

Department relied upon the data and assumptions in the analysis for the corresponding Federal regulations.

6. *Unfunded Mandates Reform Act*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 7, 1996.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 931—NEW MEXICO

1. The authority citation for Part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 931.15 is amended by adding paragraph (t) to read as follows:

§ 931.15 Approval of amendments to State regulatory program.

* * * * *

(t) The director approves, with one exception at CSMC 80-1-20-116(b)(6) concerning the authorization for the Director of the New Mexico program to approve normal husbandry practices that have not been approved by OSM, the proposed revisions submitted by New Mexico on January 22, 1996.

3. Section 931.16 is amended by removing and reserving paragraphs (a), (c), (d), (f), (g), (h), (i), (j), (k), (l), (p), (q), (r), and (s); revising (n); and adding paragraphs (w), (x), (y), (z), and (aa) to read as follows:

§ 931.16 Required program amendments.

* * * * *

(n) By February 15, 1994, New Mexico shall submit to OSM proposed revisions to CSMC Rule 80-1-20-116(b)(1), or otherwise amend its program, to require that all revegetation success standards and measuring techniques be approved by the Director of OSM as well as the Director of MMD.

* * * * *

(w) By November 25, 1996, New Mexico shall submit revisions at CSMC Rule 80-1-1-5, for the definitions of "Material damage" and "Occupied residential dwelling and associated structures" to include references in these definitions to CSMC Rules 80-1-20-121, 125, and 127.

(x) By November 25, 1996, New Mexico shall submit revisions at CSMC Rule 80-1-9-29(e)(5) and CSMC Rules 80-1-20-49(d), (f)(2), and (g)(4) and (5), to incorporate the requirements pertaining to those structures that meet or exceed the Class B or C criteria for dams in TR-60.

(y) By November 25, 1996, New Mexico shall submit revisions at CSMC Rule 80-1-11-20(b)(1) to violations review criteria that the Director of the New Mexico program would use to determine what specific unabated violations, delinquent penalties and fees, and ownership and control relationship applied at the time a permit was issued.

(z) By November 25, 1996, New Mexico shall submit revisions at CSMC Rule 80-1-20-116(b)(6) to either

(1) Identify selected husbandry practices and submit them with documentation verifying that the proposed practices would be considered normal in the areas being mined or

(2) State that selected husbandry practices approved by the Director may not be implemented prior to approval from OSM in accordance with the State program amendment process at 30 CFR 772.17.

(aa) By November 25, 1996, New Mexico shall submit revisions at CSMC Rule 80-1-20-127 to clearly require adjustment of the bond amount when subsidence-related contamination, diminution, or interruption to a water supply occurs.

[FR Doc. 96-13265 Filed 5-28-96; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 946

[VA-105-FOR]

Virginia Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of five explanatory statements written to clarify and assist the implementation of, and compliance with, recent changes to §§ 480-03-19.816/817.102(e) of the Virginia program relative to the disposal of coal processing waste and underground development waste in mined-out areas.

The amendment is intended to address a required program amendment at 30 CFR 946.16(a).

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (703) 523-4303.

SUPPLEMENTARY INFORMATION:

- I. Background on the Virginia Program.
- II. Submission of the Amendment.
- III. Director's Findings.
- IV. Summary and Disposition of Comments.
- V. Director's Decision.
- VI. Procedural Determination.

I. Background on the Virginia Program

SMCRA was passed in 1977 to address environmental and safety problems associated with coal mining. Under SMCRA, OSM works with States to ensure that coal mines are operated in a manner that protects citizens and the environment during mining, that the land is restored to beneficial use following mining, and that the effects of past mining at abandoned coal mines are mitigated.

Many coal-producing States, including Virginia, have sought and obtained approval from the Secretary of the Interior to carry out SMCRA's requirements within their borders. In becoming the primary enforcers of SMCRA, these "primacy" States accept a shared responsibility with OSM to achieve the goals of the Act. Such States join with OSM in a shared commitment to the protection of citizens from abusive mining practices, to be responsive to their concerns, and to allow them full access to information needed to evaluate the effects of mining on their health, safety, general welfare, and property. This commitment also recognizes the need for clear, fair, and consistently applied policies that are not unnecessarily burdensome to the coal industry—producers of an important sources of our Nation's energy.

Under SMCRA, OSM sets minimum regulatory and reclamation standards. Each primacy State ensures that coal mines are operated and reclaimed in accordance with the standards in its approved State program. The States serve as the front-line authorities for implementation and enforcement of SMCRA, while OSM maintains a State performance evaluation role and provides funding and technical assistance to States to carry out their approved programs. OSM also is responsible for taking direct

enforcement action in a primacy State, if needed, to protect the public in cases of imminent harm or, following appropriate notice to the State, when a State acts in an arbitrary and capricious manner in not taking needed enforcement actions required under its approved regulatory program.

Currently, there are 24 primacy states that administer and enforce regulatory programs under SMCRA. These states may amend their programs, with OSM approval, at any time so long as they remain no less effective than Federal regulatory requirements. In addition, whenever SMCRA or implementing Federal regulations are revised, OSM is required to notify the States of the changes so that they can revise their programs accordingly to remain no less effective than the Federal requirements.

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, Federal Register (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 946.11, 946.12, 946.13, 946.15, and 946.16.

II. Submission of the Amendment

By letter dated October 31, 1994 (Administrative Record No. VA-839), Virginia proposed to amend section 480-03-19.816/817.102(e) to clarify the Virginia regulations that are applicable when coal processing waste and underground development waste is used as backfill material for mined-out areas. The amendment was submitted to settle interpretational differences between Virginia and OSM relative to how the coal mine waste regulations apply to waste materials placed in backfills.

Virginia's submittal of the amendment to section 480-03-19.816/817.102(e) was accompanied by a detailed explanation of the intended implementation and scope of the proposed amendment. OSM approved the amendment on August 8, 1995 (60 FR 40271) to the extent that the amendments are implemented as explained by Virginia in its October 31, 1994, submittal letter. In addition, OSM also required (at 30 CFR 946.16(a)) that Virginia further clarify the implementation of the changes by amending the Virginia program as follows:

- (1) Define the term "suitable";
- (2) Add a requirement to the Virginia rules to explicitly require the determination of the location of seeps,

springs, or other discharges in the designing of a backfill;

- (3) Add to 480-03-19.773.17 a specific requirement that a permit condition be imposed requiring a quarterly analysis of coal mine waste as it is placed in a refuse pile or in an area being backfilled.

- (4) Define the term "small" to mean that there are no channeled flows, that during storm events there is only sheet flow, and that no variance would be approved if the drainage area above the pile on any point exceeds 500 feet, measured along the slope;
- (5) Add a requirement that whenever coal refuse is placed on preexisting benches for the purpose of returning the benches to approximate original contour (AOC), the performance standards for the placement of excess spoil on preexisting benches will be followed.

By letter dated October 13, 1995 (Administrative Record No. VA-865), Virginia submitted its response to the required amendments at 30 CFR 946.16(a). The amendment consists of five statements that are attached to a letter to be sent to coal operators, consultants, Virginia Division of Mined Land Reclamation (DMLR) personnel, and other interested parties. The five statements are intended to clarify the intended implementation and scope of the recently approved amendments to section 480-03-19.816/817.102(e).

The proposed amendment was published in the November 27, 1995, Federal Register (60 FR 58320), and in the same notice, OSM opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on December 27, 1995. There were no requests for a public hearing, so no hearing was held.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Virginia program.

I. Clarification of the Term "Suitable"

The State submitted the following statement:

The Department of Mines, Minerals, and Energy (DMME) has not promulgated a regulatory definition for the term "suitable" as used at 480-03-19.816/817.102(e) since the ordinary usage (Webster-satisfactory for a use or purpose) is intended. DMME will consider material suitable provided it is satisfactory for the purpose of meeting the Virginia program performance standards for each site specific circumstance. For an example, the physical cohesive property of a given waste material under specific site

conditions will be considered suitable provided the required (1.3) static safety factor can be achieved and landslides prevented [see 480-03-19.816/817.102(a) and (f)]. Waste material is considered suitable provided the host site conditions, the material's chemical and physical characteristics, and the disposal techniques collectively demonstrate compliance with the Virginia program performance standards, including sections 480-03-19-816/817.41, 480-03-19.816/817.74, 480-03-19.816/817.81, 480-03-19.816/817.95, 480-03-19.816/817.97, 480-03-19.816/817.111-116, and 480-03-19.816/817.133.

The Director finds that the DMLR's statement adequately clarifies how the State interprets and will implement the term "suitable" in the Virginia program. That is, materials will be considered suitable, if the DMME determines that the use of those materials will not result in the violation of the Virginia approved performance standards. Therefore, the Director finds that the required amendment at 30 CFR 946.16(a)(1) is satisfied and can be removed.

2. Seeps, Springs, or Other Discharges in the Backfill

The State submitted the following statement:

The Division of Mined Land Reclamation (DMLR) finds it necessary for the applicant to determine and identify in the application the location of seeps, springs, or other discharges in any area proposed for backfilling with coal mine waste. Such information is crucial to the applicant's site selection and backfill design as well as to DMLR's environmental impact analysis. DMLR has initiated the process to revise its regulations to be more specific with regard to seeps and springs in such backfills. In the meantime, DMLR interprets 480-03-19.780.21 (f) and (h) and 480-03-19.784.14 (e) and (g) as authority for this requirement.

The Federal regulations at 30 CFR 780.21(f) and 784.14(e) concerning probable hydrologic consequences (PHC) determination provide the findings shall be made on whether adverse impacts may occur to the hydrologic balance, and whether acid-forming or toxic-forming materials are present that could result in contamination of surface or ground waters. In addition, 30 CFR 780.21(h) and 784.14(g) provide that an application shall contain a hydrologic reclamation plan that includes the measures to be taken to avoid acid or toxic drainage.

The DMLR has clarified that a permit application should include the location of seeps, springs, or other discharges is crucial to the applicant's site selection and backfill design as well as to the DMLR's environmental impact analysis. The DMLR also acknowledged that it has the authority under § 480-03-

19.780.21 (f) and (h) and 784.14 (e) and (g) to require such information. In addition, the DMLR will revise its regulations to more clearly require information regarding springs and seeps.

The Director finds that the DMLR's statement adequately explains the State program concerning the identification of the location of seeps, springs, and other discharges in any area proposed for backfilling with coal mine waste, and that the Virginia program has the authority to require such information. Therefore, the Director finds that the required amendment at 30 CFR 946.16(a)(2) is satisfied and can be removed.

3. Permit Condition/Quarterly Analysis-Clarification

The State submitted the following statement:

The Virginia regulations at 480-03-19.773.17(b) provide authority for DMLR to impose permit conditions in addition to those mandated by this section. When the physical or chemical characteristics of coal mine waste used as backfill material are subject to change, DMLR will specify a condition in the permit approval document requiring the appropriate sampling and analysis necessary to ensure continued compliance with the performance standards. (Examples of circumstances in which DMLR requires periodic analysis of coal mine refuse, and/or backfill include, but is not limited to: refuse produced by preparation plant serving several operations; refuse produced over a large areal extent at a single operation; refuse produced by several operations; and refuse of varying quality produced at several locations within one operation.)

The Director finds that the DMLR's statement clearly acknowledges that the regulatory authority will impose a permit condition requiring sampling of the coal mine waste material whenever the physical or chemical characteristics of that material are subject to changes. In addition, the DMLR has provided some specific examples that clarify typical circumstances under which the DMLR will apply permit conditions to require analysis of coal mine waste that is placed in the backfill to ensure continued compliance with the performance standards. The DMLR also has stated that it interprets § 480-03-19.780/784.22(c) as authority to require periodic testing as necessary to ensure compliance with the hydrologic protection and other performance standards.

As noted above, the Director had required Virginia to amend its program by adding a provision requiring quarterly analysis of coal mine waste material as it is placed in backfills or

refuse piles. The basis for this required amendment was Virginia's statement that, as a matter of practice, it already imposed permit conditions pursuant to 480-03-19.773.17 requiring a quarterly analysis of coal mine waste. Because the Director was concerned that this permit condition requirement would not be enforceable, he required Virginia to add the requirement to its program. See 60 FR 40271, 40274, August 8, 1995. In its submittal of October 13, 1995 (Administrative Record No. VA-865), Virginia stated that it had chosen a more flexible permit condition requirement, based on the type of coal mine waste material involved in each particular instance. The Director did not conclude in the August 8, 1995, Federal Register notice, nor does he conclude now, that quarterly analysis of coal mine waste material is required in all instances by SMCRA or its implementing regulations. Rather, the Director's primary concern was that Virginia have the ability to enforce the requirement of an added permit condition. Moreover, the Director now agrees with Virginia that the State regulatory authority should have the flexibility to impose permit conditions requiring "appropriate" sampling and analysis to ensure continued compliance with all applicable performance standards, particularly where the chemical or physical characteristics of the coal mine waste material are subject to change. "Appropriate" analysis may, in some instances, mean testing the material more, or less frequently than on a quarterly basis. Because Virginia has adequately incorporated into the Virginia program its permit condition requirements with respect to coal mine waste, the Director is satisfied that these requirements are now enforceable. Therefore, the Director finds that 30 CFR 946.16(a)(3) is satisfied, and can be removed.

4. "Small Area"—Clarification

The State submitted the following statement:

At 480-03-19.816/817.102(e), the Virginia regulations provide that a variance to the requirement at 480-03-19.816/817.83(a)(2) may be approved by DMLR provided "the applicant demonstrates that the area above the refuse pile is *small* and that appropriate measures will be taken to direct or convey runoff across the surface area of the pile in a controlled manner.

DMLR intends to consider areas *small* provided the drainage area is 500 feet or less as measured along the slope. However, DMLR will grant such a variance only when there are no channeled flows, and if during storm events, there is only sheet flow.

The Director finds that the DMLR's statement adequately explains the definition of "small" relative to uncontrolled drainage above a backfill in accordance with the required amendments at 30 CFR 946.16(a)(4). 39 CFR 946.16(a)(4) is, therefore, removed.

5. Preexisting Benches—Clarification

DMLR will approve an application to place coal refuse on preexisting benches for the purpose of returning the benches to the approximate original contour provided the performance standard for the placement of excess spoil on preexisting benches will be followed. The preexisting bench standard are found at 480-03-19.816/817.74.

The Director finds the DMLR's statement adequately clarifies the applicability of the performance standards for the placement of excess spoil on pre-existing benches in accordance with the required amendment at 30 CFR 946.16(a)(5). 30 CFR 946.16(a)(5) is, therefore, removed.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The U.S. Fish and Wildlife Service responded (Administrative Record No. VA-868) but offered no comments on this amendment. The U.S. Department of Labor, Mine Safety and Health Administration responded (Administrative Record No. VA-867) that the amendments are deemed appropriate since there appears to be no conflict with MSHA regulations. The U.S. Department of Agriculture, Natural Resources Conservation Service responded (Administrative Record No. VA-866) and stated that the clarifications should be accepted.

Public Comments

A public comment period and opportunity to request a public hearing was announced in the November 27, 1995, Federal Register (60 FR 58320). The comment period closed on December 27, 1995. No comments were received and no one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with the respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*)

or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA. EPA responded on February 1, 1996 (Administrative Record No. VA-869) and stated that the amendment is consistent with regulations under the Clean Water Act and offered no additional comments.

V. Director's Decision

Based on the findings above, the Director is approving Virginia's amendment concerning coal refuse disposal as submitted by Virginia on October 13, 1995.

The Federal regulations at 30 CFR Part 946 codifying decisions concerning the Virginia program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 14, 1996.
Michael K. Robinson,
*Acting Regional Director, Appalachian
Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 946—VIRGINIA

1. The authority citation for Part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 946.15, paragraph (jj) is added to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(jj) The following amendment to the Virginia program at 480-03-19.816/817.102(e) concerning coal refuse disposal as submitted to OSM on October 13, 1995, is approved effective May 29, 1996:

§ 946.16 [Amended]

3. In § 946.16, paragraph (a) is removed and reserved.

[FR Doc. 96-13268 Filed 5-28-96; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 224

RIN 1510-AA49

Federal Process Agents of Surety Companies

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This action amends the regulation governing surety companies doing business with the United States. Specifically, it eliminates the requirement that surety companies doing business with the United States report their Federal process agent appointments to the Department of the Treasury, Financial Management Service (FMS). FMS no longer needs or collects this information. This amendment makes the regulation consistent with current practice.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Dorothy E. Martin, (202) 874-6850 (Manager, Surety Bond Branch).

SUPPLEMENTARY INFORMATION: This regulation eliminates the requirement that surety companies report their Federal Process Agent appointments to the Financial Management Service. This action does not eliminate the requirement for surety companies to designate a person to serve as a Federal Process Agent and register that person with the clerk of the district court for the district in which a surety bond is to be given.

The final rule includes several editorial changes and a realignment of the sections as a result of eliminating § 224.5, "Filing process agent appointment information with the Treasury."