

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SPATS No. MT-022-F0R]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Montana regulatory program (hereinafter, the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Montana proposes a statutory revision concerning the transfer of a revoked permit. Montana intends to revise its program to improve operational efficiency.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t. June 25, 2001. If requested, we will hold a public hearing on the amendment on June 18, 2001. We will accept requests to speak until 4 p.m., m.d.t. on June 8, 2001.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Guy Padgett at the address listed below. You may review copies of the Montana program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Federal Building, Room 2128, Casper, WY 82601-1918.

Neil Harrington, Acting Chief, Industrial and Energy Minerals Bureau, Montana Department of Environmental Quality, 1520 E. Sixth Ave., Helena, Montana 59620-0901, Telephone: (406) 444-4973.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261-6550. Internet: gpadgett@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Montana Program.
- II. Description of the Proposed Amendment.
- III. Public Comment Procedures.
- IV. Procedural Determinations.

I. Background on the Montana Program

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Description of the Proposed Amendment

By letter dated April 27, 2001, Montana sent us a proposed amendment to its program (Administrative Record No. MT-19-01) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment in response to a statutory revision passed by the 2001 Montana legislature. The full text of the program amendment is available for you to read at the locations listed above under

ADDRESSES.

Specifically, Montana proposes to provide that a revoked permit will not terminate until 5 years after revocation, or until substantial revegetation occurs; that a person applying for the transfer of a revoked permit that has not terminated shall submit an application to the department that contains the information required for a permit applicant in Montana's statutes and that upon receipt on such application, the department shall cease reclamation activities on the permit area; that a person applying for a revoked permit need not submit any additional information unless the department can show that significant changes in the environmental baseline data have occurred; that the department may not

prepare a review for permit transfer unless the department can show that the operation has caused or may cause significant impacts that have not been analyzed previously in an environmental review document; that the department shall process applications under timeframes already in the statutes; that following public comment period, the department shall transfer the permit when the new operator provides proof of site ownership or control and adequate bonding, with the requirement that prior to creating additional surface disturbance, all preexisting permit deficiencies and modifications necessary shall be corrected to the satisfaction of the department and that any preestablished environmental monitoring requirements continue; that under certain conditions the permit may not be transferred; that the department is not required to reimburse the former permittee or surety for funds expended for reclamation, monitoring or site maintenance; and that this statute does not apply to the revocation or transfer of an operating permit on Federal lands.

III. Public Comment Procedures.

Under the provisions of 30 CFR 732.17(h), OSM requests your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Montana program.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Casper Field Office.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. MT-022-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message,

contact the Casper Field Office at (307) 261-6550.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on June 8, 2001. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable 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 the Federal regulations at 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.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major

Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

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 that 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.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

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 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 14, 2001.

Peter Rutledge,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 01-13157 Filed 5-23-01; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV-091-FOR]

West 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 West Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The program amendment consists of changes to the West Virginia Surface Mining Reclamation rules at 38 CSR 2 as contained in House Bill 2663. The amendment submitted by the State is intended to render the West Virginia program no less effective than the Federal requirements.

DATES: If you submit written comments, they must be received on or before 4:00 p.m. (local time), on June 25, 2001. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. (local time), on June 18, 2001. Requests to speak at the hearing must be received by 4:00 p.m. (local time), on June 8, 2001.

ADDRESSES: Mail or hand-deliver your written comments and requests to speak at the hearing to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

You may review copies of the West Virginia program, the proposed amendment, a listing of any scheduled hearings, and all written comments received in response to this document at the addresses below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's 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. E-mail: chfo@osmre.gov.

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759-0515. The proposed amendment will be posted at the Department's Internet page: <http://www.dep.state.wv.us>.

In addition, you may review copies of the proposed amendment 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. (By Appointment Only)

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. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 21, 1981, **Federal Register** (46 FR 5915-5956).

You can find later actions concerning the conditions of approval and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Discussion of the Proposed Amendment

By letter dated May 2, 2001 (Administrative Record Number WV-1209), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its program. The program amendment consists of changes to the West Virginia Surface Mining Reclamation rules at 38 CSR 2 as amended by House Bill 2663. The amendment submitted by the State is intended to render the West Virginia program no less effective than the Federal requirements.

We are not requesting comments on the proposed changes to CSR 38-2-

3.14.b.12, concerning the partial removal of coal processing refuse piles, for the following reason. In 1990, we stated that "the removal, transport and use (without onsite reprocessing) of coal mine refuse which does not meet the definition of "coal" set forth in 30 CFR 700.5; i.e., ASTM Standard D 388-77, is not subject to regulation [under SMCRA]." 55 FR 21314; May 23, 1990. CSR 38-2-3.14.b.12 pertains to the removal of coal refuse that does not meet the definition of coal. Therefore, it is not subject to regulation under SMCRA, and will not be considered here.

You will find West Virginia's program amendment presented below.

1. CSR 38-2-2.39 Definition of "Cumulative Impact"

This definition is being amended by deleting the existing language and adding in its place the following language.

2.39. Cumulative Impact Area means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include the entire projected lives through bond releases of:

- 2.39.a. The proposed operation;
- 2.39.b. All existing operations;
- 2.39.c. Any operation for which a permit application has been submitted to the Director, and;
- 2.39.d. All operations required to meet diligent development requirements for leased Federal coal for which there is actual mine development information available.

2. CSR 38-2-3.12.a.1. Subsidence Control Plan

This provision is being amended by adding the words "a narrative indicating" to the survey and map requirements of this subsection. As amended, this provision requires a survey, map, and a narrative indicating whether or not subsidence could cause material damage to the identified structures and water supplies.

We note that this amendment is in response to the required program amendment codified at 30 CFR 948.16(zzz). This required amendment provides that the State must amend the West Virginia program to require that the map of all lands, structures, and drinking, domestic and residential water supplies which may be materially damaged by subsidence show the type and location of all such lands, structures, and drinking, domestic and residential water supplies within the