

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 Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

#### Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.S.T. on December 12, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the 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 speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

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**.

#### Public Meeting

If only one person requests an opportunity to speak 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 amendment may request a meeting 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 at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

#### 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 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 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 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 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 9, 1995.

David G. Simpson,

*Acting Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 95-28863 Filed 11-24-95; 8:45 am]

BILLING CODE 4310-05-M

#### 30 CFR Part 946

[VA-104-FOR]

#### Virginia Regulatory Program

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

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

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Virginia regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of five explanatory statements written to clarify and assist the implementation of, and compliance with, recent changes to §§ 480-03-19.816/817.102(e) of the Virginia program relative to the disposal of coal processing waste and underground development waste in mined-out areas. The amendment is intended to address a required program amendment at 30 CFR 946.16(a).

**DATES:** Written comments must be received by 4:00 p.m., E.S.T. on December 27, 1995. If requested, a public hearing on the proposed amendment will be held on December 22, 1995. Requests to speak at the hearing must be received by 4:00 p.m., E.S.T. on December 12, 1995.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive one free copy of the proposed amendment by contacting OSM's Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field

Office, P.O. Drawer 1217, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone: (703) 523-4303.

Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (703) 523-8100.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (703) 523-4303.

**SUPPLEMENTARY INFORMATION:**

**I. Background on the Virginia Program**

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, Federal Register (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 946.12, 946.13, 946.15, and 946.16.

**II. Discussion of the Proposed Amendment**

By letter dated October 31, 1994 (Administrative Record No. VA-839), Virginia proposed to amend section 480-03-19.816/817.102(e) to clarify the Virginia regulations that are applicable when coal processing waste and underground development waste is used as backfill material for mined-out areas. The amendment was submitted to settle interpretational differences between Virginia and OSM relative to how the coal mine waste regulations apply to waste materials placed in backfills.

Virginia's submittal of the amendment to section 480-03-19.816/817.102(e) was accompanied by a detailed explanation of the intended implementation and scope of the proposed amendment. OSM approved the amendment on August 8, 1995 (60 FR 40271) to the extent that the amendments are implemented as explained by Virginia in its October 31, 1994, submittal letter. In addition, OSM also required (at 30 CFR 946.16(a)) that Virginia further clarify the implementation of the changes by amending the Virginia program as follows:

- (1) Define the term "suitable;"
- (2) Add a requirement to the Virginia rules to explicitly require the determination of the location of seeps, springs, or other discharges in the designing of a backfill;
- (3) Add to 480-03-19.773.17 a specific requirement that a permit

condition be imposed requiring a quarterly analysis of coal mine waste as it is placed in a refuse pile or in an area being backfilled.

(4) Define the term "small" to mean that there are no channeled flows, that during storm events there is only sheet flow, and that no variance would be approved if the drainage area above the pile on any point exceeds 500 feet, measured along the slope;

(5) Add a requirement that whenever coal refuse is placed on preexisting benches for the purpose of returning the benches to approximate original contour (AOC), the performance standards for the placement of excess spoil on preexisting benches will be followed.

By letter dated October 13, 1995 (Administrative Record No. VA-865), Virginia submitted its response to the required amendments at 30 CFR 946.16(a). The amendment consists of five statements that are attached to a letter to be sent to coal operators, consultants, Virginia Division of Mined Land Reclamation (DMLR) personnel, and other interested parties. The five statements are intended to clarify the intended implementation and scope of the recently approved amendments to section 480-03-19.816/817.102(e). The proposed amendments are as follows:

**1. Clarification of the Term "Suitable"**

The Department of Mines, Minerals, and Energy (DMME) has not promulgated a regulatory definition for the term "suitable" as used at 480-03-19.816/817.102(e) since the ordinary usage (Webster—satisfactory for a use or purpose) is intended. DMME will consider material suitable provided it is satisfactory for the purpose of meeting the Virginia program performance standards for each site specific circumstance. For an example, the physical cohesive property of a given waste material under specific site conditions will be considered suitable provided the required (1.3) static safety factor can be achieved and landslides prevented (see 480-03-19.816/817.102(a) and (f)). Waste material is considered suitable provided the host site conditions, the material's chemical and physical characteristics, and the disposal techniques collectively demonstrate compliance with the Virginia program performance standards, including sections 480-03-19.816/817.41, 480-03-19.816/817.74, 480-03-19.816/817.81, 480-03-19.816/817.95, 480-03-19.816/817.97, 480-03-19.816/817.111-116, and 480-03-19.816/817.133.

**2. Seeps, Springs, or Other Discharges in the Backfill**

The Division of Mined Land Reclamation (DMLR) finds it necessary for the applicant to determine and identify in the application the location of seeps, springs, or other discharges in any area proposed for backfilling with coal mine waste. Such information is crucial to the applicant's site selection and backfill design as well as to DMLR's environmental impact analysis. DMLR has initiated the process to revise its regulations to be more specific with regard to seeps and springs in such backfills. In the meantime, DMLR interprets 480-03-19.780.21 (f) and (h) and 480-03-19.784.14 (e) and (g) as authority for this requirement.

**3. Permit Condition/Quarterly Analysis—Clarification**

The Virginia regulations at 480-03-19.773.17(b) provide authority for DMLR to impose permit conditions in addition to those mandated by this section. When the physical or chemical characteristics of coal mine waste used as backfill material are subject to change, DMLR will specify a condition in the permit approval document requiring the appropriate sampling and analysis necessary to ensure continued compliance with the performance standards. (Examples of circumstances in which DMLR requires periodic analysis of coal mine refuse, and/or backfill include, but is not limited to: Refuse produced by preparation plant serving several operations; refuse produced over a large areal extent at a single operation; refuse produced by several operations; and refuse of varying quality produced at several locations within one operation.)

**4. "Small Area"—Clarification**

At 480-03-19.816/817.102(e), the Virginia regulations provide that a variance to the requirement at 480-03-19.816/817.83(a)(2) may be approved by DMLR provided "the applicant demonstrates that the area above the refuse pile is small and that appropriate measures will be taken to direct or convey runoff across the surface area of the pile in a controlled manner.

DMLR intends to consider areas *small* provided the drainage area is 500 feet or less as measured along the slope. However, DMLR will grant such a variance only when there are no channeled flows, and if during storm events, there is only sheet flow.

**5. Preexisting Benches—Clarification**

DMLR will approve an application to place coal refuse on preexisting benches for the purpose of returning the benches

to the approximate original contour provided the performance standard for the placement of excess spoil on preexisting benches will be followed. The preexisting bench standard are found at 480-03-19.816/817.74.

### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the 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 Big Stone Gap 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 December 12, 1995. 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 Big Stone Gap 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 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 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 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 counterpart Federal regulations.

#### List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 9, 1995.

David G. Simpson,

*Acting Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 95-28864 Filed 11-24-95; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 229

[FRA Docket No. RSGC-2, Notice No. 9]

RIN 2130-AA80

#### Locomotive Visibility; Notice of Proposed Rulemaking, Public Hearing

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation.

**ACTION:** Proposed rule; extension of comment period and notice of public hearing.

**SUMMARY:** Under the authority of 49 U.S.C. 20103, 20143, and 20701, FRA will hold a public hearing in the format of a technical conference on November 28, 1995, in order to hear comments on the Locomotive Visibility Notice of Proposed Rulemaking (NPRM). This NPRM, published on August 28, 1995, at 60 FR 44457, would change headlight regulations for locomotives by requiring two auxiliary lights that would be placed on the front of the locomotive to form a triangle with the headlight. FRA believes this arrangement will increase locomotive visibility and help reduce grade crossing accidents and trespasser injuries. The meeting will be open to any interested person who wishes to attend.