not been reviewed by the Office of Management and Budget. The proposed rule, if adopted, will not have a significant economic impact upon a substantial number of small entities, within the meaning of the regulatory flexibility act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, probation and parole, prisoners.

The Final Rule

Accordingly, the Parole Commission adopts the following amendments to 28 CFR part 2:

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR part 2, § 2.20, Chapter 3, Subchapter A, Paragraph 303 (Property Destruction Other Than as Listed Above) is amended by deleting subparagraph (b); redesignating subparagraphs (c) through (g) as subparagraphs (d) through (h) respectively; and by adding new subparagraphs (b) and (c) to read as follows:

* * * * *

(b) if damage of more than $5,000,000 is caused, grade as Category Seven;

(c) if damage of more than $1,000,000 but not more than $5,000,000 is caused, grade as Category Six;

* * * * *

3. 28 CFR part 2, § 2.20, Chapter 3, Subchapter D, Paragraph 331 (Theft, Forgery, Fraud, Trafficking in Stolen Property, Interstate Transportation of Stolen Property, Receiving Stolen Property,* Embezzlement, and Related Offenses) is amended to delete subparagraph (a); to redesignate subparagraphs (b) through (g) as subparagraphs (c) through (h) respectively; and to add new subparagraphs (a) and (b) to read as follows:

* * * * *

(a) If the value of the property * is more than $5,000,000, grade as Category Seven;

(b) If the value of the property * is more than $1,000,000 but not more than $5,000,000, grade as Category Six;

* * * * *

4. 28 CFR part 2, § 2.20, Chapter 3, Subchapter E, Paragraph 341 (Passing or Possession of Counterfeit Currency or Other Medium of Exchange*), is amended to delete subparagraph (a); to redesignate subparagraphs (b) through (e) as subparagraphs (c) through (f) respectively; and to add new subparagraphs (a) and (b) as follows:

* * * * *

(a) If the face value of the currency or other medium of exchange is more than $5,000,000, grade as Category Seven;

(b) If the face value of the currency or other medium of exchange is more than $1,000,000 but not more than $5,000,000, grade as Category Six;

* * * * *

5. 28 CFR part 2, § 2.20, Chapter 3, Subchapter F, Paragraph 363 (Insider Trading), is amended to delete subparagraph (a); to redesignate subparagraphs (b) through (f) as subparagraphs (c) through (g) respectively; and to add new subparagraphs (a) and (b) to read as follows:

* * * * *

(a) If the estimated economic impact is more than $5,000,000, grade as Category Seven;

(b) If the estimated economic impact is more than $1,000,000 but not more than $5,000,000, grade as Category Six;

* * * * *

6. 28 CFR part 2, § 2.20, Chapter 5, Subchapter A, Paragraph 501 (Tax Evasion), is amended to delete subparagraph (a); to redesignate subparagraphs (b) through (f) as subparagraphs (c) through (g) respectively; and to add new subparagraphs (a) and (b) as follows:

* * * * *

(a) If the amount of tax evaded or evasion attempted is more than $5,000,000, grade as Category Seven;

(b) If the amount of tax evaded or evasion attempted is more than $1,000,000 but not more than $5,000,000, grade as Category Six;

* * * * *

7. 28 CFR part 2, § 2.20, Chapter 11, Subchapter G, Paragraph 1161 (Reports on Monetary Instrument Transactions), is amended to delete subparagraph (a); to redesignate subparagraphs (b) through (d) as subparagraphs (c) through (e) respectively; and to add new subparagraphs (a) and (b) to read as follows:

* * * * *

(a) If extremely large scale (e.g., the estimated gross amount of currency involved is more than $5,000,000), grade as Category Seven;

(b) If very large scale (e.g., the estimated gross amount of currency involved is more than $1,000,000 but not more than $5,000,000), grade as Category Six;

* * * * *

Dated: July 26, 1995.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 95–19311 Filed 8–7–95; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–103–FOR]

Virginia Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, 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 includes changes to sections 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 clarify what provisions of the coal mine waste disposal regulations apply when disposal of coal processing waste or underground development waste occurs in mined-out areas for the purpose of backfilling a disturbed area.

EFFECTIVE DATES: August 8, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Drawer 1217, Powell Valley Square Shopping Center, Room 220, route 23, 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 Determinations.

I. Background on the Virginia Program

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 946.12, 946.13, 946.15, and 946.16.

II. Submission of the Amendment

By letter dated October 31, 1994 (Administrative Record No. VA–839), Virginia submitted a proposed amendment to its program pursuant to SMCRA. Virginia proposes to amend sections 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 proposed amendment is intended to settle interpretational differences between Virginia and OSM relative to how the coal mine waste regulations apply to waste materials placed in backfills.

The proposed amendment was published in the November 16, 1994, **Federal Register** (59 FR 59187), 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 16, 1994.

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.

VR 480–03–19.816/817.102(e), Backfilling and Grading: General Requirements

Virginia is amending subsections 102(e) to provide that the disposal of coal processing waste and underground development waste in the mined-out areas shall be in accordance with new subsections 102(e) (1) and (2).

a. New paragraphs 480–03–19.816/817.102(e)(1) provide that disposal of coal processing waste and underground development waste in the mined-out area to backfill disturbed areas shall be in accordance with 480–03–19.816/817.81 (coal mine waste: general requirements). This provision differs from the counterpart Federal regulations at 30 CFR 816/817.102(e) in that the Federal regulations require that the disposal of coal processing waste and underground development waste placed in the mined-out area shall be in accordance with both 30 CFR 816/817.81 and 816/817.83. In effect, the proposed amendment will eliminate compliance with section 480–03–19.816/817.83, the Virginia counterpart to 30 CFR 816/817.83, the performance standards for refuse piles, when refuse is used for backfill. Therefore, the Virginia program must assure the stability of the backfill material, and the prevention of acid or toxic drainage from the backfill.

In its submittal of this amendment, Virginia provided the following explanation of how the regulatory authority will interpret and implement Virginia Regulations (VR) 480–03–19.816/817.102(e) (1) to be as effective as the counterpart Federal regulations in providing environmental safeguards:

[i] As proposed, VR 480–03–19.816/817.102(e) (1), would apply when coal mine waste is placed in a mined-out area as part of the backfilling process to restore the approximate original contour (AOC) without a change in premining surface elevations. It clarifies that compliance with VR 480–03–19.816/817.81, but not VR 480–03–19.816/817.83, is required.

[ii] The Virginia proposed regulation distinguishes between those standards that are appropriate for a conventional refuse pile and those appropriate for areas conventionally backfilled with refuse. This is analogues to the way the Virginia program distinguishes between excess spoil fills and areas backfilled to AOC.

[iii] Section 480–03–19.816/817.102(f) requires that ''acid and toxic-forming material shall not be buried or stored in proximity to any drainage course.'' The Virginia Division of Mined Land Reclamation (DMLR) interprets this standard to be applicable to acid and toxi-forming refuse as well as acid and toxic-forming overburden/mine spoil.

[iv] Pursuant to 480–03–19.816/817.81(c) such backfill design is required to be certified by a qualified registered professional engineer (RPE) using prudent engineering practices and any criteria established by the Division. DMLR considers the determination of seeps, springs, or other discharges necessary in the designating of a backfill consistent with 480–0319.816/817.81. Thus, coal mine waste that is acid or toxic-forming could not be considered as suitable for backfill pursuant to proposed 816/817.102(e) unless the permittee is able to demonstrate that the material is isolated and hydrologically separated from a drainage course.

[v] The proposed regulation is intended to include the hydrologic protection standards of 480–03–19.816/817.41 and 480–03–19.816/817.102. Through DMLR's hydrologic impact assessment and the application of 480–03–19.816/817.102(a)(4), (c), (f), and (g), DMLR has ample authority to limit coal mine waste to suitable areas and to ensure that appropriate measures are taken to prevent erosion, acid/toxic drainage and adverse effects to the hydrologic balance. This standard is reinforced by 480–03–19.816/817.81(a)(1) which requires, ''Coal mine wastes shall be placed in a controlled manner to (1) minimize adverse effects of leachate and surface water runoff on surface and ground water quality and quantity.''

[vi] The Virginia program permits only ''suitable coal mine waste materials'' to be used as backfill. Other coal mine waste must be placed in a conventional ''refuse pile'' subject to the standards of 480–03–19.816/817.102(e), 480–03–19.816/817.81, and 480–03–19.816/817.83.

[vii] DMLR finds authority at 480–03–19.816/817.22(b) and (c) to require a demonstration of the suitability of coal mine waste both during and subsequent to the permitting process. DMLR has always been concerned that the characteristics of coal mine waste may change when produced over a large aerial extent, from different seams, or at different locations. DMLR interprets 480–03–19.816/817.22(c) as authority to require periodic testing as necessary to ensure compliance with the hydrologic protection and other performance standards. DMLR finds further support for its interpretation at 480–03–19.816/817.102(f). DMLR assures periodic testing by imposing a permit condition pursuant to 480–03–19.733.17 requiring a quarterly analysis of appropriate coal mine waste as it is placed in a refuse pile or in the area being backfilled. DMLR has regulations, policies, and procedures in place which require applicable operations to periodically analyze waste.

[viii] Since some coal mine waste is not suitable for the backfill of pre-existing benches or other mined-out areas, DMLR's proposed regulation can only be read to be consistent with the defined term ''reasonably available spoil'' which includes the use of ''suitable coal mine/waste,'' as backfill material. DMLR interprets suitable to be a measure of both chemical and physical characteristics. DMLR requires analyses for the chemical characteristics during the permitting process before it will determine that the material is suitable. DMLR also requires a design certified by a qualified RPE demonstrating that the material is suitable to achieve a static safety factor of 1.3.

[ix] DMLR finds authority to require the demonstration of suitability at 480–03–19.816/817.102(a)(3), 480–03–19.816/817.102(f), and 480–03–19.816/817.81(c).

[x] The proposed regulation still requires compliance with the general requirements of coal mine waste handling set forth by 480–03–19.816.81. These general requirements require among other things that waste be placed in a controlled manner to minimize adverse effects of leachate and surface water runoff on surface and ground water quality and quantity, and ensure mass stability and prevent mass movement during and after construction.

[xi] The regulation as proposed and read in context with the entire Virginia program also contains sufficient specificity appropriate for ''suitable coal mine waste.'' The material sampling, the hydrologic protection standards, and the design and stability standards give DMLR ample authority to ensure that backfilling operations use suitable material and meet the standards of the Virginia program.

Virginia's construction of the requirements of the Virginia program regulations and the explanation of the regulatory authority's interpretation of those regulations indicates that the stability of the backfill will be ensured. Only coal mine waste that is physically suitable for placement will be used in the backfill. The physical properties of the material will be determined upon the judgement of a qualified RPE. Quality control of these materials will

be ensured by periodic testing. All backfill must be certified by the RPE as obtaining a minimum safety factor of 1.3.

While the specifics of the sampling and analyzing program have not been described in detail, Virginia has reasonably explained its authority and procedures for ensuring that only non-toxic forming material will be placed in the backfill areas, or that the permittee must demonstrate that the placement of these materials will not result in toxic/acid mine drainage. In addition, Virginia also explained that the regulatory authority has ample authority to ensure that appropriate measures are taken to prevent acid and toxic drainage and adverse effects to the hydrologic balance. Such measures could reasonably include the addition of limestone or other alkaline materials to the backfill when the regulatory authority determined it necessary to provide an appropriate measure of safety.

b. Virginia is proposing to amend paragraph 480–03–19.816/817(e)(2) to provide that the disposal of coal processing waste and underground development waste in the mined-out area as a refuse pile and not to backfill disturbed areas to AOC shall be in accordance with 480–03–19,816/817.81 and 480–03–19.816/817.83. The Division, may approve a variance to 490–03–19.816/817.83(a)(2), concerning drainage controls, if 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.

The proposed language differs from the Federal regulations at 30 CFR 816/817.102(e) in that the Federal regulations do not provide for a variance from the requirements at 30 CFR 816/817.83(a)(2) concerning drainage controls. In effect, the proposed variance could eliminate an additional safeguard against erosion of the fill.

In its submittal of this amendment, Virginia provided the following explanation of how the regulatory authority will interpret and implement 480–0319.816/817.102(e)(2).

[i] Proposed 480–03–19.816/817.102(e)(2) requires compliance with 480–03–19.816/817.81, and 480–03–19.816/817.83 when a refuse pile is to be constructed in the mined-out area. In this respect, it is identical to the Federal requirements. However, this rule also provides for a variance from the surface runoff diversion requirements of 480–03–19.816/817.83(a)(2) under certain conditions.

[ii] The proposed rule at 480–03–19.816/817.102(e)(2) is applicable only to coal mine waste piles built in mined-out areas. Usually, when a permittee has ''suitable coal mine waste'' and the permit area includes previously mined benches, an opportunity exists to achieve two separate objectives of the Act. The suitable coal mine waste can be used to achieve AOC on the existing benches, thus reclaiming AML [abandoned mine lands] that would likely never be reclaimed otherwise. Also, by using the suitable coal mine waste on the pre-existing benches, the disturbance of off-site areas and construction of a conventional refuse pile becomes unnecessary. Thus, DMLR is able to minimize areas disturbed or affected by the mining operation.

[iii] It is DMLR's practice to require the placement of suitable coal mine waste on pre-existing benches as backfill when sufficient and suitable benches are available. However, when the volume of coal mine waste will exceed the AOC configuration of the available bench, DMLR still prefers placement of the coal mine waste on the bench rather than on undisturbed areas. In such cases, DMLR will require the construction of the refuse pile to be consistent with both 480–03–19.816/817.81 and 83.

[iv] DMLR proposes to grant the variance contained at proposed 480–03–19.817.102(e)(2) in such case, but only when certain conditions are met. DMLR will consider the area above the refuse pile as small if there are no channeled flows and if during storm events there is only sheet flow. However, DMLR will not grant the variance if the drainage area above the pile on any point excess 500 feet, measured along the slope.

[v] DMLR will accept only those appropriate measures that can be shown, using standard engineering practices to convey the flow across the pile safely and prevent erosion. Such practices may include sufficient vegetation to prevent erosion or the use of terrances that direct runoff from the areas above the refuse pile and runoff from the surface of the refuse pile into stabilized channels designed to safely pass runoff from the 100-year, 6-hour precipitation event.

As detailed above, Virginia has clarified those instances where a variance could be granted. In addition, Virginia has limited the size of areas which could qualify for an exemption to ''small'' areas. Virginia has defined ''small'' quantitatively as slopes less than 500 feet in length, and functionally, as zones where runoff during storm events is only sheet flow. Virginia has also reasonably explained how the Virginia program would safeguard refuse piles in mined-out areas from erosion despite an authorization of the proposed variance.

The Federal regulations at 30 CFR 732.15(a) require that the State's laws and rules, collectively, be in accordance with SMCRA and consistent with the Federal regulations. That is, the State's statutes, rules, policy statements, and similar materials are compared, collectively, with the Federal statute and rules, collectively, to ensure that the State's program, as a whole, meets the Federal requirements. Therefore, while Virginia's proposed provisions are not identical to the counterpart Federal regulations, OSM has reviewed the Virginia program, collectively, to determine consistency with the Federal regulations. The detailed explanation and scope of the proposed amendments which were submitted by Virginia on October 31, 1994, provide a clear explanation of Virginia's assertion that the Virginia program, with the proposed amendments, remains no less effective than the Federal regulations.

The Director concurs that the Virginia program will not be rendered less effective than the Federal regulations in controlling erosion, preventing acid and toxic drainage, and providing for the stability of fills of coal processing waste and underground development waste in mined-out areas if the program is implemented as discussed in the October 31, 1994, submittal, provided that the required amendments discussed below are added to the program.

The Federal regulations at 30 CFR 816/817.83(a) provide for drainage control at refuse piles. Specifically, the regulations require diversions and underdrains to control erosion, prevent water infiltration into the disposal facility, and to ensure stability if the area contains springs, natural or manmade watercourses, or wet weather seeps. These provisions pertain most appropriately to piles or deposits which, when placed, would interfere with the natural, preexisting drainage patterns. Directing drainage away from those refuse piles would help prevent the creation of impoundments and would help prevent excessive infiltration into the pile that could weaken the structure. Diversions and underdrains do not serve those purposes, however, when the refuse is used for backfill to return to AOC. That is because the AOC complements and assists the area's natural surface drainage patterns. Therefore, returning a site to AOC should itself prevent the creation of impoundments and other interferences with natural drainage patterns. Virginia will not require these diversions and underdrains for coal refuse disposals on benches that are only being returned to AOC. For the above stated reasons, the Director agrees that Virginia need not require placement of underdrains and diversions in coal refuse sites returned to AOC.

The Federal regulations at 30 CFR 816/817.83(b) provide for the stabilization and revegetation of surface areas at refuse piles in order to minimize surface erosion. The Virginia

rules at 480–03–19.816/817.111–116 require the revegetation of all disturbed areas following backfilling. In addition, 480–03–19.816/817.102(a)(4) require that backfilling and grading be performed in a manner to minimize erosion and water pollution. These requirements serve as counterparts to and are no less effective than the Federal requirements at 30 CFR 816/817.83(b) concerning surface area stabilization of refuse piles.

The Federal regulations at 30 CFR 816/817.83(c)(1) require that all vegetation and organic materials be removed from the disposal area prior to placement of coal mine waste. Where coal mine waste will be placed on pre-existing mine benches, the Director is requiring that Virginia comply with the Virginia rules at 480–03–19.816/817.74 concerning placement of excess spoil on pre-existing mine benches. Those rules specifically require, at subsection (a), that all vegetative and organic materials be removed from the disposal area prior to placement. Where coal mine waste will be placed on recently mined-out benches, the Director expects that all vegetation and organic materials will already have been removed by the mining operations. Therefore, Virginia's rules (with the required amendment mentioned above) will provide counterparts to and will be no less effective than the Federal requirements at 30 CFR 816/817.83(c)(1).

The Federal regulations at 816/817.83(c)(2) provide that the final configuration of the pile shall be suitable for the approved post-mining land use. Terraces are permitted, but the grade of the outslope between terraces shall not be steeper than 2h:1v (50 percent). The Virginia rules at 480–03–19.816/817.102(a)(5) provide that disturbed areas shall be backfilled and graded to support the approved postmining land use. Virginia's rules at 480–03–19.816/817.102(g) allow the use of cut-and-fill terraces without imposing any grade limits on the outslope between the terraces. However, restricting outslopes to 2h:1v as the Federal rule requires for refuse piles may conflict with the requirement to return a site to AOC, since premining slopes might have exceeded 2h:1v. Furthermore, Virginia requires, at 480–03–19.816/817.102(a)(3), that postmining slopes not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides. Therefore, the Director concludes that the Virginia program contains adequate provisions to ensure the slope stability of any cut-and-fill terraces on a site returned to AOC without imposition of an unduly restrictive slope standard.

The Federal regulations at 30 CFR 816/817.83(c)(3) provide that no permanent impoundments shall be allowed on the completed refuse pile. Virginia has a counterpart to this Federal provision for coal waste which is piled to rise above AOC. However, this Federal provision doesn't appropriately apply in situations where the backfilled material doesn't exceed AOC. In such instances (AOC) the Federal regulations at 30 CFR 816/817.102(i) do allow the creation of permanent impoundments on backfilled areas. Therefore, where coal mine waste is used only to return a mined out area to AOC, Virginia need not require compliance with its counterparts to 30 CFR 816/817.83(c)(3).

The Federal regulations at 30 CFR 816/817.83(c)(4) provide for the covering of coal mine waste with four feet of the best available, nontoxic and noncumbustible material. Virginia has a counterpart to these requirements at 480–03–19.816/817.102(f), the general provisions for backfilling and grading. Virginia's provision pertains to all backfilling operations, and this would include backfilling with coal mine waste as Virginia proposes to do. Therefore, the Virginia program contains the requirements of 30 CFR 816/817.83(c)(4) and is, therefore, no less effective than those regulations.

The Federal regulations at 30 CFR 816/817.83(d) provide that refuse piles shall be inspected during construction by a qualified registered professional engineer. These Federal requirements pertain to critical periods during the construction of refuse piles. Virginia's use of coal refuse to achieve AOC will not result in a refuse pile to which the Federal regulations at 30 CFR 816/817.83(d) appropriately apply, since there will be no such critical construction periods. Therefore, the lack of an inspection requirement for coal refuse being used to achieve AOC does not render the Virginia program less effective.

However, OSM is concerned that key points of Virginia's explanation may not be enforceable because they are not currently part of the approved Virginia program. For example, Virginia stated that some coal mine waste is not ''suitable'' for the backfill of pre-existing benches or other mined-out areas. The term ''suitable'' is used several times in Virginia's explanation of the proposed amendments, but the term is not defined. The State did say, however, that the DMLR interprets ''suitable'' to be a measure of both chemical and physical characteristics. The term ''suitable'' needs to be defined. Such a definition should clarify ''suitable'' so that the regulatory authority can consistently apply the term appropriately. The definition should clarify the criteria, both physical and chemical, to be used to distinguish between materials which can and cannot be used for the backfilling of pre-existing benches or mined-out areas.

Virginia stated that the DMLR considers the determination of seeps, springs, or other discharges necessary in the designing of a backfill consistent with 480–03–19.816/817.81. Such a determination would be crucial to efforts to successfully prevent acid or toxic drainage. A requirement to provide this crucial information is not explicitly required by the Virginia program, but should be.

Virginia stated that the DMLR assures periodic testing by imposing a permit condition pursuant to 480–03–19.773.17 requiring a quarterly analysis of appropriate coal mine waste as it is placed in a refuse pile or in the area being backfilled. 480–03–19.773.17 does not, however, specifically require the imposition of such a permit condition. This important permit condition should be added to the Virginia program at 480–03–19.773.17.

In its discussion of the proposed amendment at 480–03–19.816/817.102(e)(2), Virginia stated that the proposed variance from the requirement to direct water around the refuse pile would only be granted if the area above the refuse pile is ''small.'' The term ''small'' was explained to mean that there are no channeled flows and that during storm events, there is only sheet flow. Additionally, the DMLR would not grant the variance if the drainage area above the pile on any point exceeds 500 feet, measured along the slope. These important criteria should be added to the Virginia program as a definition.

Both the Federal regulations at 30 CFR 816/817.83(a)(2) and the Virginia rules at 480–03–19.816/817.83(a)(2) prohibit the flow of uncontrolled surface drainage over the outslope of a refuse pile. Virginia will not grant a variance to the diversion requirements contained in this same subdivision, unless the operator can demonstrate that drainage over the outslope of the refuse pile will be controlled.

Further, the Director finds that runoff above the refuse pile need not be diverted around the surface of the pile so long as that runoff is not channeled flow (either natural or constructed) but is restricted to sheet flow only. Virginia has assured OSM that it will inspect these areas above the refuse piles until

final bond release to ensure that channeled flows do not form in those areas. Should such channeled flows subsequently develop, Virginia must require the operators to repair and revegetate the area to return to sheet flow, or construct diversions of that flow so that it goes around the pile rather than over the pile in channeled flow. The Director notes that limiting the area above the pile to 500 feet along the slope provides an additional restriction to approval of the variance.

Therefore, the Director finds, to the extent that the proposed amendments will be implemented as explained by Virginia in its October 31, 1994, submittal to OSM, that the proposed amendments at 480–03–19.816/817.102(e) (1) and (2) can be approved. However, in addition, the Director is requiring that Virginia further clarify the implementation of these amendments by amending the Virginia program as follows: (1) Define the term ''suitable.'' The definition should clarify the criteria, both physical and chemical, to be used to distinguish between materials which can and cannot be used for the backfilling of pre-existing benches or mined-out areas; (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; and (4) add a definition of ''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.

Finally, the Director finds that where coal refuse will be placed on pre-existing benches (for the purpose of returning benches to OAC), Virginia must require compliance with its performance standards at 480–03–19.816/817.74 concerning the placement of excess spoil on pre-existing benches. Compliance with these performance standards is necessary because coal refuse presents at least as many stability problems as does the placement of excess spoil on pre-existing benches. While Virginia recognizes this need and currently requires that the placement of coal refuse on pre-existing benches (for the purpose of returning to AOC) meet the standards concerning the placement of excess spoil on pre-existing benches, those requirements are not codified in the Virginia program. Therefore, the Director is requiring that the State amend the Virginia program by adding a requirement that whenever coal refuse is placed on pre-existing benches for the purposes of returning the benches to AOC, the performance standards for the placement of excess spoil on pre-existing benches will be followed. This requirement can be in the form of either a regulation or an official policy statement.

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 Fish and Wildlife Service (FWS) of the U.S. Department of the Interior expressed concern that the proposed amendments may negatively affect water quality, and thus potentially affect Federal listed threatened and endangered aquatic species in southwestern Virginia (Administrative Record Number VA–848). FWS further stated that on December 12, 1994, FWS met with DMLR to discuss the proposed amendments and visit active mine sites with ongoing backfill activities. FWS learned that despite the proposed amendments, all downgradient surface water runoff controls for all disturbed areas are still required by the Virginia program. Additionally, the ''suitability'' of the material for purposes of backfilling or disposing as a refuse pile must be demonstrated by tests for acidity, and the Virginia program continues to prohibit the burial or storage of acid- and toxic-forming materials in proximity to any drainage course. It is clear, FWS stated, that all current regulations will continue in force that require treatment of surface water runoff from the entire disturbed area. The FWS concluded that the proposed amendments are not likely to adversely affect listed species or critical habitat.

Public Comments

A public comment period and opportunity to request a public hearing was announced in the November 16, 1994, **Federal Register** (59 FR 59187). The comment period closed on December 16, 1994. 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 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 December 6, 1994 (Administrative Record Number VA–845), and on January 19, 1995 (Administrative Record Number VA–849). The EPA expressed concerns with potential pollution from the proposed coal refuse disposal on abandoned steep mining areas. In particular, EPA was concerned that the proposed allowance of hillside runoff from ''small'' drainage areas over the refuse pile could result in acid and toxic seepage and runoff.

Virginia indicated to EPA that construction of ditches along the top of the steep mined areas to divert the runoff around the disposal sites would be impractical due to the unstable nature of abandoned highwalls. Virginia also stated that acid and toxic refuse would not be regarded as suitable for such disposal unless isolated and hydrologically separated from drainage courses. Virginia also indicated to the EPA that refuse would be tested in the permitting stage for suitability as well assuring the placement stage.

The EPA stated that disposal of coal refuse on abandoned mine sites, such as proposed by Virginia or in any other manner, is subject to effluent guideline limits as described in 40 CFR 434 subpart B for Coal Preparation Plant Associated Areas during the active and reclamation stages. However, even if treatment during these stages results in compliance with effluent guideline limits and water quality standards, a major concern is the potential of perpetual acid and toxic drainage after closure. EPA stated that it is important to emphasize that any refuse disposal sites which will be exposed to any runoff or infiltration should be free of acid or toxic forming substances. Even where no such substances are initially evident, EPA said, diversion of runoff to the extent possible should be provided and limestone or other alkaline materials should be added to the refuse for added safety. The Director notes that Virginia explained in its October 31, 1994, submittal that the State regulatory authority has ample authority to ensure that appropriate measures are taken to prevent acid and toxic drainage and adverse affects to the hydrologic balance. Virginia also continues to

prohibit the burial or storage of acid- and toxic-forming materials in proximity to any drainage course.

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 31, 1994, to the extent that the proposed amendments will be implemented as explained by Virginia in its October 31, 1994, submittal to OSM.

In addition, the Director is requiring that Virginia further clarify the implementation of these amendments by amending the Virginia program as follows: (1) Define the term ''suitable.'' The definition should clarify the criteria, both physical and chemical, to be used to distinguish between materials which can and cannot be used for the backfilling of pre-existing benches or mined-out areas; (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) add a definition of ''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; and (5) add a requirement that whenever coal refuse is placed on pre-existing benches for the purpose of returning the benches to AOC, the performance standards for the placement of excess spoil on pre-existing benches will be followed.

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.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Virginia program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Virginia of only such provisions.

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 12778

The Department of the Interior has conducted the reviews required by section 2 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.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 27, 1995.

Allen D. Klein,

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 (ii) is added to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(ii) The following amendment to the Virginia program at 480–03–19.816/817.102(e) (1) and (2) concerning coal refuse disposal as submitted to OSM on October 31, 1994, is approved to the extent that the proposed amendments will be implemented as explained by Virginia in its October 31, 1994, submittal to OSM, effective August 8, 1995.

3. In section 946.16, paragraph (a) is added to read as follows:

§ 946.16 Required regulatory program amendments.

* * * * *

(a) By September 1, 1995, or another date approved by the Office of Surface Mining Reclamation and Enforcement, Virginia shall further clarify the

implementation of 480–03–19.816/817.102(e) (1) and (2) by amending the Virginia program as follows:

(1) Define the term ''suitable.'' The definition should clarify the criteria, both physical and chemical, to be used to distinguish between materials which can and cannot be used for the backfilling of pre-existing benches or mined-out areas;

(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) Add a definition of ''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; and

(5) Add a requirement that whenever coal refuse is placed on pre-existing benches for the purpose of returning the benches to AOC, the performance standards for the placement of excess spoil on pre-existing benches will be followed.

* * * * *

[FR Doc. 95–19509 Filed 8–7–95; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 92

RIN 0790–AG18

Revitalizing Base Closure Communities and Community Assistance—Community Redevelopment and Homeless Assistance

AGENCY: Office of the Assistant Secretary of Defense for Economic Security, DoD.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule promulgates policies and procedures, developed by both the Departments of Defense and Housing and Urban Development, for implementing the Base Closure Community Redevelopment and Homeless Assistance Act (the ''Redevelopment Act''). The Department of Housing and urban Development will be making a similar publication in 24 CFR part 586.

DATES: This part is effective August 8, 1995. Comments must be received by October 10, 1995.

ADDRESSES: Comments must be forwarded to the Office of the Assistant Secretary of Defense (Economic Security), 3300 Defense Pentagon, Room 1D760, Washington, DC 20301–3300. This rule was written jointly by the Department of Defense and the Department of Housing and Urban Development. All public comments will be reviewed by both Departments and subsequent amendments will be drafted together.

FOR FURTHER INFORMATION CONTACT: Robert Hertzfeld, Office of Assistant Secretary of Defense (Economic Security), Department of Defense, 3300 Defense Pentagon, Room 1D–760, Washington, DC 20301–3300, (703) 695–1470 or Thelma Moore, Deputy Assistant Secretary for Planning/Community Viability, Office of Community Planning and Development, Room 7204, Department of Housing and urban Development, 451 7th Street, SW, Washington, DC 20410, (202) 708–2484 or, TDD number for hearing and speech-impaired, (202) 708–0738 (these telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION: The Redevelopment Act amends the Base Closure and Realignment Act of 1988 and the Defense Base Closure and Realignment Act of 1990, both as amended by the National Defense Authorization Act for Fiscal Year 1994.

I. Certification

It has been determined that this interim rule is not a significant regulatory action. This part is not subject to the Regulatory Flexibility Act because it would not have a significant economic impact on a substantial number of small entities. This interim rule doe not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980.

II. Other Matters

A. Justification for Interim Rulemaking

Although rulemaking procedures generally require the publication of a proposed rule before regulations are made final and effective, there exists good cause to publish this rule for effect without first soliciting public comment. Forty-five military installations from the 1988, 1991, or 1993 base closure/realignment rounds have elected to be included under this new process. HUD anticipates the receipt of applications in the very near future from the LRAs representing these closure/realignment sites. Moreover, a fourth round of military base closures and realignments was initiated with the Secretary of Defense submitting a list of proposed closures/realignments to the Defense Base Closure and Realignment Commission on February 28, 1995. The Commission submitted its recommendations to the President on June 30, 1995. Upon approval by the President and Congress, this rule will apply immediately to the installations on this 1995 closure/realignment list.

To delay the implementation of this law until publication of a final rule would mean that base reuse would be delayed until a final rule is published. LRAs are awaiting the guidance contained in this rule, necessitating implementation through this interim rule.

DoD and HUD invite public comment on this interim rule within the 60-day comment period. All comments will be considered during the development of the final rule.

B. Impact on the Environment

HUD has made a Finding of No Significant Impact with respect to the environment in accordance with HUD regulations in 24 CFR part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Department of Housing and Urban Development, Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

C. Impact on the Family

The General Counsel of HUD, as the Designated Official under Executive Order 12606, The Family, has determined that this interim rule would not have a potentially significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

III. Background

A. Legislative Summary

This interim rule promulgates policy and procedures for implementing the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (''Redevelopment Act'') (Pub. L. 103–421). The Redevelopment Act amends the Base Closure and Realignment Act of 1988 (Pub. L. 100–526) and the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510) (both at 10 U.S.C. § 2687, note), both as amended by the National Defense