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]

BILLING CODE 4310–05–M

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 submitted the proposed amendment at its own initiative.


On May 27, 1997 (Administrative Record No. TX–633.05), Texas requested that the proposed amendment be withdrawn. Texas intends to incorporate several recently approved amendments into the withdrawn proposed amendment, and then resubmit the amendment. Therefore, the proposed amendment announced in the February 21, 1997, Federal Register is withdrawn.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

[FR Doc. 97–15010 Filed 6–9–97; 8:45 am]

BILLING CODE 4310–05–M

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.

ADDRESS: 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


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 “Replacement of water supply.”

§ 22–3–3(y) is added to define “Lands eligible for remining.”

§ 22–3–3(z) is added to define “Unanticipated event or condition.”

§ 22–3–2(d) is amended by deleting the words “shall” in two locations and replacing those words with “may.” With these revisions, a permit “may” not be issued unless 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(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 use; and the reclamation of an abandoned or forfeited mine by a 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 unites. §22–3–14.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.


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

§ 22–3–29 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 windowing to promote the enhancement of food, shelter, and habitat for wildlife.

38–2–9.2.1.2 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.2 is added to specify the criteria for 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 excess 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.

38–2–14.15.e concerning damage from pre-subsidence survey, no presumption of causation will exist.

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:
who wish to comment have been heard.

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

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 transcriptor.
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
talk about the proposed amendments may
request a meeting at the Charleston
Field Office by contacting the person
listed under FOR FURTHER
INFORMATION CONTACT.

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
camducted 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.

SED no 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.


Allen D. Klein,
Regional Director, Appalachian Regional
Coordinating Center.

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

BILLING CODE 4310-05-M

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").