

the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

#### 4. 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.*).

#### 5. 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 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 established by SMCRA or 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 in the analyses for the corresponding Federal regulations.

#### 6. Unfunded Mandates Reform Act

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

#### List of Subjects in 30 CFR Part 944

Abandoned mine reclamation programs, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 26, 1997.

#### Richard J. Seibel,

*Regional Director, Western Regional Coordinating Center.*

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#### DEPARTMENT OF THE INTERIOR

#### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 946

[VA-106-FOR]

#### Virginia Regulatory Program

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

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** OSM is reopening the comment period on information submitted by Virginia concerning parts 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 information submitted by Virginia for which the comment period is being reopened includes Virginia's technical justification for the proposed use of a 28-degree angle of draw with the rebuttable presumption of causation by subsidence provision. Virginia's proposed amendment is intended to revise the State program to be consistent with the Federal regulations as amended on March 31, 1995 (60 FR 16772).

**DATES:** Comments must be received by 4:00 p.m., on April 22, 1997.

**ADDRESSES:** Written comments 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, the technical justification for the 28-degree angle of draw, other information submitted by Virginia, and all written comments received in response to this amendment 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, 1941 Neeley Road, Suite 201, Compartment 116, 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 May 21, 1996 (Administrative Record No. VA-882), Virginia submitted amendments to the Virginia program concerning subsidence damage. The amendments are intended to make the Virginia program consistent with the Federal regulations as amended on March 31, 1995 (60 FR 16722). Virginia stated that the proposed amendments implement the standards of the Federal Energy Policy Act of 1992, and sections 45.1-243 and 45.1-258 of the Code of Virginia.

The proposed amendment was published in the June 11, 1996, **Federal Register** (61 FR 29506), and in the same notice, OSM opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on July 11, 1996. The public comment period was reopened on July 24, 1996 (61 FR 38422), to accept additional comments on the proposed use of a 28-degree angle of draw with the rebuttable presumption of causation by subsidence provision. That comment period ended on August 8, 1996. On September 12, 1996 (61 FR 48110), OSM announced a scheduled public hearing on the proposed amendments. The hearing was held on September 18, 1996 (Administrative Record Number VA-896).

By letter dated July 11, 1996 (Administrative Record Number VA-894), OSM requested that Virginia provide additional information on the proposed amendments, including technical justification for the use of the 28-degree angle of draw. Virginia responded to that request for additional information by letter dated January 3, 1997 (Administrative Record Number VA-902). OSM is reopening the public comment period on the additional information submitted by Virginia, including the technical justification of the use of a 28-degree angle of draw.

#### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comment on whether the additional information submitted by Virginia satisfies 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.

#### 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 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.

##### *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 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 26, 1997.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

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**ADDRESSES:** Forward comments to Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045-6900.

**FOR FURTHER INFORMATION CONTACT:** Steve Lillie, Office of the Assistant Secretary of Defense (Health Affairs), telephone (703) 695-3350.

Questions regarding payment of specific claims under the CHAMPUS allowable charge method should be addressed to the appropriate CHAMPUS contractor.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction and Background

###### A. Congressional Action

Section 712 of the National Defense Authorization Act for Fiscal Year 1996 revised 10 U.S.C. 1097(c), regarding the role of military medical treatment facilities in managed care initiatives, including TRICARE. Prior to the revision, section 1097(c) read in part, "However, the Secretary may, as an incentive for enrollment, establish reasonable preferences for services in facilities of the uniformed services for covered beneficiaries enrolled in any program established under, or operating in connection with, any contract under this section." The Authorization Act provision replaced "may" with "shall", which has the effect of directing priority access for TRICARE Prime enrollees over persons not enrolled.

Another statutory provision relating to access priority is 10 U.S.C. 1076(a), which establishes a special priority for survivors of sponsors who died on active duty: they are given the same priority as family members of active duty members. This special access priority is not time-limited, as is the special one-year cost sharing protection given to this category under 10 U.S.C. 1079.

The National Defense Authorization Act for FY 1997, section 734 amended 10 U.S.C. 1080 to establish certain exceptions to requirements for nonavailability statements in connection with payment of claims for civilian health care services. First, the Act eliminates authority for nonavailability statements for outpatient services; NASs have been required for a limited number of outpatient procedures over the past several years. Second, the Act eliminates authority for NAS requirements for enrollees in managed care plans, which has the effect of eliminating NAS requirements for TRICARE Prime enrollees. Finally, the Act gives the Secretary authority to waive NAS requirements based on an

#### DEPARTMENT OF DEFENSE

##### Office of the Secretary

#### 32 CFR Part 199

##### Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Program; Nonavailability Statement Requirements

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule revises certain requirements and procedures for the TRICARE Program, the purpose of which is to implement a comprehensive managed health care delivery system composed of military medical treatment facilities and CHAMPUS. Issues addressed in this proposed rule include priority for access to care in military treatment facilities and requirements for payment of enrollment fees. This proposed rule also includes provisions revising the requirement that certain beneficiaries obtain a non-availability statement from a military treatment facility commander prior to receiving certain health care services from civilian providers.

**DATES:** Comments must be received on or before June 6, 1997.