Proposed Rules

Federal Register
Vol. 67, No. 57
Monday, March 25, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1219

[FV–01–705 PR#2 Correction]

Proposed Hass Avocado Promotion, Research and Information Order; Correction

AGENCY: Agricultural Marketing Service, Agriculture.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule that was published on February 19, 2002 [67 FR 7290] by publishing the correct Harmonized Tariff Schedule number for Hass avocados used to identify those avocados which are subject to import assessments.

EFFECTIVE DATE: March 25, 2002.

FOR FURTHER INFORMATION CONTACT: Julie A. Morin, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535 South Building, Washington, DC 20250–0244; telephone (202) 720–9915; facsimile (202) 205–2800; or *julie.morin@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Department of Agriculture (Department) published a proposed rule on the Hass Avocado Promotion, Research, and Information Order [7 CFR Part 1219] in the **Federal Register** on February 19, 2002 [67 FR 7290]. The proposed Order is authorized under the Hass Avocado Promotion, Research, and Information Act of 2000 [7 U.S.C. 7801–7813].

Need for Correction

As published, there was a typographical error in the proposed rule. In § 1219.54(c)(2) import assessments, the Harmonized Tariff Schedule number identifying Hass avocados is incorrect. Accordingly, this correction document contains the correct Hass avocado Harmonized Tariff Schedule number.

Correction

FR Doc. 02–3797, published on February 19, 2002 [67 FR 7290], is corrected as follows:

§ 1219.54 [Corrected]

1. On page 7307, in the first column, in the Assessment—Import Assessments, section number § 1219.54(c)(2) is correctly revised to read as follows:

(2) The import assessment shall be uniformly applied to imported fresh Hass avocados that are identified by the number 0804.40.00.10 in the Harmonized Tariff Schedule of the United States or any other numbers to identify fresh Hass avocados. Assessments on other types of imported fresh avocados or on processed Hass avocados, such as prepared, preserved, or frozen Hass avocados or Hass avocado paste, puree, and oil will be added at the recommendation of the Board with the approval of the Secretary.

Dated: March 19, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–7106 Filed 3–22–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–088–FOR]

West Virginia Regulatory Program

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

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM) are reopening the public comment period on an amendment to the West Virginia surface mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of the State's responses to several required program amendments codified in the Federal regulations. The amendment is intended to render the West Virginia program no less effective than the Federal requirements. We are reopening the comment period to provide an opportunity to review and comment on a status report from West Virginia Department of Environmental Protection (WVDEP) of actions taken by the State in an attempt to satisfy the required program amendments, and other related documents. We are also providing opportunity to comment on the State's responses to two required program amendments that we inadvertently omitted from a previous announcement of a public comment period.

This document gives the times and locations that the West Virginia program, the proposed amendments to that program, the status report provided by WVDEP, and other related documents are available for your inspection, and the comment period during which you may submit written comments on the amendment.

DATES: We will accept written comments until 4:30 p.m. (local time), on April 9, 2002.

ADDRESSES: You may mail or hand-deliver written comments to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

You may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

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

In addition, you may review copies of the proposed amendment, the status report provided by WVDEP, and the other related documents during regular

business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004. (By Appointment Only)

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 313 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office; Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description of the Proposed Amendment

By letter dated November 30, 2000 (Administrative Record Number WV–1189), the WVDEP submitted an amendment to its program. The amendment consists of the State's written response to several required regulatory program amendments codified in the Federal regulations at 30 CFR 948.16. We announced receipt of the proposed amendment on January 3, 2001 (66 FR 335). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment (Administrative Record Number WV–1194).

On January 15, 2002, we met with the WVDEP to discuss our concerns with the proposed amendment and to obtain the State's responses to our concerns (Administrative Record Number WV–1271). The WVDEP submitted a draft status report on February 15, 2002 (Administrative Record Number WV–1274). By letters dated February 26, 2002, and March 8, 2002 (Administrative Record Numbers WV–1277 and WV–1280, respectively), the WVDEP sent us updated status reports, with attachments, that outline the actions taken by WVDEP in an attempt to satisfy the required program amendments. That information is summarized below. On various dates we provided WVDEP with related materials such as West Virginia 2001 Bulletin No. 32 concerning agricultural statistics (Administrative Record Number WV–1269); Natural Resources Conservation Service (NRCS) listing of prime farmland soils in West Virginia (Administrative Record Number WV–1278); and ''Technical Guides of Reference Areas and Technical Standards for Evaluating Surface Mine Vegetation in OSM Regions I and II'' (Administrative Record Number WV–1277).

We also discussed with the WVDEP the State's responses to several required program amendments that were submitted to us by letter dated May 2, 2001 (Administrative Record Number WV–1209). We announced receipt and provided an opportunity to comment on the amendments submitted on May 2, 2001, in the May 24, 2001, **Federal Register** (66 FR 28682) (Administrative Record Number WV–1213). In that announcement, we inadvertently omitted identifying the State's responses to the required program amendments codified at 30 CFR 948.16(gggg) and (hhhh). Therefore, we are taking this opportunity to announce receipt and provide an opportunity to comment on the State's responses to the required amendments codified at 30 CFR 948.16(gggg) and (hhhh).

We have organized the information provided by WVDEP according to the required program amendment codified at 30 CFR 948.16 that is being addressed. We will begin each discussion by quoting the required amendment. We will then include WVDEP's response to that required amendment, followed by a description of any attachments that were provided by WVDEP. Finally, whenever we add our own words in the form of a note, we will place our note within brackets.

Required Amendments Addressed in the November 30, 2000, Submittal

1. 30 CFR 948.16(dd) Revegetation.

30 CFR 948.16(dd)—West Virginia shall submit proposed revisions to Subsection 38–2–9.3 of its surface mining reclamation regulations or otherwise propose to amend its program to establish productivity success standards for grazing land, pasture land and cropland; require use of the 90 percent statistical confidence interval with a one-sided test using a 0.10 alpha error in data analysis and in the design of sampling techniques; and require that revegetation success be judged on the basis of the vegetation's effectiveness for the postmining land use and in meeting the general revegetation and reclamation plan requirements of Subsections 9.1 and 9.2. Furthermore, * * *, West Virginia shall submit for OSM approval its selected productivity and revegetation sampling techniques to be used when evaluating the success of ground cover, stocking, or production as required by 30 CFR 816.116 and 817.116.

WVDEP response:

Productivity: The WVDEP has developed a policy (Attachment 1) that will use productivity standards developed by the Natural Resources Conservation Service (NRCS) or other publications of the United States Department of Agriculture. These standards will be compared to yields obtained from the particular site.

Ground cover: WVDEP has reviewed the modified Rennie-Farmer Method in addition to methods used in other states and has developed a policy (Attachment 1) which references section 3 of ''Technical Guides of Reference Areas and Technical Standards for Evaluating Surface Mine Vegetation in OSM Regions I and II,'' by Robert E. Farmer, Jr. *et al.,* OSM J5701442/TV–54055A, 1981, U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement.

Attachment 1: Productivity and Ground Cover Success Standards

The productivity success standards for grazing land and hayland will be based upon determinations for similar map units as published in the productivity tables in NRCS soil surveys for the county or from average county yields recognized by the United States Department of Agriculture (USDA). The yields for grazing land or hayland will be measured in material produced per acre or animal units supported. The success of production shall be equal to or greater than that of the standard obtained from the tables. Evaluation methods for productivity to be utilized are described in section 1 of ''Technical Guides of Reference Areas and Technical Standards for Evaluating Surface Mine Vegetation in OSM

Regions I and II'' by Robert E. Farmer, Jr. *et. al.,* OSM J5701442/TV–54055A, 1981, U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement.

The productivity success standard for cropland shall be determined using yields for reference crops from unmined areas. Reference crop yields shall be determined from the current yields records of representative local farms in the surrounding area or from the average county yields recognized by the USDA. The success of production shall be equal to or greater than that of the reference crop from unmined areas. Evaluation methods for productivity to be utilized are described in section 1 of ''Technical Guides of Reference Areas and Technical Standards for Evaluating Surface Mine Vegetation in OSM Regions I and II'' by Robert E. Farmer, Jr. *et. al.,* OSM J5701442/TV–54055A, 1981, U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement.

The company shall be responsible for providing DEP with copies of the productivity tables and/or data used to determine reference crop yield. Where the USDA or other agricultural data for productivity does not exist for a particular county, the applicant will work with the DEP and the USDA to develop standards for the proposed area.

Ground cover success shall be based on the Rennie and Farmer technique described in section 3 of ''Technical Guides of Reference Areas and Technical Standards for Evaluating Surface Mine Vegetation in OSM Regions I and II'' by Robert E. Farmer, Jr. *et. al.,* OSM J5701442/TV–54055A, 1981, U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement.

2. 30 CFR 948.16(ee) Prime farmland.

30 CFR 948.16(ee)—West Virginia shall submit documentation that the U.S. Soil Conservation Service (SCS), now the NRCS, has been consulted with respect to the nature and extent of the prime farmland reconnaissance inspection required under Subsection 38–2–10.1 of the State's surface mining reclamation regulations. In addition, the State shall either delete paragraphs (a)(2) and (a)(3) of Subsection 38–2–10.2 or submit documentation that the SCS State Conservationist concurs with the negative determination criteria set forth in these paragraphs.

WVDEP response:

Comments from NRCS resolve this issue (WV administrative Record No. 1203). The NRCS stated in their comment letter dated February 9, 2001, to OSM that all prime farmlands in the State have been mapped and are available. WVDEP has contacted the NRCS and has drafted a letter seeking further concurrence (Attachment 1A).

Attachment 1A: February 25, 2002, Letter From WVDEP to NRCS

In the letter that comprises this attachment, WVDEP stated that it was providing NRCS a copy of its rule concerning prime farmlands at CSR 38–2–10 (Attachment 1P). WVDEP requested that NRCS address the following: the reconnaissance inspection and two paragraphs of the negative determination section.

WVDEP described the States reconnaissance inspection process as it currently exists. Included in that description are the following criteria, one or more of which can be the basis of a prime farmland negative determination: (1) No historical use of the land as cropland; (2) the slope of the land in the permit area is greater than 10 percent; (3) other factors (*i.e.,* rocky surface, frequent flooding) disqualify the land as prime farmland; (4) a soil survey by a qualified person.

The letter further states that WVDEP reviews the applicants' information and will check county soil survey maps. The soils in the area are compared to a list from ''West Virginia's Prime Farmland Soil Mapping Units'' by NRCS (Attachment 3P). If the soils in the proposed mining area are not on the list, then the negative determinations are approved. If the negative determination is not approved, then the NRCS is consulted. If prime farmland is identified, then a much more detailed plan is required.

For counties where no mapping has been published, WVDEP's procedure is described in Attachment 2P. If the slopes are less than 10 percent and the area has historically been used as cropland then NRCS is consulted.

WVDEP further stated that the criteria for both the slope and the rocky or flooded land were based on NRCS literature. Of all the soils identified in the ''West Virginia's Prime Farmland Soil Mapping Units'' document, not one has greater than 10 percent slope and that same document says that prime farmland cannot be in areas that are flooded frequently nor areas that are rocky (10 percent cover of rock fragments coarser than 3 inches).

The letter of Attachment 1A asked for NRCS concurrence on the State's methods of reconnaissance inspections and with the State's negative determination criteria for prime farmland.

Attachment 2P: Prime Farmlands Identifications

Soil surveys prepared by the NRCS will be the basis for the final determination of prime farmlands in West Virginia involving surface mining permits. In these cases where soil surveys are not complete in a county and prime farmland involvement is possible, the NRCS will conduct a soil survey for the permit area for final determination.

If a permit application contains any areas with less than 10 percent slope and it is evident the area has been used for crops at least 5 years out of the last 20 years, it is possible that these areas could be considered prime farmland.

If this condition is present, you should check the NRCS soil survey for that county. If a soil survey does not exist for a particular county, you should consult the local NRCS District Conservationist for a prime farmland determination.

In counties where soil surveys have been published, you must locate the permit on the soils map and by utilizing the symbols on the map, determine the soil types in the proposed area. Then, comparison with the attached list of soils constituting prime farmlands in West Virginia will have to be made. If the soil type is considered prime farmland on the list, the District Conservationist for that county must be contacted for final determination.

If the permit application involves prime farmland, all provisions of sections 507(b)(16) and 515(b)(7) of Public Law 95–87 and section 10 of the West Virginia Surface Mining Regulations will apply.

Attachment 3P: West Virginia's Prime Farmland Soil Mapping Units

This publication contains a listing of West Virginia's prime farmland soil mapping units. The publication is dated April 1982.

Attachment 4P: This attachment consists of the State response to the required amendment codified at 30 CFR 948.16(ee) as submitted to OSM on November 30, 2000.

3. 30 CFR 948.16(oo). Spillway design.

30 CFR 948.16(oo)—West Virginia shall submit proposed revisions to subsection 38–2–5.4(b)(8) of its surface mining reclamation regulations to require that excavated sediment control structures which are at ground level and which have an open exit channel constructed of non-erodible material be designed to pass the peak discharge of a 25-year, 24-hour precipitation event.

WVDEP response:

The WVDEP is proposing language (Attachment 2) that all sediment control structures spillways will be designed based on a 25-year/24-hour storm except for haulroads.

Attachment 2: This attachment contains the draft language for CSR 38–

2–5.4.b.8. As amended, the proviso that excluded excavated sediment control structures is deleted. In its place is language that provides as follows: ''provided, however that this subsection does not apply to haulroads.'' As amended, CSR 38–2–5.4.b.8. provides as follows.

5.4.b.8. Be designed to safely pass a twenty-five (25) year, twenty-four (24) hour precipitation event. The combination of both principal and/or emergency spillway of the structures shall be designed to safely pass the peak discharge of a twenty-five (25) year, twenty-four (24) hour precipitation event, provided, that a single open channel spillway may be used only if it is of non-erodable construction and designed to carry sustained flows; or earth or grass-lined and designed to carry short term, infrequent flows at non-erosive velocities where sustained flows are not expected; provided, however, that this subsection does not apply to haulroads.

4. 20 CFR 948.16(nnn) Unjust hardship.

30 CFR 948.16(nnn)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise Section 22B–1–7(d) to remove unjust hardship as a criterion to support the granting of temporary relief from an order or other decision issued under Chapter 22, Article 3 of the West Virginia Code.

WVDEP response:

The WVDEP is proposing language (Attachment 3) to exclude unjust hardship as criteria to support the granting of temporary relief under WV Code 22–3.

Attachment 3: W. Va. Code 22B–1–7 Appeals to Boards

This attachment consists of the language at 22B–1–7(d) and (h) and identifies how these provisions are proposed to be amended.

Paragraph (d) is amended by adding a proviso that provides as follows: ''Provided; however, the criterion of unjust hardship cannot be used to support the granting of temporary relief for an order or other decision issued under article three chapter twenty-two of this code.''

5. 30 CFR 948.16(ooo) Temporary relief.

30 CFR 948.16(ooo)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise Section 22B–1–7(h) by removing reference to Article 3, Chapter 22.

WVDEP response:

This provision only applies to the Environmental Quality Board (EQB), which adjudicates Clean Water Act appeals. The WVDEP is proposing language (Attachment 3) to delete the reference to Article 3 Chapter 22.

Attachment 3: W. Va. Code 22B–1–7(h) Appeals to Boards

This attachment consists of the language at section 22B–1–7(d) and (h) and identifies how these provisions are proposed to be amended. Paragraph (h) is amended in the first sentence by deleting reference to article ''three'' chapter 22 of the W. Va. Code.

6. 30 CFR 948.16(sss) Water replacement waiver.

30 CFR 948.16(sss)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise CSR 38–2–14.5(h) and 22–3–24(b) to clarify that the replacement of water supply can only be waived under the conditions set forth in the definition of ''Replacement of water supply,'' paragraph (b), at 30 CFR 701.5.

WVDEP response:

The WVDEP has reevaluated its water replacement and waiver requirements at W.Va. Code § 22–3–24 and the rules. As stated in 38–2–14.5.h, the waiver of water supply provided in § 22–3–24(b) only applies to underground operations and the agency plans to propose changes for the 2003 regular legislative session that would clarify that replacement of an affected water supply that is needed for the existing land use or for the post-mining land use cannot be waived. Historically, under the state program, replacement waivers are not sought nor granted for such water supplies. However, in the interim, it is the position of the WVDEP that replacement of water supply can only be waived when consistent with the conditions described in the definition of ''Replacement of water supply,'' paragraph (b), at 30 CFR 701.5.

7. 30 CFR 948.16(vvv)(2) Certification of haul roads.

30 CFR 948.16(vvv)(2)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to amend CSR 38–2–4.12 to reinstate the following deleted language: ''and submitted for approval to the Director as a permit revision.''

WVDEP response:

The WVDEP has established guidelines (Series 20 Effective 1–97, page 22 of the I&E Handbook, Attachment 4) for approval of minor revisions to the original design. Minor deviations from the approved plan for haulroads (width, grade, etc.) are permissible as long they are within the construction tolerance specified in 38–3.35. [Note: typo, should be 38–2–3.35]

Attachment 4: Minor Revisions Approvable by Field Level Personnel

Policy/Procedures: Minor revisions to original designs must be within the construction tolerances specified in 38–2–3.35. If not, a permit revision is required. The following are examples of minor revisions that are approvable at the field inspector level.

1. Minor drainage structure configuration changes (*i.e.,* round vs. square, spillway on one side instead of the other, *etc.*) as long as the required sediment storage capacity is maintained. (Approved by virtue of the inspector signing off on the as-built certification)

2. Minor road width/slope configuration (as long as the width/slope do not compromise safety considerations). (Approved as an as-built certification)

3. Additional sediment control capacity (*i.e.,* additional sumps on roads, pre sumps in front of sediment ponds). (Approved as an as-built certification)

4. Species substitution on planting plans (*i.e.,* substituting legume for legume, hardwoods for hardwoods, *etc.*). Approved by letter submittal and inspector signs off on it.

5. Minor bench size changes on fills (*i.e.,* wider than twenty (20) feet. (Approved on the final certification)

6. Outlets/spillways constructed of different material than originally proposed. (Approved on the as-built certification)

7. Additional rock flumes on backfill areas (letter approval when constructed).

8. Minor encroachment of the permit boundary (*i.e.,* slips, shootovers, *etc.*). These need to be covered with a notice of violation (NOV) then shown on a progress map or on the final map. The acreage involved has to be included in the disturbed acreage number on the Phase I release application, and the bond reduction calculated accordingly.

Keep in mind that some of these changes need to be delineated on the ''map of record.'' This can be done by requesting a progress map to accompany the certification or letter, or at a mid term review, or at the time of final map submittal (Phase I release).

8. 30 CFR 948.16(vvv)(3) Slurry impoundments.

30 CFR 948.16(vvv)(3)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to amend the West Virginia program by clarifying that the requirements at CSR 38–2–5.4(c) also apply to slurry impoundments.

WVDEP response:

The WVDEP is proposing a change to 5.4.d.4 (Attachment 5) which clarifies that non-MSHA sized coal processing waste dams and embankments will be certified by a registered professional engineer as indicated in 30 CFR 780.25.

Attachment 5: CSR 38–2–5.4.d. Certification

This provision would be amended at subdivision 38–2–5.4.d.3. by adding the words ''except all coal processing waste dams and embankments covered by subsection 22.4.c. shall be certified by a registered professional engineer.'' As amended, CSR 38–2–5.4.d.3. would read as follows: Design and construction certification of embankment type sediment control structures may be performed only by a registered professional engineer or licensed land surveyor experienced in construction of embankments ''except all coal processing waste dams and embankments covered by subsection 22.4.c. shall be certified by a registered professional engineer.''

9. 30 CFR 948.16(vvv)(4) Coal refuse disposal.

30 CFR 948.16(vvv)(4)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to amend CSR 38–2–14.15(m), or otherwise amend the West Virginia program to require compliance with 30 CFR 816/817.81(b), (d), and (e) regarding coal refuse disposal, foundation investigations, and emergency procedures and to clarify that where the coal processing waste proposed to be placed in the backfill contains acid- or toxic-producing materials, such material must not be buried or stored in proximity to any drainage course such as springs and seeps, must be protected from goundwater by the appropriate use of rock drains under the backfill and along the highwall, and be protected from water infiltration into the backfill by the use of appropriate methods such as diversion drains for surface runoff or encapsulation with clay or other material of low permeability.

WVDEP response:

Clarify that where the coal processing waste proposed to be placed in the backfill contains acid- or toxic-producing materials, such materials must not be buried or stored in proximity to any drainage course such as springs and seeps.

This part of the required program amendment is satisfied by the state rule (14.15.m.2) which requires that coal processing waste will not be placed in the backfill unless it is non-acid and/or non-toxic material or rendered non-acid and/or non-toxic material and by the state rule (14.6.b) which prohibits acid-forming or toxic forming material being buried or stored in proximity to a drainage course or groundwater system.

Emergency Procedures: OSM believes that the State's emergency procedures at subsection 14.15.m.2 may be no less effective than those at 30 CFR 816.81(e).

Material from Outside the Permit Area: The state rules are clear that prior approval of the Secretary is necessary before placing coal refuse material in the backfill regardless of where the material originates. 14.15.m.2. states the following:

The coal processing waste will not be placed in the backfill unless it has been demonstrated to the satisfaction of the Secretary that: 14.15.m.2.A. the coal processing waste to be placed based upon laboratory testing to be non-toxic and/or non-acid producing; or 14.15.m.2.B. an adequate handling plan including alkaline additives has been developed and the material after alkaline addition is non-toxic and/or non-acid producing.

The WVDEP requires the permittee to identify the source of the refuse in addition to the laboratory testing. Any changes in the source of the refuse require approval of the Secretary.

Foundation: This part of the required program amendment is satisfied due to the requirement that backfill be designed and certified by a registered professional engineer so that a minimum long-term static safety factor of 1.3 is achieved for the final graded slope. All stability analyses include properties of the material to be placed, properties of the foundation (whether on solid bench or backfill) and include site conditions that will affect stability.

Acid Material Handling Plan: OSM stated that this required program amendment is based on a comment by EPA on the original submittal of the rule and that EPA did not comment on WVDEP's explanation. In WVDEP's explanation, it stated that the state rule is clear that the material must be non-acid producing or rendered non-acid producing prior to placement before the Secretary can allow placement of the material in the backfill. In addition, WVDEP stated that the rules at 14.6 apply to the handling of all acid producing material.

10. 30 CFR 948.16(zzz) Pre-subsidence surveys.

30 CFR 948.16(zzz)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to revise 38–2–3.12.a.1., or otherwise amend the West Virginia program to require that the map of all lands, structures, and drinking, domestic, and residential water supplies which may be materially damaged by subsidence show the type and location of all such lands, structures, and drinking, domestic, and residential water supplies within the permit and adjacent areas, and to require that the permit application include a narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminsh, or interrupt drinking, or residential water supplies.

WVDEP response:

The WVDEP stated the identification of structures on a map as required by 3.12.a includes showing the location and type. However, for clarification, on February 4, 2002, WVDEP modified the permit application to state ''Identify Structure (location and type)'' (Attachment 6). This program amendment is currently being reviewed by OSM.

Attachment 6: Section S: Underground/Subsidence Information

Section S–2 of the permit application provides as follows: Does the subsidence survey identify any of the following within 30 degree angle of draw above the proposed underground workings? (Minimum 30 decgree angle of draw unless otherwise specified)

A. Perennial and/or intermittent streams?	Yes	No
B. Structures?	Yes	No
C. Renewal Resource Lands?	Yes	No
D. PSD or Municipal Water Works	Yes	No

If Yes to A., B., C., and/or D. above, identify (location and type) on the topographic map.

11. 30 CFR 948.16(aaaa) Water supply survey.

30 CFR 948.16(aaaa)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to revise CSR 38–2–3.12.a.2., or otherwise amend the West Virginia program to require that the water supply survey required by CSR 38–2–3.12.a.2. include all drinking, domestic, and residential water supplies within the permit area and adjacent area, without limitation by an angle of draw, that could be contaminated, diminished, or interrupted by subsidence.

WVDEP response:

The 30-degree angle of draw as set forth in state rule is a minimum criteria and the state reserves the right to request surveys within a larger area based on evaluation of the application. However, for clarification, the WVDEP has proposed a change to 3.12.a (Attachment 7).

Attachment 7: CSR 38–2–3.12. Subsidence Control Plan

Subsection 3.12.a.1. is proposed to be amended by adding the words ''unless a greater area is specified by the Secretary.'' In addition, a new sentence is added at the end of this paragraph which is as follows. ''A survey that identifies, on a topographic map of a scale of 1 inch = 1,000 feet or less, location and type of water supplies and a narrative indicating whether or not subsidence could contaminate, diminish or interrupt water supplies both on the

permit area and adjacent areas.'' Other changes are also made. As amended, CSR 38–2–3.12.a.1. would read as follows:

3.12.a.1. A survey that identifies, on a topographic map of a scale of 1 inch = 1,000 feet or less, structures, perennial and intermittent streams or renewable resource lands and a narrative indicating whether or not subsidence would cause material damage or diminution of value or use of such structures or renewable resource lands both on the permit area and adjacent areas within an angle of draw of at least 30 degrees unless a greater area is specified by the Secretary. Provided; however, an angle of draw less than 30 degrees can be requested by the applicant based upon results of site specific analyses and demonstration that a different angle of draw is justified. Computer program packages predicting surface movement and deformation caused by underground coal extraction can be utilized. A survey that identifies, on a topographic map of a scale of 1 inch = 1,000 feet or less, location and type of water supplies and a narrative indicating whether or not subsidence could contaminate, diminish or interrupt water supplies both on the permit area and adjacent areas.

CSR 38–2–3.12.a.2. is proposed to be amended by deleting the phrase ''the area encompassed by the applicable angle of draw'' and by replacing those words with the phrase ''the permit area and adjacent areas.'' Other minor changes are also proposed. As amended, paragraph 3.12.a.2. would provide as follows. ''A survey of the quality and quantity of water supplies that could be contaminated, diminished or interrupted by subsidence within the permit area and adjacent areas.''

12. 30 CFR 948.16(bbbb) Pre-subsidence survey report and cost.

30 CFR 948.16(bbbb)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to revise 38–2–3.12.a.2., or otherwise amend the West Virginia program to require that the permit applicant pay for any technical assessment or engineering evaluation used to determine the premining quality and quantity of drinking, domestic, or residential water supplies, and to require that the applicant provide copies of any technical assessment or engineering evaluation to the property owner and to the regulatory authority.

WVDEP response:

Historically, the presubsidence survey includes any assessments and engineering evaluation used and copies of the survey are to be provided to the property owner and to the WVDEP at the cost of the applicant. However, for clarification, the WVDEP has proposed a change to 3.12.a.2.B. (Attachment 7) to reflect that position.

Attachment 7: Subsidence Control Plan

Subsection CSR 38–2–3.12.a.2.B. is proposed to be amended in the fourth paragraph, by adding the words ''at the cost of the applicant'' at the beginning of the sentence. In addition, the words ''containing any technical assessments and engineering evaluation used in the survey'' are added. As amended, the fourth paragraph at CSR 38–2–3.12.a.2.B. provides as follows.

At the cost of the applicant, a written report of the survey containing any technical assessments and engineering evaluation used in the survey shall be prepared and signed by the person or persons who conducted the survey. Copies of the report shall be provided to the property owner and to the Secretary.

13. 30 CFR 948.16(iiii) Recreational facility use.

30 CFR 948.16(iiii)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to amend the term of ''recreational uses'' at W.Va. Code 22–3–13(c)(3) to mean ''recreational facilities use'' at SMCRA section 515(c)(3).

WVDEP response:

Neither state code nor state rules define the term ''public facility including recreational land use.'' It is the state position that the term ''public facility including recreational land use,'' implies structures or other significant developments that the public is able to use, or that confer some type of public benefit. Depending upon individual circumstances, this term may include schools, hospitals, airports, reservoirs, museums, and developed recreational sites such as picnic areas, campgrounds, ballfields, tennis courts, fishing ponds, equestrian and off-road vehicle trails, and amusement areas, together with necessary supporting infrastructure such as parking lots and rest facilities. In general, those sites with a public or public facility postmining land use will provide the public with access as a matter of right on a non-profit basis. Facilities that meet a public need, like water supply reservoirs and publicly owned prisons, and facilities that provide a benefit, like flood control structures and institutions of higher education, also qualify, even if they are not readily accessible to all members of the public or completely non-profit.

14. 30 CFR 948.16(nnnn) Abandoned coal refuse removal.

30 CFR 948.16(nnnn)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to either delete CSR 38–2–3.14 or revise CSR 38–2–3.14 to clearly specify that its provisions apply only to operations that do not qualify as surface mining operations as defined in 30 CFR 700.5. If the State chooses the second option it must submit a sampling protocol that will be used to determine whether the refuse piles meet the definition of coal. The protocol must be designed to ensure that no activities meeting the definition of surface coal mining operations escape regulation under WVSCMRA.

WVDEP response:

WVDEP included the words ''and if not AML eligible'' to allow for the removal of abandoned coal refuse piles under AML enhancement requirements. The State has developed a sampling protocol and set the BTU value for coal (Attachment 8).

Attachment 8: Removal of Abandoned Coal Refuse Piles

The Secretary may issue a reclamation contract, in accordance with 38–2–3.14, solely for the removal of existing abandoned coal processing waste piles; only if the average quality of the refuse material *does not* meet the minimum BTU value standards to be classified as coal and/or has a percent ash value of greater than 50, as set forth in ASTM standard D 388–99.

Refuse material that *does not* meet minimum BTU value standards to be classified as coal means; a pile of waste products of coal mining, physical coal cleaning, and coal preparation operations (e.g. culm, gob, etc.) containing coal, matrix material, clay, and other organic and inorganic material in which the material in the pile has a calculated average BTU value less than 10,500.

Calculation of the average BTU value of the pile will be based on samples taken in a minimum of five different, uniformly distributed locations. The number and spacing of sampling locations should take into account variability of the material in short distances.

Required Amendments Addressed in the May 2, 2001, Submittal

15. 30 CFR 948.16(xx) Constructed outcrop barriers.

30 CFR 948.16(xx)—West Virginia shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise subsection CSR 38–2–14.8(a) to specify design requirements for constructed outcrop barriers that will be the equivalent of natural barriers and will assure the protection of water quality and ensure the long-term stability of the backfill.

WVDEP response:

Responding to OSM's concern that the word ''inhibit'' as in ''to inhibit slides and erosion'' is less effective than the Federal standard of ''prevent'' at 30 CFR 816.99(a), WVDEP provided the following.

The state statutory language for outcrop barriers at W.Va. Code 22–3–13(b)(25) requires the retention of the natural barrier to ''inhibit'' slides and erosion. As set forth in the **Federal Register** dated January 21, 1981,

OSM agrees that provisions regarding natural barriers at W.Va. Code 22–3–13(b)(25) and (c)(4) were found to be consistent with section 515(b)(25) of SMCRA.

Standard Engineering Practices.—The constructed outcrop barriers are designed structures that have a required minimum long-term static safety factor while the natural outcrop barriers are not designed structures and are not required to have a minimum factor of safety. Furthermore, the analysis of stability includes consideration of the material to be placed, the foundation and site conditions. The WVDEP is in the process of developing guidelines for constructed outcrop barriers that will include: requirements for the outslope; sequencing of construction of the outcrop barrier; and minimum factor of safety when barrier is part of the sediment control system (Attachment 9).

[**Note:** Attachment 9 completes WVDEP's process of developing guidelines for constructed outcrop barriers.]

Attachment 9: Constructed Outcrop Barriers

Standard engineering practices for constructed outcrop barriers shall include the following:

1. The design of the constructed barrier shall take into consideration site conditions.

2. The construction of the outcrop barrier shall occur simultaneously with the removal of the natural barrier and be located at or near the edge of the lowest coal seam being mined. Temporary measures must be in place until the barrier is constructed.

3. The recommended outslope of the constructed barrier is 2v:1v

[**Note:** This is a typo, and should be 2v:1h.]

with a static safety factor of 1.3.

4. If the proposed outslope is steeper than 2v:1v

[**Note:** This is a typo, and should be 2v:1h.],

the constructed barrier shall be designed to have a static safety factor of 1.5.

5. If constructed barrier is part of the sediment control system (sediment ditch), the constructed barrier shall be designed to have a static safety factor of 1.5.

16. 30 CFR 948.16(gggg) Bonding for water replacement.

30 CFR 948.16(gggg)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend 38–2–16.2.c.4., or to otherwise amend the West Virginia program, to be no less effective than the Federal regulations at 30 CFR 817.121(c)(5) by requiring additional bond whenever protected water supplies are contaminated, diminished, or interrupted by underground mining operations conducted after October 24, 1992. The amount of the additional bond must be adequate to cover the estimated cost of replacing the affected water supply.

In the program amendment submitted by the WVDEP on May 2, 2001, WVDEP proposed to amend CSR 38–2–16.2.c.4. by deleting the existing first two sentences. In their place, the following sentences are added.

The director shall issue a notice to the permittee that subsidence related material damage has occurred to lands, structures, or water supply, and that the permittee has ninety (90) days from the date of notice to complete repairs or replacement. The director may extend the ninety (90) day abatement period but such extension shall not exceed one (1) year from the date of the notice. Provided, however, the permittee demonstrates in writing, and the director concurs that subsidence is not complete, that not all probable subsidence related material [damage] has occurred to lands or structures; or that not all reasonably anticipated changes have occurred affecting the water supply, and that it would be unreasonable to complete repairs or replacement within the ninety (90) day abatement period.

In addition, the final existing sentence is being amended by adding the following words to the end of the sentence: ''to land or structures, or the estimated cost to replace water supply.''

This amendment is intended to address the required program amendment codified at 30 CFR 948.16(gggg). For more information, see Finding 26 in the February 9, 1999, **Federal Register** (64 FR 6201, 6212–6213).

WVDEP response:

Under the state program additional bond is required whenever a protected water supply will be contaminated, diminished, or interrupted by underground mining and the amount of bond is based to be the estimated cost of replacing the water supply. However, for clarification, WVDEP has proposed a change to 16.2.c.4 (Attachment 10).

Attachment 10: CSR 38–2–16.2.c.4. Bonding for Subsidence Damage

CSR 38–2–16.2.c.4. is proposed to be amended by deleting the word ''that'' in the first sentence immediately after the word ''permittee.'' In its place, the word ''when'' is added. In addition, the first sentence is amended by adding the words ''when contamination, diminution or interruption occurs to a domestic or residential water supply'' are added immediately following the words ''structures, or.'' As amended, CSR 38–2–16.2.c.4. provides as follows.

16.2.c.4. Bonding for Subsidence Damage: The Secretary shall issue a notice to the permittee when subsidence related material damage has occurred to lands, structures, or when contamination, diminution or interruption occurs to a domestic or residential water supply, and that the permittee has ninety (90) days from the date of notice to complete repairs or replacement. The Secretary may extend the ninety (90) day abatement period but such extension shall not exceed one (1) year from the date of the notice. Provided, however, the permittee demonstrates in writing, and the Secretary concurs that subsidence is not complete, that not all probable subsidence related material [damage] has occurred to lands or structures; or that not all reasonably anticipated changes have occurred affecting the water supply, and that it would be unreasonable to complete repairs or replacement within the ninety (90) day abatement period. If extended beyond ninety (90) days, as part of the remedial measures, the permittee shall post an escrow bond to cover the estimated costs of repairs to land or structures, or the estimated cost to replace water supply.

17. 30 CFR 948.16(hhhh) Time allowed for bonding for water replacement.

30 CFR 948.16(hhhh)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38–2–16.2.c.4., or to otherwise amend the West Virginia program, to be no less effective than the Federal regulations at 30 CFR 817.121(c)(5), by requiring that the 90-day period before which additional bond must be posted begin to run from the date of occurrence of subsidence-related material damage.

In the program amendment submitted by the WVDEP on May 2, 2001, WVDEP proposed to amend CSR 38–2–16.2.c.4. by deleting the existing first two sentences. In their place, the following sentences are added.

The director shall issue a notice to the permittee that subsidence related material damage has occurred to lands, structures, or water supply, and that the permittee has ninety (90) days from the date of notice to complete repairs or replacement. The director may extend the ninety (90) day abatement period but such extension shall not exceed one (1) year from the date of the notice. Provided, however, the permittee demonstrates in writing, and the director concurs that subsidence is not complete, that not all probable subsidence related material [damage] has occurred to lands or structures; or that not all reasonably anticipated changes have occurred affecting the water supply, and that it would be unreasonable to complete repairs or replacement within the ninety (90) day abatement period.

In addition, the last existing sentence is being amended by adding the following words to the end of the sentence: ''to land or structures, or the estimated cost to replace water supply.''

This amendment is intended to address the required program amendment codified at 30 CFR 948.16(hhhh). For more information, see Finding 26 in the February 9, 1999, **Federal Register** (64 FR 6201, 6212–6213).

WVDEP response:

OSM agreed to reevaluate its rules and other program approval decisions, especially Pennsylvania Act 54. OSM agrees that the State can provide notification to an operator of a water problem under 30 CFR 817.121(c)(5). Once an operator is notified of the problem and if repair, replacement, or compensation cannot occur within 90 days, the operator is required to post the additional bond. In addition, an extension of time beyond 90 days is allowed for the reasons set forth under 30 CFR 817.121(c)(5). The parties agreed that counsel for OSM and counsel for WVDEP-would reevaluate this issue.

[**Note:** With respect to Act 54, OSM did not reconsider its decision on Act 54, we merely checked to see if it had any relevance to this issue.]

18. 30 CFR 948.16(pppp) Bond release and premining water quality.

30 CFR 948.16(pppp)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove CSR 38–2–24.4.

WVDEP response:

OSM acknowledged that the offending language in 24.4 was deleted with the passage of H. B. 2663.

Required Amendments Not Addressed by WVDEP

19. 30 CFR 948.16(oooo) Coal removal incidental to construction.

30 CFR 948.16(oooo)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to remove CSR 38–2–23.

WVDEP response:

WVDEP proposed to delete the incidental mining requirements at subsection 23, but its rule advisory council recommended that the proposed deletion be removed from the final rule change. WVDEP acknowledged that these provisions have been disapproved by OSM, and they are not implementing them, as recently evidenced by the West Virginia Supreme Court decision. However, WVDEP did acknowledge that they would continue to pursue with OSM and others the approval of incidental coal removal requirements to prevent the wasting of coal. OSM said that WVDEP must provide it a schedule showing that it is attempting to get these provisions out of its program.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendation(s). We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Charleston Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS No. WV–088–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field Office at (304) 347–7158.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during our normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their names or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable 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 because 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 the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse affect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42

U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the 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 regulation.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, geographic regions or Federal, State, or local government agencies; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose 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 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 8, 2002.

Vann Weaver,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 02–7088 Filed 3–22–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–024]

RIN 2115–AA97

Safety Zone: Beverly Homecoming Fireworks—Beverly, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for the Beverly Homecoming Fireworks on August 11, 2002 in Beverly, MA. The safety zone would temporarily close all waters of Beverly Harbor in a 400-yard radius of the fireworks barge located at position 42°32′36″ N, 070°51′50″ W. The safety zone would prohibit entry into or movement within this portion of Beverly Harbor during the closure period.

DATES: Comments and related material must reach the Coast Guard on or before May 1, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office Boston, 455 Commercial Street, Boston, MA. Marine Safety Office Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket and will be available for inspection or copying at Marine Safety Office Boston between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Michael Popovich, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–02–024), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your comments reached us, please enclose a stamped, self addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. However, you may submit a request for a meeting by writing to Marine Safety Office Boston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

This proposed regulation would establish a safety zone in Beverly Harbor within a 400-yard radius of the fireworks barge located at position 42°32′36″ N, 070°51′50″ W. The safety zone would be in effect from 8 p.m. until 10:30 p.m. on August 11, 2002.

The zone would restrict movement within this portion of Beverly Harbor and is needed to protect the maritime public from the dangers posed by a fireworks display. Marine traffic may transit safely outside of the safety zone during the effective periods. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via safety marine information broadcasts and local notice to mariners.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the