

installed, the thrust reversers may be reactivated, and the AFM limitation specified by paragraph (b) of this AD may be removed from the AFM. Table 2 follows:

TABLE 2.—SERVICE INFORMATION FOR MODIFICATION

For Airbus model—	Equipped with model—	Install the modification in accordance with Airbus service bulletin—
A300 B4–620 airplanes .....	PWJT9D–7R4 series engines .....	A300–78–6017, dated August 6, 2001.
A300 B4–622 airplanes .....	PW4000 series engines .....	A300–78–6020, dated August 10, 2001.
A300 B4–622R airplanes .....	PW4000 series engines .....	A300–78–6018, dated July 17, 2001.
A310–221 series airplanes .....	PWJT9D–7R4 series engines .....	A310–78–2020, dated June 1, 2001.
A310–222 series airplanes .....	PWJT9D–7R4 series engines .....	A310–78–2020 or A310–78–2018, both dated June 1, 2001.
A310–322 series airplanes .....	PWJT9D–7R4 series engines .....	A310–78–2018, dated June 1, 2001.
Airbus Model A310–324 and –325 series airplanes.	PW4000 series engines .....	A310–78–2019, dated May 2, 2001.

**Alternative Methods of Compliance**

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–25–51, amendment 39–10952, are approved as alternative methods of compliance with the requirements of paragraphs (a) and (b) of this AD.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 4:** The subject of this AD is addressed in French airworthiness directive 2001–523(B), dated October 31, 2001.

Issued in Renton, Washington, on April 8, 2003.

**Vi L. Lipski,**

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9015 Filed 4–11–03; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 111**

[Docket No. 96N–0417]

**Dietary Supplements; Current Good Manufacturing Practice Regulations; Public Meetings; Correction**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notification of public meetings; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of March 28, 2003 (68 FR 15117). The notice announced two public meetings to discuss the proposed rule entitled “Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Ingredients and Dietary Supplements.” The document was published with an inadvertent error. This document corrects that error.

**FOR FURTHER INFORMATION CONTACT:**

*For the east coast meeting:* Kenneth Taylor, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1439, FAX: 301–436–2639, or e-mail: [Kenneth.Taylor@cfsan.fda.gov](mailto:Kenneth.Taylor@cfsan.fda.gov).

*For the west coast meeting:* Janet McDonald, FDA/San Francisco District, 1431 Harbor Bay Pkwy., Alameda, CA 94502–7070, 510–337–6845, FAX: 510–337–6708, or e-mail: [Janet.McDonald@fda.gov](mailto:Janet.McDonald@fda.gov).

**SUPPLEMENTARY INFORMATION:** In the FR Doc. 03–7377, appearing on page 15117 in the **Federal Register** of Friday, March 28, 2003, the following correction is made:

1. On page 15117, in the first column, under “DATES,” the first sentence is corrected to read “The public meetings will be held on the east coast on Tuesday, April 29, 2003, from 9 a.m. to 12 noon and 1:30 p.m. to 5 p.m. and on the west coast on Tuesday, May 6, 2003, from 9 a.m. to 12 noon and 1:30 p.m. to 5 p.m.”

Dated: April 8, 2003.  
**Jeffrey Shuren,**  
*Assistant Commissioner for Policy.*  
 [FR Doc. 03–9066 Filed 4–11–03; 8:45 am]  
**BILLING CODE 4160–01–S**

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 948**

[WV–098–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 on proposed amendments.

**SUMMARY:** We are 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 Code of West Virginia (W. Va. Code) as contained in House Bills 2881 and 2882, changes to the Coal Related Dam Safety Rules at Code of State Regulations (CSR) 38–4, and changes to the Surface Coal Mining and Reclamation Regulations at CSR 38–2 as contained in House Bill 2603. The amendment concerns a variety of topics including bond release, dam safety, permit application requirements,

drainage and sediment control systems, fish and wildlife considerations, revegetation, performance standards, inspection and enforcement, coal refuse, and performance standards applicable to reining operations. The amendment is intended to improve the effectiveness of the West Virginia program and to render the West Virginia program no less effective than the Federal regulations.

**DATES:** We will accept written comments on this amendment until 4 p.m. (local time), on May 14, 2003. If requested, we will hold a public hearing on the amendment on May 9, 2003. We will accept requests to speak at a hearing until 4 p.m. (local time), on April 29, 2003.

**ADDRESSES:** You should mail or hand-deliver 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, 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) 759-0510. Copies of Enrolled House Bills 2603, 2881, and 2882 and summaries of changes to the State's Coal Related Dam Safety Rules and the Surface Mining Reclamation Rules will be posted at the Department's Internet page: <http://www.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, PO 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: [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 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 March 18, 2003, the West Virginia Department of Environmental Protection (WVDEP) sent us a proposed amendment to its program (Administrative Record Number WV-1352) under SMCRA (30 U.S.C. 1201 *et seq.*). West Virginia sent the amendment in response to the required program amendments at 30 CFR 948.16(nnn), (ooo), and (qqqq) and to include the changes made at its own initiative.

The program amendment consists of changes to the W. Va. Code as contained in House Bills 2881 and 2882, and changes to the Coal Related Dam Safety Rule at CSR 38-4 and to the Surface Coal Mining and Reclamation Regulations at CSR 38-2 as contained in House Bill 2603. The amendment concerns a variety of topics including bond release, dam safety, permit application requirements, drainage and sediment control systems, fish and

wildlife considerations, revegetation, performance standards, inspection and enforcement, coal refuse, and performance standards applicable to reining operations. The amendment is intended to improve the effectiveness of the West Virginia program and to render the West Virginia program no less effective than the Federal regulations.

A. The provisions of the W. Va. Code that West Virginia proposes to revise as contained in House Bills 2881 and 2882 are:

W. Va. Code 22-3-23, concerning release of bond or deposits, is amended by changing the term "director" to "secretary" in numerous locations.

W. Va. Code 22-3-23(c)(1)(C), concerning bond release for all operations except those with an approved variance from approximate original contour (AOC), is amended by adding the following language to the end of the last sentence: "where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter." As amended, the sentence reads as follows:

Provided, however, that the release may be made where the quality of the untreated post mining water discharged is better than or equal to the premining water quality discharged from the mining site where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter.

W. Va. Code 22-3-23(c)(2)(C), concerning bond release for operations with an approved variance from AOC, is amended by adding the following language to the end of the last sentence: "where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter." As amended, the sentence reads as follows:

Provided, however, that the release may be made where the quality of the untreated post mining water discharged is better than or equal to the premining water quality discharged from the mining site where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter.

W. Va. Code 22-3-23(c)(2)(C), concerning bond release, is amended by deleting the reference to subdivision 3 and requiring compliance with the bond release scheduling requirements of subdivisions 1 and 2 of this subsection.

W. Va. Code 22B-1-7, concerning appeals to boards, is amended by changing the term "director" to "secretary" in several locations.

W. Va. Code 22B-1-7(d), concerning appeals to boards, is amended by adding a proviso that unjust hardship shall not be grounds for granting a stay or suspension of an order, permit or

official action for an order issued pursuant to W. Va. Code 22-3.

W. Va. Code 22B-1-7(h), concerning appeals to boards, is amended by deleting the reference to article 3 in regard to appeals to the environmental quality board.

B. The provisions of the Code of State Regulations that West Virginia proposes to revise as contained in House Bill 2603 are:

Surface Mining Reclamation Regulations at CSR 38-2

CSR 38-2 is amended by updating the name of the U.S. Department of Agriculture, Natural Resources Conservation Service (formerly Soil Conservation Service) in several locations, *i.e.*, subsections 3.2.c, 3.20, 10.2.a.4, 10.3.a.1, 10.4.c.1, 10.6.b.2, 10.6.b.7.A, 10.6.b.7.B, and 10.6.b.8.

CSR 38-2-3.7.d, concerning disposal of excess spoil, is new and adds a requirement for a survey of the watershed identifying all man made structures and residents in proximity to the disposal area to determine potential storm runoff impacts. At least 30 days prior to any beginning of placement of material, the accuracy of the survey shall be field verified. Any changes shall be documented and brought to the attention of the Secretary to determine if there is a need to revise the permit.

CSR 38-2-3.22.f.5.A, A.1 and A.2, concerning the requirement to restore, protect, or replace water supply of present water users, is new and adds that the hydrologic reclamation plan shall contain a description of the measures to be taken to replace water supplies that are contaminated, diminished, or interrupted. The plan shall include an identification of the water replacement, which includes quantity and quality descriptions including discharge rates, or usage and depth to water; and documentation that the development of identified water replacement is feasible and that the financial resources necessary to replace the affected water supply are available.

CSR 38-2-3.31.a, concerning Federal, State, county, municipal, or other local government-financed highway or other construction exemption, is amended by adding a provision that may allow funding at less than 50 percent to qualify if the construction is undertaken as an approved government reclamation contract.

CSR 38-2-5.4.b.4, concerning sediment control, is amended by adding language to provide that all sediment control systems for valley fills, including durable rock fills, shall be designed for the entire disturbed acreage and shall include a schedule indicating

timing and sequence of construction over the life of the fill.

CSR 38-2-5.4.b.11, concerning the control of water discharge, is amended by adding language to provide that the location of discharge points and the volume to be released shall not cause a net increase in peak runoff from the proposed permit area when compared to premining conditions and shall be compatible with the post-mining configuration and adequately address watershed transfer.

CSR 38-2-5.6 is a new provision concerning storm water runoff and requires each permit application to contain a storm water runoff analysis consistent with subsections 5.6.a through 5.6.d.1.e. The new language provides as follows:

5.6.a. Each application for a permit shall contain a storm water runoff analysis which includes the following:

5.6.a.1. An analysis showing the changes in storm runoff caused by the proposed operation(s) using standard engineering and hydrologic practices and assumptions.

5.6.a.2. The analysis will evaluate pre-mining, worst case during mining, and post-mining (Phase III standards) conditions. The storm used for the analysis will be the largest required design storm for any sediment control or other water retention structure proposed in the application. The analysis must take into account all allowable operational clearing and grubbing activities. The applicant will establish evaluation points on a case-by-case basis depending on site specific conditions including, but not limited to, type of operation and proximity of man-made structures.

5.6.a.3. The worst case during mining and post-mining evaluations must show no net increase in peak runoff compared to the pre-mining evaluation.

5.6.b. Each application for a permit shall contain a runoff-monitoring plan which shall include, but is not limited to, the installation and maintenance of rain gauges. The plan shall be specific to local conditions. All operations must record daily precipitation and report monitoring results on a monthly basis and any one (1) year, twenty-four (24) storm event or greater must be reported to the Secretary within twenty-four (24) hours and shall include the results of a permit wide drainage system inspection.

5.6.c. Each application for a permit shall contain a sediment retention plan to minimize downstream sediment deposition within the watershed resulting from precipitation events. Sediment retention plans may include, but are not limited to decant ponds, secondary control structures, increased

frequency for cleaning out sediment control structures, or other methods approved by the Secretary.

5.6.d. After the first day of January two thousand four, all active mining operations must be consistent with the requirements of this subdivision. The permittee must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval within the schedule described in 5.6.d.1. Full compliance [compliance] with the permit revision shall be accomplished within 180 days from the date of Secretary approval. Active mining operations for the purpose of this subsection exclude permits that have obtained at least a Phase I release and are vegetated. Provided, however, permits or portions of permits that meet at least Phase I standards and are vegetated will be considered on a case by case basis.

5.6.d.1. Schedule of Submittal

5.6.d.1.a. Within 180 days from the first day of January two thousand four all active mining operations with permitted acreage greater than 400 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.b. Within 360 days from the first day of January two thousand four all active mining operations with permitted acreage between 200 and 400 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.c. Within 540 days from the first day of January two thousand four all active mining operations with permitted acreage between 100 and less than 200 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.d. Within 720 days from the first day of January two thousand four all active mining operations with permitted acreage between 50 and less than 100 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.e. Within 900 days from the first day of January two thousand four all active mining operations with permitted acreage less than 50 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval. Provided, however, an exemption may be

considered on a case-by-case basis. Furthermore, haulroads, loadouts, and ventilation facilities are excluded from this requirement.

CSR 38-2-8.2.e, concerning fish and wildlife considerations, is amended by adding language to provide that in constructing a windrow, timber shall not be placed in a manner or location to block natural drainways.

CSR 38-2-9.1.a, concerning revegetation, is amended by adding language to provide that reforestation opportunities must be maximized for all areas not directly associated with the primary approved postmining land use and requiring revegetation plans for those areas to be reforested to include a map, a planting schedule and stocking rates.

CSR 38-2-9.3.d, concerning standards for evaluating vegetative cover, is amended by deleting the words "from the Handbook," so that sampling techniques will no longer be taken from the State's revegetation handbook.

CSR 38-2-9.3.f, concerning standards for evaluating vegetative cover and productivity, is amended by deleting the words "in the Handbook," and replacing those words with the words "by the Secretary." The effect of the change is that vegetation ground cover and productivity levels will be set by the Secretary of the WVDEP, rather than as provided in the State's revegetation handbook.

CSR 38-2-14.5.h, concerning hydrologic balance, is amended by adding a proviso that the requirement for replacement of an affected water supply that is needed for the land use in existence at the time of contamination, diminution or interruption or where the affected water supply is necessary to achieve the post-mining land use shall not be waived.

CSR 38-2-14.14.g.1, concerning durable rock fills, is amended by adding language to provide that fills proposed after January 1, 2004, may only be approved with the design, construction, and use of a single lift fill if they include an erosion protection zone or a durable rock fill designed to be reclaimed from the toe [toe] upward.

CSR 38-2-14.14.g.2 is new and adds additional design specifications and requirements for single lift fills with an erosion protection zone at subsections 14.14.g.2.A through 14.14.g.2.B.3. The new language provides as follows:

14.14.g.2.A. Erosion Protection Zone. The erosion protection zone is a designed structure constructed to provide energy dissipation to minimize erosion vulnerability and may extend beyond the designed toe of the fill.

14.14.g.2.A.1. The effective length of the erosion protection zone shall be at least one half the height of the fill measured to the target fill elevation or fill design elevation as defined in the approximate original contour procedures and shall be designed to provide a continuous underdrain extension from the fill through and beneath the erosion protection zone.

14.14.g.2.A.2. The height of the erosion protection zone shall be sufficient to accommodate designed flow from the underdrain of the fill and shall comply with 14.14.e.1. of this rule.

14.14.g.2.A.3. The erosion protection zone shall be constructed of durable rock as defined in 14.14.g.1. originating from a permit area and shall be of sufficient gradation to satisfy the underdrain function of the fill.

14.14.g.2.A.4. The outer slope or face of the erosion protection zone shall be no steeper than two (2) horizontal or [to] one (1) vertical (2:1). The top of the erosion protection zone shall slope toward the fill at a three (3) to five (5) percent grade and slope laterally from the center toward the sides at one (1) percent grade to discharge channels capable of passing the peak runoff of a one-hundred (100) year, twenty-four (24) hour precipitation event.

14.14.g.2.A.5. Prior to commencement of single lift construction of the durable rock fill, the erosion protection zone must be seeded and certified by a registered professional engineer as a critical phase of fill construction. The erosion protection zone shall be maintained until completion of reclamation of the fill.

14.14.g.2.A.6. Unless otherwise approved in the reclamation plan, the erosion protection zone shall be removed and the area upon which it was located shall be regraded and revegetated in accordance with the reclamation plan.

14.14.g.2.B. Single Lift Construction Requirements.

14.14.g.2.B.1. Excess spoil disposal shall commence at the head of the hollow and proceed downstream to the final toe. Unless required for construction of the underdrain, there shall be no material placed in the fill from the sides of the valley more than 300 feet ahead of the advancing toe. Exceptions from side placement of material limits may be approved by the Secretary if requested and the applicant can demonstrate through sound engineering that it is necessary to facilitate access to isolated coal seams, the head of the hollow or otherwise facilitates fill stability, erosion, or drainage control.

14.14.g.2.B.2. During construction, the fill shall be designed and maintained in such a manner as to prevent water from discharging over the face of the fill.

14.14.g.2.B.2.(a). The top of the fill shall be configured to prevent water from discharging over the face of the fill and to direct water to the sides of the fill.

14.14.g.2.B.2.(b). Water discharging along the edges of the fill shall be conveyed in such a manner to minimize erosion along the edges of the fill.

14.14.g.2.B.3. Reclamation of the fill shall be initiated from the top of the fill and progress to the toe with concurrent construction of terraces and permanent drainage.

CSR 38-2-14.14.g.3 is new and adds design specifications and requirements at 14.14.g.3.A through 14.14.g.3.B for durable rock fills designed to be reclaimed from the toe upward. The new language provides as follows:

14.14.g.3.A. Transportation of Material to toe of fill. The method of transporting material to the toe of the fill shall be specified in the application and shall include a plan for inclement weather dumping. The means of transporting material to the toe may be by any method authorized by the Act and this rule and is not limited to the use of roads.

14.14.g.3.A.1. Constructed roads shall be graded and sloped in such a manner that water does not discharge over the face. Sumps shall be constructed along the road in switchback areas and shall be located at least 15 feet from the outslope.

14.14.g.3.A.2. The constructed road shall be in compliance with all applicable State and Federal safety requirements. The design criteria to comply with all applicable State and Federal safety requirements shall be included in the permit.

14.14.g.3.B. Once the necessary volume of material has been transported to the toe of the fill, face construction and installation of terraces and permanent drainage shall commence. The face construction and reclamation of the fill shall be from the bottom up with progressive construction of terraces and permanent drainage in dumping increments not to exceed 100 feet.

CSR 38-2-14.15.a.2, concerning contemporaneous reclamation standards, is amended by adding language to provide that the mining and reclamation plan shall contain information on how mining and reclamation operations will be coordinated so as to minimize surface water runoff, and comply with the storm water runoff plan.

CSR 38-2-14.15.c, concerning reclaimed area, is amended by adding the words "and seeding has occurred" to the definition of reclaimed acreage that is applicable to this subsection. As amended, the definition of reclaimed area provides that for purposes of this subsection, reclaimed acreage shall be that portion of the permit area which has at a minimum been fully regraded and stabilized in accordance with the reclamation plan, meets Phase I standards, and seeding has occurred.

CSR 38-2-14.15.g, concerning contemporaneous reclamation variance—permit applications, is amended by adding language to require a demonstration that the variance being sought will comply with CSR 38-2-5.6 concerning the new storm water runoff provisions.

CSR 38-2-17.1, concerning Small Operator Assistance Program, is amended by adding that the Secretary of WVDEP shall establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services pursuant to CSR 38-2-17.

CSR 38-2-20.6.a, concerning civil penalty assessments, is amended by deleting all language concerning an "assessment officer," and adding language concerning the Secretary of WVDEP. The new language provides that the Secretary shall not determine the proposed penalty assessment until such time as an inspection of the violation has been conducted and the findings of that inspection are submitted to the Secretary in writing.

CSR 38-2-20.6.c, concerning notice of civil penalty assessment, is amended by deleting two sentences that provide that the "Secretary shall also give notice including any worksheet, in person or by certified mail, to the operator of any penalty adjustment as a result of an informal conference within thirty (30) days following the date of the conference. The reasons for reassessment shall be documented in the file by the assessment officer." Also, the following sentence is added immediately before the existing last sentence: "The reasons for reassessment shall be documented in the file by the Secretary."

CSR 38-2-20.6.d, concerning notice of informal assessment conference, is amended by adding language to provide that the Secretary shall arrange for a conference to review the proposed assessment or reassessment, upon written request if received within 15 days from the date the proposed assessment or reassessment is received. Language is also added to provide that

the operator shall forward the amount of proposed penalty assessment to the Secretary for placement in an interest bearing escrow account, and that the Secretary shall assign an assessment officer to hold the assessment conference.

CSR 38-2-20.6.e, concerning informal conference, is amended by adding language to provide that the assessment officer shall give notice including any worksheet, in person or by certified mail, to the operator of any penalty adjustment as a result of an informal conference within 30 days following the date of the conference. The reasons for the assessment officer's action shall be documented in the file.

CSR 38-2-20.6.f is new and adds the requirement that an increase or reduction of a proposed civil penalty of more than 25 percent and more than \$500.00 shall not be final and binding until approved by the Secretary.

CSR 38-2-20.6.j, concerning escrow, is amended by adding the phrase "an informal conference or" immediately before the words "judicial review of a proposed assessment." In addition, the words "continue to" are deleted immediately before the words "be held in escrow." The new language provides that if a person requests an informal conference or judicial review of a proposed assessment, the proposed penalty assessment shall be held in escrow until completion of the judicial review.

CSR 38-2-22.4.g.3.A, concerning coal refuse, impoundments designed without discharge structures, is amended by deleting the second sentence and adding three sentences in its place. The new language requires that a system shall be designed to dewater the impoundment of the probable maximum storm in 10 days by pumping or other means. The new language requires the requirements of the Coal Related Dam Safety Rule at CSR 38-4-25.14, concerning removal of storm water from impoundments, shall be met. For existing structures exceeding the minimum 2 PMP volume requirement, the dewatering system shall be installed when the containment volume is reduced to 2 PMPs.

CSR 38-2-22.4.i.6 is new and concerns the use of corrugated metal pipes in spillways. This provision provides that corrugated metal pipes shall not be used in new or unconstructed refuse impoundments or slurry cells. If an existing corrugated metal pipe has developed leaks or otherwise deteriorated so as to cause the pipe to not function properly and such deterioration constitutes a hazard to the proper operation of the impoundment, the Secretary will require the corrugated

metal pipe to be either repaired or replaced.

CSR 38-2-24.2.a, concerning remining operations—revegetation, is amended by deleting the words "in the Handbook" at the end of the last sentence, and replacing those words with the words "by the Secretary." The new revision provides that the determination of premining [remining] ground cover success and productivity shall be made using sampling techniques described by the Secretary.

CSR 38-2-24.3, concerning remining operations—water quality, is amended by adding the following language at the end of the last sentence: "or a coal remining operation as defined in 40 CFR Part 434 as amended may qualify for the water quality exemptions set forth in 40 CFR 434 as amended." The new revision provides that a coal remining operation which began after February 4, 1987, and on a site which was mined prior to August 3, 1977, may qualify for the water quality exemptions set forth in subsection (p), section 301 of the Federal Clean Water Act, as amended or a coal remining operation as defined in 40 CFR Part 434 as amended may qualify for the water quality exemptions set forth in 40 CFR Part 434 as amended.

CSR 38-2-24.4, concerning remining operations—requirements to release bonds, is amended by adding the following language at the end of the first sentence: "and the terms and conditions set forth in the NPDES [National Pollutant Discharge Elimination System] Permit in accordance with subsection (p), section 301 of the Federal Clean Water Act, as amended or 40 CFR Part 434 as amended." The new revision provides that bond release for remining operations shall be in accordance with all of the requirements set forth in subsection 12.2 of this rule and the terms and conditions set forth in the NPDES Permit in accordance with subsection (p), section 301 of the Federal Clean Water Act, as amended or 40 CFR Part 434 as amended.

Coal Related Dam Safety Rules at CSR 38-4

CSR 38-4-3.4.c, concerning hazard evaluation, is amended by deleting the existing heading and renaming the provision "Assessment of Hazards and Consequences of Failure." In addition, the following language is added as an introductory paragraph:

All new applications and expansions to existing impoundments must submit a complete Assessment of Hazards and Consequences of Failure (AHCF) in narrative form, certified by a Registered Professional Engineer (RPE), that addresses potential risks and impacts resulting from failure that could

occur from the construction and/or operation of the facility and addresses the following:

CSR 38-4-7.1.f.3.A, concerning Class C impoundments designed without discharge structures, is amended by deleting the existing second sentence and replacing that sentence with the following three sentences. "A system shall be designed to dewater the impoundment of the probable maximum storm in ten (10) days by pumping or by other means. The requirements of 25.14 shall also be met. For existing structures exceeding the minimum 2 PMP volume requirements, the dewatering system shall be installed when the containment volume is reduced to 2 PMPs."

CSR 38-4-7.1.n is new and concerns use of corrugated metal pipes for spillways. The new language provides as follows:

Corrugated metal pipes, whether coated or uncoated, shall not be used in new or unconstructed refuse impoundments or slurry cells. If an existing corrugated metal pipe has developed leaks or otherwise deteriorated so as to cause the pipe to not function properly and such deterioration constitutes a hazard to the proper operation of the impoundment, the Secretary will require the corrugated metal pipe to be either repaired or replaced. Provided, however, sediment control or other water retention structures used for the treatment of effluent and designated as Class A Dams under 3.4.b of this rule are exempt from this prohibition.

CSR 38-4-8.1, concerning subsidence evaluation of the site and the dam and its storage area, is amended by revising the phrase "that coal pillars and floor are strong" to read "that the coal pillars, roofs and floor are strong." The last two existing sentences are deleted, and the new last sentence is amended by adding, at the end, the words "or are otherwise capable of preventing significant subsidence impacts, in accordance with 8.2 and 8.3 of this rule." The effect of this change is to add this requirement as an alternative condition for allowing dams to be constructed over underground workings.

CSR 38-4-8.2.a, concerning basin, is new and provides as follows:

There shall be no underground mining in a safety zone that extends horizontally 200 feet from the high water mark of an impoundment and vertically to a depth that provides for a minimum thickness of 100 feet of solid strata between the bottom of the pool and any mining. The presence of any mine workings within this safety zone is prohibited unless the potential subsidence effects are mitigated by injection grouting or otherwise filling the mine related voids completely. Alternately, such risk can be mitigated by providing constructed barriers, grouting or other means to establish equivalent protection that will comply with

the safety zone dimensions. Coal extraction of 80 percent or more is prohibited unless at a depth greater than 60 times the coal extraction thickness or at a depth where the maximum tensile strain at original ground is less than 5.0 mm/m (0.5%), whichever is greater. The Secretary may impose other limitations as specified by BM IC 8741, barrier analysis, other pertinent analysis or due to conditions such as fracturing, which may require a larger safety zone or further limitations in coal extraction.

CSR 38-4-8.2.b, concerning embankment, is new and provides as follows:

There shall be no mining in a safety zone under the structural embankment measured outward 200 feet in all directions, downward 350 feet and then outward at a dip of 65° from the horizontal, unless acceptable pillar stability and/or strain effects are confirmed by a design evaluation to be certified by an RPE. Also, the related AHCF must clearly demonstrate that the facility will have a low risk of impact to the public and the environment. Existing mine workings within this safety zone having the potential to cause significant subsidence impacts are prohibited unless those effects are mitigated by grouting, filling the mine related voids or providing comparable protection. Additional underground mining may be subsequently approved in the embankment safety zone only if a design evaluation, certified by an RPE, demonstrates that no significant impacts from subsidence can result.

CSR 38-4-8.2.c, concerning existing impoundments, is new and provides as follows:

Existing impoundments that currently have mining within the safety zones must be evaluated in accordance with this section and 3.4.c. of this rule. Remedial measures shall be implemented as necessary to eliminate or reduce the potential impact on the public and/or the environment. Remedial measures may include, but are not limited to, constructed barriers, grouting of underground works and back stowing of mines.

CSR 38-4-8.3, concerning safety factors applicable to new, revised, and existing impoundment facilities, is new and provides as follows:

A detailed engineering design evaluation of the embankment and impoundment basin areas shall be conducted to assure protection of the environment and public. The engineering design analysis shall demonstrate that appropriate safety factors exist. Major design considerations of this engineering analysis are embankment stability, pillar design, outcrop barrier design, and any other design aspects as necessary to manage risk. The adequacy of calculated safety factors should be determined by applying appropriate regulatory standards. For design applications where regulatory standards do not exist, the AHCF should be the basis used to derive acceptable safety factors.

CSR 38-4-25.14 concerning removal of storm water in the impoundment is new and provides as follows:

Storm water in the impoundment shall be removed as specified in the design requirements. In addition, the slurry impoundment pool shall be maintained at the lowest practical pool level based upon the design requirements and the AHCF. The mechanical storm dewatering system shall be installed as designed and maintained properly with the system being tested monthly.

### 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 West Virginia program.

#### *Written Comments*

Send your written or electronic 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 may 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, Word file avoiding the use of special characters and any form of encryption. Please also include Attn: SATS NO. WV-098-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 inspection 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 April 29, 2003. 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 will be 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 exempt 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 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is our decision on a State regulatory program and does not involve a Federal regulation involving Indian lands.

#### *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 analysis performed under various laws and executive orders for the counterpart Federal regulations.

#### *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 analysis performed under various laws and executive orders for the counterpart Federal regulations.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 28, 2003.

#### **Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 03-9033 Filed 4-11-03; 8:45 am]

**BILLING CODE 4310-05-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 62**

[FL-094-200316b; FRL-7481-7]

#### **Approval and Promulgation of State Plan for Designated Facilities and Pollutants: Florida**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the section 111(d)/129 State Plan submitted by the Florida Department of Environmental Protection (FDEP) for the State of Florida on November 29, 2001, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Commercial and Industrial Solid Waste Incinerators. The Plan was submitted by FDEP to satisfy Federal Clean Air Act requirements. In the Final Rules Section of this **Federal Register**, the EPA is approving the Florida State Plan revision as a direct final rule without prior proposal because the Agency views this revision as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule.

The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before May 14, 2003.

**ADDRESSES:** All comments should be addressed to: Joydeb Majumder, EPA Region 4, Air Toxics and Management Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Copies of documents relative to this action are available for inspection during normal business hours at the above listed Region 4 location. Anyone interested in examining this document should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Joydeb Majumder at (404) 562-9121 or Sean Lakeman at (404) 562-9043.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: March 24, 2003.

#### **A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 03-8954 Filed 4-11-03; 8:45 am]

**BILLING CODE 6560-50-P**

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[I.D. 032803F]

#### **Fisheries of the Northeastern United States; Atlantic Herring Fishery; Scoping Process**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of intent to prepare a supplemental environmental impact statement (SEIS) and notice of re-initiation of scoping process; request for comments.

**SUMMARY:** The New England Fishery Management Council (Council) announces its intent to prepare an amendment to the Fishery Management Plan (FMP) for Atlantic Herring (*Clupea harengus*) and to prepare an SEIS to analyze the impacts of any proposed management measures. The Council is also formally re-initiating a public process to determine the scope of alternatives to be addressed in the amendment and SEIS. The purpose of this notification is to alert the interested

public of the re-commencement of the scoping process and to provide for public participation in compliance with environmental documentation requirements.

**DATES:** The Council will discuss and take scoping comments at public meetings in April and May 2003. For specific dates and times of the scoping meetings, see **SUPPLEMENTARY INFORMATION**. Written scoping comments must be received on or before 5 pm., local time, June 2, 2003.

**ADDRESSES:** The Council will take scoping comments at public meetings in Maine, Massachusetts, and New Jersey. For specific locations, see

**SUPPLEMENTARY INFORMATION**. Written comments and requests for copies of the scoping document and other information should be directed to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950, telephone (978) 465-0492. The scoping document is accessible electronically via the Internet at <http://www.nefmc.org>. Comments may also be sent via facsimile (fax) to (978) 465-3116. Comments will not be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465-0492.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The U.S. Atlantic herring fishery is managed as one stock complex along the east coast from Maine to Cape Hatteras, NC, although evidence suggests that separate spawning components exist within the stock complex. The Council and the Atlantic States Marine Fisheries Commission (ASMFC or Commission) adopted management measures for the herring fishery in state and Federal waters in 1999, and NMFS approved most of the management measures contained in the Federal Herring FMP on October 27, 1999. The Federal Atlantic Herring FMP became effective on January 10, 2001.

The state and Federal management plans contain similar management measures. The state and Federal management plans for herring establish total allowable catches (TACs) levels in each of four management areas. In state waters, there are spawning area restrictions and requirements for vessels to take specified days out of the fishery (under the Commission plan). Both plans include limits on the size of vessels that can take, catch, or harvest herring. Each plan includes administrative elements such as