to grant inactive status for a period not to exceed ten years, provided the facilities are maintained in such condition that operations could be resumed within 60 days.

38-2-14.11.f is added to authorize the WVDEP Director to grant inactive status for a period not to exceed current permit term plus five years for underground mining operations provided the

operation is maintained in such condition that the operations could be resumed within 60 days and openings are protected from unauthorized entry.

38-2-14.11.g is added to authorize the WVDEP Director to grant inactive status for a period not to exceed ten years for coal refuse sites provided the completed lifts of the coal refuse site are regraded (which may include topsoiling), seeded and drainage control, where possible, has been installed in accordance with the terms and conditions of the permit.

38-2-14.11.h is added to provide that the WVDEP Director may grant inactive status for a permit for a longer term than set forth in 14.11.e. and f. Provided, the permittee shall furnish and maintain bond that is equal to the estimated actual reclamation cost, as determined by the director. The director shall review the estimated actual reclamation cost at least every two and one-half years.

38-2-14.15.c, concerning reclaimed areas, is amended to delete language concerning Phase I bond release and semi-permanent ancillary facilities. Language is added to provide that regraded areas must also be stabilized. Also added is a list that identifies areas and criteria that shall not be included in the calculation of disturbed area: 14.15.c.1. Semi-permanent ancillary facilities; 14.15.c.2. Areas within the confines of excess spoil disposal fills which are under construction; 14.15.c.3. Areas containing 30 aggregate acres or less which have been cleared and grubbed and have the appropriate drainage controls installed and certified; 14.15.c.4. Areas that have been cleared and grubbed with exceed the thirty aggregate acres and/or those which will not be included in the operational area within six months; 14.15.c.5. Areas which have been backfilled and graded with material placed in a stable, controlled manner which will not subsequently be moved to final grade, mechanically stabilized, and had drainage controls installed.

38-2-14.15.d. This provision is amended by adding a final sentence to provide that the WVDEP Director may consider contemporaneous reclamation plans on multiple permitted areas with adjoining boundaries where contemporaneous reclamation is practiced on a total operation basis.

38-2-16.2.c is amended by adding an explanation of the term "material" damage. "Material" means functional impairment of surface lands, features, structures or facilities; any physical change that has a significant adverse impact on the affected land's capability to support or reasonably foreseeable

uses or causes significant loss in production or income; or any significant change in the condition, appearance or utility of any structure from its pre-subsidence condition.

38-2-16.2.c.2 is amended by adding a final sentence to provide that the provision applies only to subsidence related damage caused by underground mining activities conducted after October 24, 1992.

38-2-16.2.c.3 is added to provide that if alleged subsidence damage occurs to protected structures as a result of earth movement within the area in which a pre-subsidence structural survey is required, a rebuttable presumption exists that the underground mining operation caused the damage.

38-2-16.2.c.3.A is added to provide that if the permittee was denied access to conduct a pre-subsidence survey, no presumption of causation will exist.

38-2-16.2.c.3.B. This provision is added to provide that the presumption will be rebutted if, for example, the evidence establishes that: the damage predated the mining in question; the damage was proximately caused by some other factors or was not proximately caused by subsidence; or the damage occurred outside the surface area within which subsidence was actually caused by the mining in question.

38-2-16.2.c.3.C. This provision is added to provide that in any determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the director.

38-2-16.2.c.4. This provision is added to provide that when subsidence related material damage occurs to lands, structures, or water supply, and if the director issues violation(s), the director may extend the 90-day abatement period to complete repairs, but shall not exceed one year from date of violation notice. Provided, however, the permittee demonstrates, in writing, that it would be unreasonable to complete repairs within the 90-day abatement period. If extended beyond 90 days, as part of the remedial measures, the permittee shall post an escrow bond to cover the estimated costs of repairs.

38-2-20.1.e is added to provide that the permittee may request an on-site compliance conference, and out the requirements related to such a conference. Neither the holding of a compliance conference nor any opinion given by an authorized representative of the director at a conference shall affect the following:

38-2-20.1.e.1. Any rights or obligations of the director or by the permittee with respect to any inspection, notice of violation, or cessation order, whether prior to or subsequent to the compliance conference; or

38-2-20.1.e.2. The validity of any notice of violation or cessation order issued with any condition or practice reviewed at the compliance conference.

### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on the proposed amendment submitted by the State of West Virginia to its permanent regulatory program. Specifically, OSM is seeking comments on the revision to the State's Code and regulations that were submitted on April 28, 1997, and amended on May 14, 1997. Comments should address whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the West Virginia program.

#### Written Comments

Written comments should be specific, pertain only to the issue proposed in this notice and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

#### Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on June 25, 1997. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

#### Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Charleston Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made part of the Administrative Record.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

### IV. Procedural Determinations

#### Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

#### Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

#### National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

#### Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

#### Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

#### Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year or any governmental entity or the private sector.

#### List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 30, 1997.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 97-15008 Filed 6-9-97; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 69

[FRL-5836-3]

### United States Virgin Islands Proposed Ruling on Petition Pursuant to Section 325(A)(1) of the Clean Air Act

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** On May 7, 1996, the Governor of the United States Virgin Islands sent to the Environmental Protection Agency ("EPA") a petition for an exemption ("petition") from certain requirements of the Clean Air Act (the "Act"). The