a period of one year, and shall be made available for review by the Secretary or his authorized representative.

(c) In addition, conditions that may present an imminent danger which are noted by the person conducting the examination shall be brought to the immediate attention of the operator who shall withdraw all persons from the area affected (except persons referred to in section 104(c) of the Federal Mine Safety and Health Act of 1977) until the danger is abated.

MSHA intends that the terms ''competent person'' and ''working place,'' used in §§ 56/57.18002(a), be interpreted as defined in §§ 56.2 and 57.2, Definitions.

A ''competent person,'' according to §§ 56.2 and 57.2, is ''a person having abilities and experience that fully qualify him to perform the duty to which he is assigned.'' This definition includes any person who, in the judgment of the operator, is fully qualified to perform the assigned task. MSHA does not require that a competent person be a mine foreman, mine superintendent, or other person associated with mine management.

The phrase ''working place'' is defined in 30 CFR §§ 56.2 and 57.2 as: ''any place in or about a mine where work is being performed.'' As used in the standard, the phrase applies to those locations at a mine site where persons work during a shift in the mining or milling processes.

Standards 56/57.18002(b) require operators to keep records of working place examinations. These records must include: (1) the date the examination was made; (2) the examiner's name; and (3) the working places examined. MSHA intends to allow operators considerable flexibility in complying with this provision in order to minimize the paperwork burden.

Records of examinations may be entered on computer data bases or documents already in use, such as production sheets, logs, charts, time cards, or other format that is more convenient for mine operators.

In order to comply with the record retention portion of §§ 56.18002(b) and 57.18002(b), operators must retain workplace examination records for the preceding 12 months. As an alternative to the 12-month retention period, an operator may discard these records after MSHA has completed its next regular inspection of the mine, if the operator also certifies that the examinations have been made for the preceding 12 months.

Evidence that a previous shift examination was not conducted or that prompt corrective action was not taken will result in a citation for violation of §§ 56.18002 and 57.18002 (a) or (c). This evidence may include information which demonstrates that safety or health hazards existed prior to the working shift in which they were found. Although the presence of hazards covered by other standards may indicate a failure to comply with this standard, MSHA does not intend to cite §§ 56.18002 and 57.18002 automatically when the Agency finds an imminent danger or a violation of another standard.

Background

Failure to conduct working place examinations has been a contributing cause of a significant number of recent accidents. In the 5-year period from 1988–1992, MSHA has investigated 17 serious and fatal accidents where working place examinations were not conducted or were inadequately conducted and were found to have contributed to the cause of the accident.

Authority

30 CFR §§ 56.18002 and 57.18002.

Filing Instructions

This policy letter should be filed after the tab ''Program Policy Letters,'' located behind Volume IV of the Program Policy Manual.

Issuing Office and Contact Person

Metal and Nonmetal Mine Safety and Health, Division of Safety, Richard Feehan, 703–235–8647

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–107–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 proposed amendment consists of statutory changes contained in Virginia House Bill 706 and the implementing regulations, both of which address sudden release of accumulated water from underground coal mine voids. The amendment is intended to improve the effectiveness of the Virginia program.

EFFECTIVE DATES: August 19, 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: (540) 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 946.11, 946.12, 946.13, 946.15, and 946.16.

II. Submission of the Amendment

By letter dated April 17, 1996 (Administrative Record No. VA–876), Virginia submitted amendments to § 45.1–243 of the Code of Virginia contained in Virginia House Bill 706, and concerning the sudden release of accumulated water from underground coal mine voids. Virginia also submitted the proposed implementing regulations at § 480–03–19.784.14 concerning hydrologic information for reclamation and operations plans, and § 480–03–19.817.41 concerning performance standards for hydrologic balance protection.

The proposed amendment was published in the May 3, 1996, Federal Register (61 FR 19885), 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 June 3, 1996.

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.

The amendments proposed by Virginia are as follows:

1. § 45.1–243 of the Code of Virginia is amended by adding a new subsection to read as follows:

B. The Director's regulations shall require that permit applicants submit hydrologic reclamation plans that include measures that will be utilized to prevent the sudden release of accumulated water from underground workings.

2. § 480–03–19.784.14(g) of the Virginia regulations is amended to add

the requirement that the hydrologic reclamation plan shall also include identification of the measures to be taken to prevent the sudden release of accumulated water from the underground workings.

3. § 480–03–19.817.41(i) is amended by adding new subparagraph (3) to read as follows:

(i)(3) Except where surface entries and accesses to underground workings are located pursuant to (i)(1) of this Section, an unmined barrier of coal shall be left in place where the coal seam dips toward the land surface. The unmined barrier and associated overburden shall be designed to prevent the sudden release of water that may accumulate in the underground workings.

(i)(3)(i) The applicant may demonstrate the appropriate barrier width and overburden height by either:

(A) providing a site specific design, certified by a qualified registered professional engineer, which considers the overburden and barrier characteristics; or

(B) providing the greater barrier width necessary for a minimum of 100 feet of vertical overburden or for an unmined horizontal barrier calculated by the formula: W=50+H, when W is the minimum width in feet and H is the calculated hydrostatic head in feet.

(i)(3)(ii) Exception to the barrier requirement may be approved provided the Division finds, based upon the geologic and hydrologic conditions, an accumulation of water in the underground workings cannot reasonably be expected to occur or other measures taken by the applicant are adequate to prevent the accumulation of water.

There are no Federal counterparts to the Virginia amendments. The Director finds, however, that the amendments are reasonable, and not inconsistent with SMCRA and the Federal regulations. The Virginia amendments are technically sound, and will add an increased measure of protection from the hazards of sudden releases of accumulated water from underground workings.

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. Department of Agriculture, Natural Resources Conservation Service responded and recommended that the amendments be accepted. The U.S. Fish and Wildlife Service responded and stated that the proposed regulatory changes are not likely to adversely affect threatened or endangered species or critical habitats.

The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded and stated that it may be useful for the State to develop the criteria that would be employed to measure the phrase ''cannot reasonably be expected'' that appears at proposed § 480–03–19.817.41(i)(3)(ii). The provision provides for an exception to the barrier width requirement of (i)(3)(i) when site specific conditions indicate there will be no accumulation of water. In response to the MSHA comment, the Division of Mines, Minerals and Energy (DMME) said that it chose not to specify in the proposed amendment each circumstance an applicant may be able to demonstrate that water ''cannot reasonably be expected'' to accumulate within the abandoned mine voids. DMME stated that it intends to depend upon conservative scientific principles in evaluating each case specific demonstration. DMME intends to consider the availability/proximity of water to the underground voids as well as the geohydrologic parameters that may affect the ability of the voids to hold such waters under head. In response, the Director believes the DMME approach to be reasonable and has determined in the Finding above, that the proposed amendments are not inconsistent with SMCRA and the Federal regulations.

Public Comments

A public comment period and opportunity to request a public hearing was announced in the May 3, 1996, Federal Register (61 FR 19885). The comment period closed on June 3, 1996. 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 June 20, 1996 (Administrative Record No. VA–891) and stated that the amendment is in compliance with 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 sudden release of accumulated water from underground coal mine voids as submitted by Virginia on April 17, 1996.

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 12988 (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 determined 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 collections 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

Intergovernmetal relations, Surface mining, Underground mining.

Dated: July 30, 1996.

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 (kk) is added to read as follows:

§ 946.15 Approval of regulatory program amendments

* * * * *

(kk) The amendment to the Virginia program concerning the sudden release of accumulated water from underground coal mine voids as submitted to OSM on April 17, 1996, is approved effective August 19, 1996.

[FR Doc. 96–21083 Filed 8–16–96; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No: 950620162–6014–02]

RIN 0651–AA75

Miscellaneous Changes in Patent Practice

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (Office) is amending the rules of practice in patent cases to implement a number of miscellaneous changes proposed in the rulemaking entitled ''Changes to Implement 18-Month Publication of Patent Applications'' (Notice of Proposed Rulemaking), published in the Federal Register at 60 FR 42352 (August 15, 1995), and in the Patent and Trademark Office Official Gazette 1177 Off. Gaz. Pat. Office 61 (August 15, 1995), that are not directly related to the 18-month publication of patent applications. While the proposed rule changes in the Notice of Proposed Rulemaking were designed primarily to implement the changes in practice related to the publication of patent applications provided for in H.R. 1733, these miscellaneous proposed changes clarify current rules of practice, without regard to the publication of patent applications.

DATES: *Effective Date:* September 23, 1996.

Applicability Date: Sections 1.52 (a) and (b), 1.58, 1.72 (b), 1.75 (g), (h) and (i), 1.77, 1.84 (c), (f), (g) and (x), 1.96, 1.154, and 1.163 of 37 CFR apply to applications filed on or after September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Stephen G. Kunin by telephone at (703) 305–8850, by facsimile at (703) 305–8825, by electronic mail at rbahr@uspto.gov, or Jeffrey V. Nase by telephone at (703) 305–9285, or by mail marked to the attention of Stephen G. Kunin, addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231. For copies of the forms discussed in this final rule package, contact the Customer Service Center of the Office of Initial Patent Examination at (703) 308–1214.

SUPPLEMENTARY INFORMATION: This final rule package is designed to implement the miscellaneous changes set forth in the proposed rulemaking entitled ''Changes to Implement 18-Month Publication of Patent Applications'' (Notice of Proposed Rulemaking) that are not directly related to 18-month publication of patent applications and that are considered desirable even in the absence of an 18-month publication system.

The Notice of Proposed Rulemaking indicated that, in addition to implementing the 18-month publication of patent applications, the Office also proposed to: (1) Clarify which applications claiming the benefit of prior applications, or which prior applications for which a benefit is claimed in a later application, will be preserved in confidence; (2) amend the rules pertaining to the format and standards for application papers and drawings to improve the standardization of patent applications; (3) provide for those instances in which inventions of a pending application or patent under reexamination and inventions of a patent held by a single party are not identical, but not patentably distinct; (4) clarify the practice for the delivery or mailing of patents; (5) expedite the entry of international applications into the national stage; and (6) amend a number of rules for consistency and clarity. The Notice of Proposed Rulemaking stated that these proposed rule changes may be adopted as final rules even in the absence of an 18-month publication system, and advised interested persons to comment on any proposed rule change, regardless of whether H.R. 1733 is enacted.

To avoid delays in the implementation of rule changes considered desirable even in the absence of an 18-month publication system, this final rule package provides for changes to 37 CFR 1.12(c), 1.14, 1.52 (a) and (b), 1.54, 1.58, 1.62 (e) and (f), 1.72(b), 1.75(g), 1.77, 1.78 (a) and (c), 1.84 (c), (f), (g) and (x), 1.96, 1.97, 1.107, 1.110, 1.131, 1.132, 1.154, 1.163, 1.291, 1.292, 1.315, 1.321 and 1.497, and adds new §§ 1.5(f), 1.75 (h) and (i), and 1.130, all of which are based upon the changes proposed in the Notice of Proposed Rulemaking.

Implementation of 18-Month Publication Held in Abeyance Pending Congressional Action on H.R. 1733

The Notice of Proposed Rulemaking also proposed changes to 37 CFR 1.4, 1.5(a), 1.9, 1.11, 1.12 (a) and (b), 1.13, 1.16, 1.17, 1.18, 1.19, 1.20, 1.24, 1.51, 1.52(d), 1.53, 1.55, 1.60, 1.78(a), 1.84(j), 1.85, 1.98, 1.108, 1.136, 1.138, 1.492, 1.494, 1.495, 1.701, 1.808, 3.31, 5.1, new §§ 1.5(g), 1.306 through 1.308 and 5.9,