

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 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 9, 2004.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV-101-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 amendment.

SUMMARY: We are announcing our proposal to remove a required program amendment from the West Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The required program amendment concerns stocking standards for commercial forestry and forestry postmining land use for operations with a variance from the requirements to restore approximate original contour (AOC). The proposed removal of the required amendment is intended to acknowledge actions taken by the State 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 April 26, 2004. If requested, we will hold a public hearing on the amendment on April 19, 2004. We will accept requests to speak at a hearing until 4 p.m. (local time), on April 9, 2004.

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. Fax: (304) 347-7158.

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759-0510.

In addition, you may review a copy of the 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
- 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 letters dated March 14, 2000, and March 28, 2000, and electronic mail dated April 6, 2000 (Administrative Record Numbers WV-1147, WV-1148, and WV-1149, respectively), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its program. Among other things, the amendment added new Code of State Regulations (CSR) 38-2-7.4 concerning standards applicable to AOC variance operations with a postmining land use of commercial forestry and forestry. CSR 38-2-7.4.b.1.I concerns the standards of success for the postmining land use. We announced our approval of CSR 38-2-7.4, with certain exceptions, on August 18, 2000 (65 FR 50409) Administrative Record Number WV-1174).

In our August 18, 2000, **Federal Register** notice, we did not approve the new tree stocking standards for commercial forestry and forestry postmining land use because there was no evidence that the West Virginia Division of Forestry had reviewed and approved the proposed standards as is required by the Federal regulations at 30 CFR 816.116(b)(3)(i) (65 FR 50409, 50422). In addition, we required that the WVDEP consult with and obtain the approval of the Division of Forestry on the new stocking standards for commercial forestry and forestry at CSR 38-2-7.4.b.1.I. We codified this requirement in the Federal regulations at 30 CFR 948.16(aaaaa).

Under the Federal regulations at 30 CFR 816.116(b)(3)(i), the approval of the stocking standards may be on a program-wide or permit-specific basis. Since a program-wide approval had not yet been granted by the Division of Forestry at the time of our August 18, 2000, notice, we determined that the WVDEP must obtain approval on a permit-specific basis until such time that it received program-wide approval by the Division of Forestry.

By letter dated February 26, 2002, (Administrative Record Number WV-1276), the WVDEP, Division of Mining and Reclamation submitted, among other materials, a letter dated November 17, 2000, from the Division of Forestry to the WVDEP. In that letter, the Division of Forestry approved, on a statewide basis, the stocking rates at CSR 38-2-7.4, concerning standards applicable to mountaintop removal mining operations with a postmining land use of commercial forestry and forestry.

Therefore, it appears that the November 17, 2000, letter from the Division of Forestry to the WVDEP satisfies the required program amendment at 30 CFR 948.16(aaaaa). Consequently, we are proposing to remove the required amendment at 30 CFR 948.16(aaaaa).

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 find that the required program amendment at 30 CFR 948.16(aaaaa) has been satisfied, it will be removed.

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. 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.

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 9, 2004. 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 (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 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 that our decision is 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

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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: February 26, 2004.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024-AC98

Chickasaw National Recreation Area, Personal Watercraft Use

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to designate areas where personal watercraft (PWC) may be used in Chickasaw National Recreation Area, Oklahoma. This proposed rule implements the provisions of the NPS general regulations authorizing park areas to allow the use of PWC by promulgating a special regulation. The NPS *Management Policies 2001* require individual parks to determine whether PWC use is appropriate for a specific park area based on an evaluation of that area's enabling legislation, resources and values, other visitor uses, and overall management objectives.

DATES: Comments must be received by May 24, 2004.

ADDRESSES: Comments on the proposed rule should be sent to Connie Rudd, Acting Superintendent, Chickasaw National Recreation Area, 1008 W. Second Street, Sulphur, OK 73086, e-mail: *chic@den.nps.gov*.

If you comment by e-mail, please include “PWC rule” in the subject line and your name and return address in the body of your Internet message. Also, you may hand deliver comments to the Superintendent, Chickasaw National Recreation Area, 1008 W. Second Street, Sulphur, OK.

For additional information see “Public Participation” under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Kym Hall, Special Assistant, National Park Service, 1849 C Street, NW., Room 3145, Washington, DC 20240. Phone: (202) 208-4206. E-mail: *Kym_Hall@nps.gov*.

SUPPLEMENTARY INFORMATION: