

### Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. 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 did not impose an unfunded mandate.

### List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 15, 2002.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 948

[WV-096-FOR]

#### West Virginia Regulatory Program

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

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

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM) are reopening the public comment period on an amendment to the West Virginia surface mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the Code of State Regulations as contained in House Bill 4163. We are reopening the comment period to provide an opportunity to review and comment on additional amendments provided by the State and provisions that we inadvertently omitted identifying as being part of the State's original submittal of this amendment. The amendment is intended to improve the effectiveness of the West Virginia program.

This document gives the times and locations that the West Virginia program and the proposed amendment to that program are available for your inspection, the comment period during which you may submit written

comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m. (local time), September 16, 2002. If requested, we will hold a public hearing on the amendment on September 10, 2002. We will accept requests to speak at a hearing until 4 p.m. (local time), on September 3, 2002.

**ADDRESSES:** You should mail or hand deliver written comments and requests to speak at the hearing to Mr. Roger W. Calhoun at the address listed below.

You may review copies of the West Virginia 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 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](mailto: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 West Virginia Department of Environmental Protection'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. Internet address: [chfo@osmre.gov](mailto:chfo@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

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

### I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act" \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981 **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

### II. Description of the Proposed Amendment

By letter dated April 9, 2002 (Administrative Record Number WV-1296), the West Virginia Department of Environmental Protection (WVDEP) sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The proposed amendment consists of several changes to the Code of State Regulations (CSR) at 38-2, and the addition of new CSR 38-4, the Coal Related Dam Safety Rule, as contained in House Bill 4163.

We announced the receipt and provided an opportunity to comment on the amendment in the June 6, 2002, **Federal Register** (67 FR 38919) (Administrative Record Number WV-1311). In that announcement, we inadvertently omitted identifying some of the changes submitted by the State, including the new Coal Related Dam Safety Rule at CSR 38-4. Therefore, we are taking this opportunity to identify and provide an opportunity to comment on those amendments.

By letter and electronic mail dated June 19, 2002, WVDEP sent us additional amendments to its program that are contained in Senate Bill 2002 concerning changes to CSR 38-2 (Administrative Record Number WV-1316). Senate Bill 2002 was signed by the governor on June 21, 2002. Two of these amendments are intended to

satisfy the required program amendments codified at 30 CFR 948.16(ssss) and (mmmmm). The new amendments are summarized below.

#### *New Proposed Amendments*

##### CSR 38–2–3. Permit Application Requirements and Contents

Subdivision 3.25.a.4., concerning transfer, reinstatement, assignment, or sale of permit rights, is amended by adding the word “reinstatement” to the sentence: “Such findings will be based on information set forth in the application for transfer, assignment, or sale and any other information made available to the Secretary.” As amended, the sentence reads, “Such findings will be based on information set forth in the application for transfer, reinstatement, assignment, or sale and any other information made available to the Secretary.”

Subdivision 3.25.a.4 has also been amended by inserting the phrase “Except for reinstatement” at the beginning of the sentence that states “Such approval may be granted in advance of the close of the public comment period Provided \* \* \*.” As amended, the sentence reads, “Except for reinstatement, such approval may be granted in advance of the close of the public comment period Provided \* \* \*.” These changes are intended to satisfy the required program amendment codified at 30 CFR 948.16(ssss).

##### CSR 38–2–7. Premining and Postmining Land Use

Subdivision 38–2–7.5.j.6.A., concerning ground cover vegetation, is amended by deletion of the word “excessive” from the sentence, “The ground cover vegetation shall be capable of stabilizing the soil from excessive erosion.” This revision is intended to satisfy the required program amendment codified at 30 CFR 948.16(mmmmm).

##### CSR 38–2–14.15 Performance Standards/Contemporaneous Reclamation

Subdivision 14.15.c.4., concerning areas that have been cleared and grubbed that exceed 30 acres, has been deleted.

Subdivision 14.15.g.5, concerning a detailed economic analysis for requests for variances, has been deleted.

#### *Amendments Not Previously Identified for Public Comment*

In general, and to be consistent with the West Virginia Code (W. Va. Code), the word “performance” has been deleted where it appeared before the word “bond.”

CSR 38–2–2.108. The definition of “Secretary” was added to mean the Secretary of the Department of Environmental Protection or his authorized agent.

##### CSR 38–2–7. Premining and Postmining Land Use

Subdivision 7.4.a.1, has been amended to add that “Commercial forestry shall be established on areas receiving a variance from AOC.” As amended, this subdivision provides in part that “Commercial forestry shall be established on areas receiving a variance from AOC and either commercial forestry or forestry shall be established on all portions of the permit area.”

Subdivision 7.4.b.1.D.1 has been amended. We previously and incorrectly identified this revision as being an amendment to subdivision 7.4.b.1.C.7. Subdivision 7.4.b.1.D.1 was amended by adding the following language to the existing definition of soil:

O horizon means the top-most horizon or layer of soil dominated by organic material derived from dead plants and animals at various stages of decomposition; it is sometimes referred to as the duff or litter layer or the forest floor. Cr horizon means the horizon or layer below the C horizon, consisting of weathered or soft bedrock including saprolite or partly consolidated soft sandstone, siltstone, or shale.

##### CSR 38–2–14. Performance Standards

Subdivision 14.15.a.2 is new, concerns the general contemporaneous reclamation standards, and provides as follows:

All permit applications shall incorporate into the required mining and reclamation plan a detailed site specific description of the timing, sequence, and areal extent of each progressive phase of the mining and reclamation of the mining and reclamation operation which reflects how the mining operations and the reclamation operations will be coordinated so as to minimize the amount of disturbed, unreclaimed area, and to quickly establish and maintain a specified ratio of disturbed versus reclaimed area throughout the life of the operation.

Subdivision 14.15.b.5 pertaining to time, distance and acreage limits for multiple seam mining, was amended by adding the following sentence: “Regardless of the allowable limits contained in this section, any disturbed area other than those specified in subdivision 14.15.c of this rule must complete backfilling and rough grading within 180 days of final mineral removal.”

Subdivision 14.15.b.6.A pertaining to disturbed acreage, including excess spoil disposal sites, was amended by

adding the following language to the end of the first paragraph:

Where operations contemplated under this section are approved with incidental contour mining, which may include augering or highwall mining, the acreage must be calculated in the allowable disturbance authorized in this paragraph. The incidental contour pit length cannot exceed 3000 feet and backfilling/grading shall follow mineral removal within 180 days. Regardless of the allowable limits contained in the section fourteen of this rule, any disturbed area other than those specified in subdivision 14.15.c. of this rule must complete backfilling and rough grading with 180 days of final mineral removal. Operations required to comply with AOC+ guidelines or approved specific post-mining land use requirements must complete backfilling and rough grading within 270 days of final mineral removal unless a waiver is otherwise granted by the Secretary pursuant to this section.

Subdivision 14.15.c. was amended to define reclaimed acreage, for purposes of this subsection, to also mean that portion of the permit area that “meets Phase I [bond release] standards.”

Subdivision 14.15.c.1 which delineates certain portions of an operation that are not included in the calculation of disturbed area for purposes of contemporaneous reclamation, was amended by adding the following language at the end of the paragraph:

Provided, That with the exception of permanent haulroads, drainage control systems and material handling facilities (including but are not limited to such facilities as preparation plants, fixed coal stockpiles/transfer areas and commercial forestry topsoil areas) the total acreage of all other semi-permanent ancillary facilities cannot exceed ten percent of the total permit acreage.

Subdivision 14.15.c.3, also pertaining to exceptions to disturbed area, was amended by adding the following sentence to the end of the paragraph: “The Secretary may consider larger acreage for clearing operations where it can be demonstrated that it is necessary to comply with applicable National Environmental Policy Act requirements.”

Subdivision 14.15.d.1, concerning excess spoil disposal fills, is new and provides as follows:

All fills must be planned for continuous material placement until designed capacity is reached and cannot have a period of inactivity that exceeds 180 days unless otherwise approved by the secretary on a permit specific basis to accommodate AOC+, post-mining land use or special material handling situations.

Subdivision 14.15.d.2, also concerning excess spoil disposal fills, is new and provides that “[t]he areas

where contour mining is proposed within the confines of the fill are not eligible for the exemption contained in 14.15.c.2.”

New subdivision 14.15.d.3 was added to provide as follows: “Operations that propose fills that are designed to use single lift top-down construction shall bond the proposed fill areas based upon the maximum amount per acre specified in WV Code § 22–3–12(c)(1).”

New subdivision 14.15.e was added to provide as follows:

14.15.e Applicability. Permit applications pending approval on the first day of January, two thousand three, shall within 120 days of permit approval have a mining and reclamation plan which is consistent with the criteria set forth in this subdivision. Permit applications which are submitted after the first day of January, two thousand three shall not be issued a permit without a mining and reclamation plan which is consistent with the criteria set forth in this subdivision.

14.15.e.1 After the first day of January, two thousand three, the mining and reclamation plan for all active mining operations must be consistent with the applicable time criteria set forth in this paragraph. Where permit revisions are necessary to satisfy this requirement, the revisions shall be prepared and submitted to the Secretary for approval within 180 days. Full compliance with the revised mining and reclamation plan shall be accomplished within twelve (12) months from the date of the Secretary’s approval.

14.15.e.2 After the first day of January, two thousand three, the mining and reclamation plan for mining operations which have approved inactive status or when permits have been issued but the operation has not started must be consistent with the applicable time criteria of this paragraph. Where the permit revisions are necessary to satisfy this requirement, the revisions shall be prepared and submitted to the Secretary for approval within 180 days. Full compliance with the revised mining and reclamation plan shall be accomplished within twelve (12) months from the date of the Secretary’s approval.

14.15.e.3 The Secretary may consider contemporaneous reclamation plans on multiple permitted areas with contiguous areas of disturbance to ensure that contemporaneous reclamation is practiced on a total operational basis. In order to establish a method of orderly transition between operations, plans submitted on multiple permitted areas cannot add allowable disturbed areas in such a manner as to result in increased disturbed areas on a single operation unless a variance is obtained pursuant to subdivision 14.15.g.

Subdivision 14.15.g.2 pertaining to required elements of a permit applications seeking a variance from contemporaneous reclamation standards, was amended by adding the words “including a discussion and feasibility analysis of alternatives that

were considered” to the end of the paragraph.

New subdivision 14.15.g.5 was added to require the following additional element to a permit application for a variance from contemporaneous reclamation standards:

A detailed economic analysis including a discussion and feasibility analysis of possible alternatives that were considered must be submitted for variance requests that use economics as the basis for the request.

New subdivision 14.15.i was added to provide as follows:

Notwithstanding any provision of this rule to the contrary, revision of the mining and reclamation plan contained in a permit is required prior to any change in mining methods which would substantially affect the standards contained in this section.

#### *CSR 38–4 Coal Related Dam Safety Rules*

These rules are new, and establish general and specific rules for design, placement, construction, enlargement, repair, removal, or abandonment of dams in West Virginia that are also regulated under West Virginia Surface Coal Mining and Reclamation Act 22–3 and West Virginia Surface Mining Reclamation Regulations CSR 38–2 by the WVDEP. The new Coal Related Dam Safety Rules were issued under the authority of W.Va. Code 22–14. The new rules consist of the following sections.

- 38–4–1 General.
- 38–4–2 Definitions.
- 38–4–3 Classification of dams.
- 38–4–4 Certificate of approval.
- 38–4–5 Application procedures.
- 38–4–6 Plans and specifications.
- 38–4–7 Design requirements
- 38–4–8 Subsidence evaluation.
- 38–4–9 Breakthrough potential evaluation.
- 38–4–10 Geotechnical considerations.
- 38–4–11 Structural considerations.
- 38–4–12 Construction or modification of dam.
- 38–4–13 Blasting.
- 38–4–14 Storm water discharge.
- 38–4–15 Erosion and sediment control.
- 38–4–16 Disposal of construction wastes.
- 38–4–17 Dust control.
- 38–4–18 Construction quality control.
- 38–4–19 Breaching of a dam.
- 38–4–20 Removal of a dam.
- 38–4–21 Abandonment of a dam.
- 38–4–22 Reduction of dam height to less than jurisdiction.
- 38–4–23 Enlargement of a structure to jurisdiction.
- 38–4–24 Sale or transfer of a dam.
- 38–4–25 Operation and maintenance.
- 38–4–26 Inspection, reporting and certification requirements.

- 38–4–27 Completion of construction.
- 38–4–28 Inspection of completed dam.
- 38–4–29 Inspection of dams with serious problems.
- 38–4–30 Reporting requirements.
- 38–4–31 Inspection and certification requirements.
- 38–4–32 Monitoring plans.
- 38–4–33 Emergency warning plans.
- 38–4–34 Emergency procedures.
- 38–4–35 Inspection and enforcement.
- 38–4–36 Application fee for certificate of approval of a dam.

#### **III. Public Comment Procedures**

Under the provisions of 30 CFR 732.17(h), we are seeking 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 State program.

##### *Written Comments*

Send your written or electric 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. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Charleston Field Office may not be logged in.

##### *Electronic Comments*

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include “Attn: SPATS No. WV–096–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 Charleston Field Office at (304) 347–7158.

##### *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. (local time), on September 3, 2002. 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 a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the 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 given an opportunity to be 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 regulation.

#### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget 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 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 because each 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, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

#### *Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

#### *National Environmental Policy Act*

This rule does not require an environmental impact statement because 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 certifies 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. 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, Federal, State, or local government agencies, or geographic regions; 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 an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. 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 did not impose an unfunded mandate.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 11, 2002.

**Tim L. Dieringer,**

*Acting Regional Director Appalachian Regional Coordinating Center.*

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BILLING CODE 4310-05-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 55

[FRL-7260-6]

#### Outer Continental Shelf Air Regulations; Consistency Update for California

**AGENCY:** Environmental Protection Agency ("EPA").

**ACTION:** Proposed rule—consistency update.

**SUMMARY:** EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 ("the Act"). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the South Coast Air Quality Management District (South Coast AQMD) and Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The intended effect of approving the OCS requirements for the above Districts is to regulate emissions from OCS sources in accordance with the requirements onshore. The changes to the existing requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

**DATES:** Comments on the proposed update must be received on or before September 16, 2002.

**ADDRESSES:** Comments must be mailed (in duplicate if possible) to: EPA Air Docket (Air-4), Attn: Docket No. A-93-16 Section XXVI, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

**Docket:** Supporting information used in developing the rule and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A-93-16 Section XXVI. This docket is available for public inspection and copying Monday-Friday during regular business hours at the following locations:

EPA Air Docket (Air-4), Attn: Docket No. A-93-16 Section XXVI, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE-131), Attn: Air Docket No. A-93-16 Section XXVI, Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington D.C. 20460.

A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Christine Vineyard, Air Division (Air-4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947-4125.

### I. Background Information

#### A. Why Is EPA Taking This Action?

On September 4, 1992, EPA promulgated 40 CFR part 55,<sup>1</sup> which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of rules by

three local air pollution control agencies. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

### II. EPA's Evaluation

#### A. What Criteria Were Used To Evaluate Rules Submitted To Update 40 CFR Part 55?

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded administrative or procedural rules,<sup>2</sup> and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

<sup>2</sup> Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14 (c)(4).

<sup>1</sup> The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.