

## LIST OF RULES THAT ARE OBSOLETE OR REPLACED BY NEW RULES—BIA WILL REMOVE THESE RULES

25 CFR part	Title of rule
45	Special Education.
65	Preparation of a Membership Roll of Delaware Indians of Western Oklahoma.
66	Preparation of Rolls of Delaware Indians.
76	Enrollment of Indian of the San Pasqual Band of Mission Indians in California.
142	Operation of U.S.M.S. "North Star" between Seattle, Washington and Stations of the Bureau of Indian Affairs and other Government Agencies, Alaska.
250	Indian Fishing—Hoopa Valley Indian Reservation.
271	Contracts under Indian Self-determination Act—Replaced with new Part 900.
272	Grants under Indian Self-determination Act—Replaced with new Part 900.
274	School Construction Contracts or Services for Tribally Operated Previously Private Schools.
276	Uniform Administrative Requirements for Grants—Replaced with new Part 900.
278	Special Grants for Economic Development and Core Management Grants to Small Tribes—Replaced with new Part 900.

Dated: April 12, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

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### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 948

[WV-075-FOR]

#### West Virginia Permanent Regulatory Program

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

**ACTION:** Proposed rule.

**SUMMARY:** OSM is announcing the receipt of proposed amendments 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 amendments concern revisions to the West Virginia Surface Mining Reclamation Regulations. The amendments are intended to improve the clarity and effectiveness of the West Virginia program, and to revise the State program to be consistent with the corresponding Federal regulations.

**DATES:** Written comments must be received on or before 4:00 p.m. on May 23, 1996. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on May 20, 1996. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on May 8, 1996.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. James C. Blankenship, Jr., 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. James C. Blankenship, Jr., 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 amendments 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. James C. Blankenship, Jr., 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 2, 1996 (Administrative Record Number WV-1024), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program pursuant to 30b CFR 732.17. The amendment contains revisions to the West Virginia Surface Mining Reclamation Regulations (CSR section 38-2-1 *et seq.*).

The last time the State regulations were significantly revised was on February 21, 1996. The Director partially approved the revisions in the February 21, 1996, Federal Register (61 FR 6511-6537). See 30 CFR 948.15 for the provisions partially approved. See 30 CFR 948.16 for required amendments.

##### Proposed Amendments

1. Section 38-2-2-106 Definition of "Safety factor." This definition is revised to mean the ratio of the sum of the resisting forces to the sum of the loading or driving forces as determined by acceptable engineering practices. Prior to this change, the term was defined as the ratio of the sum of the resisting forces to the sum of the loading forces.

2. Section 38-2-3.2(e) Readvertisement of permit applications. This provision is amended by adding the phrase, "that do not significantly affect the health, safety or welfare of the public and," to the first sentence. With this change, a limited number of minor

changes may be grouped and advertised in one additional notice if the changes do not significantly affect the health, safety or welfare of the public.

3. Section 38-2-2.6(h)(5) Certification of drainage/sediment control structure designs. This provision is amended by changing a cited reference concerning dams. "Article 5D of Chapter 20" is deleted and replaced by "Article 14 of Chapter 22."

4. Section 38-2-3.8(c) Revision or reconstruction of existing structures and support facilities. This provision is amended by adding the following language: "Provided, that those structures and facilities, where it can be demonstrated that reconstruction or revision would result in greater environmental harm and the performance standards set forth in the Act and these regulations can otherwise be met, may be exempt from revision or reconstruction." This amendment, in effect, provides an alternative to requiring revision or reconstruction of structures or support facilities in cases where greater environmental harm would result from the revisions or reconstruction.

5. Section 38-2-3.27 Permit renewals and extensions. The introductory paragraph of this provision is amended by deleting the word "may" and adding in its place the word "shall." In addition, language has been deleted that required all backfilling and grading be completed within 60 days prior to the expiration date of the permit, and that an application for Phase I bond release be filed prior to the expiration date of the permit. As amended, the provision provides that the Director of the Division of Environmental Protection (DEP) shall waive the requirements for renewal if the permittee certifies in writing that all coal extraction is completed, that all backfilling and regrading will be completed and reclamation activities are ongoing.

6. Section 38-2-4.4 Infrequently used access road. This provision is revised by deleting and adding rule citations, as amended, infrequently used access roads may not be exempt from the requirements of §§ 38-2-4.2, 4.7(a), 4.8, 4.9, and 5.3.

7. Section 38-2-4.12 Certification of primary roads. This provision is amended by deleting the requirement that changes documented in the as-built plans be submitted to the Director of DEP as a permit revision. In its place, the following language is added: "If as-built plans are submitted, the certification shall describe how and to what extent the construction deviates from the proposed design, and shall explain how and certify that the road

will meet performance standards. In effect, this amendments replaces a requirement that all changes documented as-built plans be submitted as a permit revision, with a requirement that when changes are certified, the certification shall include an explanation and certification that the changes will meet performance standards.

8. Section 38-2-5.4(c) Safety standards for embankment type structures. The first paragraph of this provision is amended by deleting the phrase "which may include slurry impoundments." With this amendment, the provision's safety standards apply to all embankment type sediment control or other water retention structures.

9. Section 38-2-11.6(a) Review of permits for adequacy of bond. This provision is amended to add a requirement that permits will not be renewed until the appropriate amount of bond has been posted.

Also, subparagraphs (a) (2), (3), and (4) are deleted. These subparagraphs provided that existing permits (for underground mines, preparation plants, and coal refuse sites) shall be subject to the site-specific bond criteria of § 38-2-11.6 at the time of application for renewal or mid-term review, shall not be renewed by the Director of DEP until the appropriate amount of bond is posted. See the first paragraph in 11.6(a) for language similar to that which is being deleted.

10. Section 38-2-11.6(c)(6), (d)(6), (e)(5), (f)(5) Bond reduction credits. These provisions are being amended to delete, in various places, the phrase "within five (5) years of the date of SMA approval." In effect, the amount of bond reduction credits assigned is no longer contingent upon the "five years from the date of SMA approval" criterion.

11. Section 38-2-12.2(e) Bond release—chemical treatment. The existing language of this provision is deleted and replaced by the following:

Notwithstanding any other provisions of this rule, no bond release or reduction will be granted if, at the time, water discharged from or affected by the operation requires chemical treatment in order to comply with applicable effluent limitations or water quality standards; Provided, That the Director may approve a request for Phase I but not Phase II or III, release if the applicant demonstrates to the satisfaction of the Director that either:

(A) The remaining bond is adequate to assure long term treatment of the drainage; or  
(B) The operator has irrevocably committed other financial resources which are adequate to assure long term treatment of the drainage; Provided, That the alternate financial resources must be in acceptable form, and meet the standards set forth in Section 11 of

the Act and Section 11 of these regulations; Provided, however, That alternate financial arrangements shall provide a mechanism whereby the Director can assume management of the resources and treatment work in the event that the operator defaults for any reason; And provided further, That default on a treatment obligation under this paragraph shall be considered equivalent to a bond forfeiture, and the operator will be subject to penalties and sanctions, including permit blocking, as if a bond forfeiture had occurred.

In order to make such demonstration as referenced above, the applicant shall address, at a minimum, the current and projected quantity and quality of drainage to be treated, the anticipated duration of treatment, the estimated capital and operating cost of the treatment facility, and the calculations which demonstrate the adequacy of the remaining bond or of the alternate financial resources.

In effect, the added language would allow, under the specified circumstances, Phase I bond release on operations which require chemical treatment in order to comply with applicable effluent limitations or water quality standards.

The Director notes that the State's definition of "chemical treatment" at § 38-2-2.20 has only been partially approved by OSM. Specifically, the language of the definition that excludes passive treatment systems from being considered "chemical treatment" was not approved to the extent that such passive treatment systems would be applied in the context of § 38-2-12.2(e) to authorize bond release for sites with discharges that require passive treatment to meet discharge standards. For a complete explanation of the partial disapproval of the State's definition of "chemical treatment," see Finding B-2, in the February 21, 1996, Federal Register (61 FR 6511) page 6517.

12. Section 38-2-14.14(e)(4) Valley fills—rock core chimney drains. This provision is being amended by deleting the third sentence, which concerns the control of surface water runoff, and replacing that language with the following:

Surface water runoff from areas above and adjacent to the fill shall be diverted into properly designed and constructed stabilized diversion channels which have been designed using best current technology to safely pass the peak runoff from a 1.0 year, 24-hour precipitation event. The channel shall be designed and constructed to ensure stability of the fill, control erosion, and minimize water infiltration into the fill.

13. Section 38-2-14.15(m) Coal processing waste disposal. This provision is being amended by deleting the prohibition at 14.15(m)(1) that coal processing waste "will not contain acid producing or toxic forming material." A

new provision at 14.15(m)(2) is added to provide as follows:

(2) The coal processing waste will not be placed in the backfill unless it has been demonstrated to the satisfaction of the Director that: (A) the coal processing waste to be placed based upon laboratory testing to be non-toxic and/or non-acid producing; or (B) an adequate handling plan including alkaline additives has been developed and the material after alkaline addition is non-toxic and/or non-acid producing.

### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on the proposed amendments submitted by the State of West Virginia to its permanent regulatory program. Specifically, OSM is seeking comments on the revisions to the State's regulations that were submitted on April 2, 1996 (Administrative Record No. WV-1024). Comments should address whether the proposed amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the West Virginia program.

#### Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking 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 testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business on May 8, 1996. If no one requests an opportunity to testify at the public hearing by that date, 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 remarks and appropriate questions.

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

#### Public Meeting

If only one person or group requests to testify at a hearing, a public meeting, rather than a public hearing, may be held, and the results of the meeting included in the Administrative Record.

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM Charleston Field Office listed under **ADDRESSES** 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 a part of the Administrative Record.

### IV. Procedural Determinations

#### Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary, and OMB regulatory review is not required.

#### Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (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 the Surface Mining Control and Reclamation Act (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 the Office of Management and Budget 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 counterpart 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 counterpart Federal regulations.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 12, 1996.

Allen D. Klein,

*Regional Director, Appalachian Regional Coordinating Center.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 110

[CGD07-96-017]

RIN 2115-AA98

#### Special Anchorage Areas; Ashley River, Charleston, SC

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish two new anchorage areas in the Ashley River, Charleston, South