

Original amendment submission date	Date of final publication	Citation/description
September 28, 2001	December 3, 2002	Sections 105; 1103; 1105; 1106; 1107(a), (b), (f), and (h); 2103(b)(14), (c), (d), (e), and (f); 3114; 53103(a) and (b); 53111(a)(4) and (5); 6511(c); and Appendix A: Revegetation Success Guidelines

§ 924.16 [Amended]

3. Section 924.16 is amended by removing and reserving paragraphs (i) and (l).

4. Section 924.17 is amended by revising the section heading to read as follows:

§ 924.17 State regulatory program provisions and amendments not approved.

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DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 948**

[WV-096-FOR]

West Virginia Regulatory Program

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

ACTION: Final rule; approval of amendments.

SUMMARY: We are announcing our approval with one exception of amendments to the West Virginia surface coal mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendments we are approving concern changes to the Code of State Regulations as contained in State House Bill 4163 and Senate Bill 2002, concerning contemporaneous reclamation of mine land.

EFFECTIVE DATE: December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

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

By letter dated April 9, 2002 (Administrative Record Number WV-1296), the West Virginia Department of Environmental Protection (WVDEP) sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The proposed amendment consists of several changes to the Code of State Regulations (CSR) at 38-2, and the addition of new CSR 38-4, the Coal Related Dam Safety Rules, as contained in House Bill 4163.

We announced receipt and provided an opportunity to comment on the amendment in the June 6, 2002, **Federal Register** (67 FR 38919) (Administrative Record Number WV-1311). The comment period closed on July 8, 2002. We received comments from the U.S. Department of Labor, Mine Safety and Health Administration.

By letter and electronic mail dated June 19, 2002, WVDEP sent us additional amendments to its program that are contained in Senate Bill 2002 concerning changes to CSR 38-2

(Administrative Record Number WV-1316). Senate Bill 2002 was signed by the Governor on June 21, 2002. Senate Bill 2002 authorized the WVDEP to promulgate revisions to its Surface Mining and Reclamation Regulations.

We announced receipt of the proposed amendments in the August 16, 2002, **Federal Register** (67 FR 53542) (Administrative Record Number WV-1322). In that notice, we also identified proposed amendments that we inadvertently omitted identifying in the June 6, 2002, **Federal Register** notice, including the new Coal Related Dam Safety Rules at CSR 38-4. The comment period closed on September 16, 2002. We received comments from the U.S. Department of Labor, Mine Safety and Health Administration, the U.S. Fish and Wildlife Service, and the Environmental Protection Agency.

Revisions to the State's contemporaneous reclamation requirements are contained in the two amendment submittals discussed above. In order to expedite our review of the State's amendments to its contemporaneous reclamation provisions, we have separated those amendments from the two amendment submittals discussed above. In this notice, we are presenting our findings only on the proposed amendments to the State's contemporaneous reclamation requirements at CSR 38-2-14.15. We will present our findings on the remainder of the amendments submitted by the State on April 9 and June 19, 2002, in a separate **Federal Register** notice at a later date.

III. OSM's Findings

For the reasons discussed below, we are approving, with one exception, the proposed amendments to the State's contemporaneous reclamation standards at CSR 38-2-14.15. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes that do not require specific approval.

1. CSR 38-2-14.15.a.1

This provision concerns backfilling and grading of spoil that is returned to the mined out area. The first sentence in this provision has been amended by adding the phrase “unless a waiver is

granted pursuant to W. Va. Code [Code of West Virginia] 22–3–13(c)(2)” between the words “approximate original contour” and the words “with all highwalls eliminated.” As amended, the first sentence is as follows:

14.15.a.1. Spoil returned to the mined-out area shall be backfilled and graded to the approximate original contour unless a waiver is granted pursuant to W. Va. Code 22–3–13(c)(2) with all highwalls eliminated.

This amended provision authorizes an exception to the requirement to return land to approximate original contour (AOC) pursuant to a waiver granted pursuant to W. Va. Code 22–3–13(c)(2) concerning mountaintop removal mining operations. SMCRA contains such a variance from the requirements to return land to AOC for mountaintop removal mining operations at section 515(c)(2). Therefore, we find that this amendment does not render the West Virginia program less stringent than SMCRA and can be approved.

2. *CSR 38–2–14.15.a.2*

This provision, which was transferred from former Subdivision 14.15.b.6.B.1. and slightly modified, provides as follows:

14.15.a.2. All permit applications shall incorporate into the required mining and reclamation plan a detailed site specific description of the timing, sequence, and areal extent of each progressive phase of the mining and reclamation operation which reflects how the mining operations and the reclamation operations will be coordinated so as to minimize the amount of disturbed, unreclaimed area, and to quickly establish and maintain a specified ratio of disturbed versus reclaimed area throughout the life of the operation.

In effect, this modified provision provides that the required mining and reclamation operations plan submitted with each permit application, include a detailed site-specific description of the timing, sequence, and areal extent of each progressive phase of proposed mining and reclamation operations. Such detailed site-specific description should provide a clear indication of how the mining and reclamation operations will be coordinated by the permittee. The required information should enable the WVDEP to assess the potential effectiveness of the proposed mining and reclamation operations plan in complying with the contemporaneous reclamation requirements at CSR 38–2–14.15. We find that this proposed provision is consistent with and no less effective than the Federal mining and reclamation plan requirements at 30 CFR 780.11 and 780.18, and consistent with the Federal contemporaneous

reclamation requirements at 30 CFR 816.100 and can be approved.

3. *CSR 38–2–14.15.b.5*

This provision is amended by adding a sentence to the end of the existing provision that provides as follows:

Regardless of the allowable limits contained in this section, any disturbed area other than those specified in subdivision 14.15.c. of this rule must complete backfilling and rough grading within 180 days of final mineral removal.

As amended, CSR 38–2–14.15.b.5. provides as follows:

14.15.b.5. Where the operation consists of multiple seam mining along the topographic contour on steep or non-steep slopes, and where the coal seams running through the mountain, hill, or ridge are only partially removed, disturbed and unreclaimed acreage including excess spoil disposal sites, shall not exceed two hundred (200) acres or fifty (50) percent of the permit area, whichever is less. Augering and/or highwall mechanical mining which becomes a part of these types of operations shall be incorporated into the operation in such a fashion so as to meet the subject acreage limitations. Regardless of the allowable limits contained in this section, any disturbed area other than those specified in subdivision 14.15.c. of this rule must complete backfilling and rough grading within 180 days of final mineral removal.

In effect, this provision sets the standard for completion of rough backfilling and grading of multiple seam mining operations where the coal seams are only partially removed at 180 days, except for those areas classified as “reclaimed” and exempted under subdivision 14.15.c.2., as discussed below. The Federal time and distance standards for backfilling and grading at 30 CFR 816.101 have been indefinitely suspended (57 FR 33875, July 31, 1992). However, we find that this provision is not inconsistent with the Federal requirements at 30 CFR 816/817.100 concerning contemporaneous reclamation and can be approved.

4. *CSR 38–2–14.15.b.6.A*

This provision concerns disturbed and unreclaimed acreage limitations for mountaintop mining operations or combination mountaintop mining operations with incidental contour mining. The provision was amended by adding the following language after the second sentence:

Where operations contemplated under this [sub]section are approved with incidental contour mining, which may include augering or highwall mining, the acreage must be calculated in the allowable disturbance authorized in this paragraph. The incidental contour pit length cannot exceed 3000 feet and backfilling/grading shall follow mineral

removal within 180 days. Regardless of the allowable limits contained in section fourteen of this rule, any disturbed area other than those specified in subdivision 14.15.c. of this rule must complete backfilling and rough grading within 180 days of final mineral removal. Operations required to comply with AOC+ guidelines or approved specific post-mining land use requirements must complete backfilling and rough grading within 270 days of final mineral removal unless a waiver is otherwise granted by the Secretary pursuant to this [sub]section.

As amended, CSR 38–2–14.15.b.6.A. provides as follows:

14.15.b.6.A. Disturbed and unreclaimed acreage, including excess spoil disposal sites, shall not exceed thirty-five (35) percent of the total permit acreage, or three hundred (300) acres, whichever is less. Provided; however, the Secretary may grant a variance not to exceed five hundred (500) acres on operations which consist of multiple spreads of equipment. Where operations contemplated under this [sub]section are approved with incidental contour mining, which may include augering or highwall mining, the acreage must be calculated in the allowable disturbance authorized in this paragraph. The incidental contour pit length cannot exceed 3000 feet and backfilling/grading shall follow mineral removal within 180 days. Regardless of the allowable limits contained in section fourteen of this rule, any disturbed area other than those specified in subdivision 14.15.c. of this rule must complete backfilling and rough grading within 180 days of final mineral removal. Operations required to comply with AOC+ guidelines or approved specific post-mining land use requirements must complete backfilling and rough grading within 270 days of final mineral removal unless a waiver is otherwise granted by the Secretary pursuant to this [sub]section.

The ratio of disturbed and unreclaimed acreage versus reclaimed and undisturbed acreage shall be shown on progress maps submitted annually or as otherwise required by the Secretary. The subject ratios shall be verified by the Secretary to be consistent with the mining and reclamation plan on the next regular inspection following receipt of the progress map.

Under the proposed rule, mountaintop mining operations with incidental contour mining, which may include auger or highwall mining, will have to complete backfilling and grading of the incidental contour pit within 180 days of mineral removal. In addition, proposed mountaintop mining operations with complete coal removal, and mountaintop mining operations with contour mining with partial coal removal are required to complete backfilling and rough grading of any disturbed areas within 180 days of final mineral removal. However, mountaintop mining operations subject to the recently developed AOC guidelines (also known as AOC+ guidelines) or with specific postmining

land uses must be backfilled and graded within 270 days of final mineral removal, unless a waiver is granted by the Secretary.

The AOC+ guidelines referred to above are dated January 27, 2000, and took effect on March 24, 2000. The AOC+ guidelines are to be used in determining when AOC has been achieved by surface coal mining operations in steep slope areas of the State. They are also used in determining when placement of excess spoil in fills has been optimized by applicants both seeking or not seeking an AOC variance. The AOC+ guidelines do not apply to contour mining operations. Those operations are subject to the AOC/Excess Spoil Guidance document that was issued on March 16, 1999. OSM and other Federal agencies have concurred with the State's AOC+ guidelines, because they have been found to be useful in providing guidance on AOC demonstrations within the context of the approved State regulatory program (Administrative Record Numbers WV-1150, WV-1153, and WV-1154).

As proposed, mountaintop mining operations without exceptions to AOC that are subject to the AOC+ guidelines or mountaintop removal mining operations with the approvable postmining land uses at subsection 22-3-13(c)(3) of the West Virginia Surface Coal Mining and Reclamation Act would be required to complete backfilling and rough grading within 270 days of final coal removal, unless a waiver is granted by the State. To date, only a few mountaintop mining operations have been approved by the State pursuant to the AOC+ guidelines and are required to complete backfilling and grading within 270 days of final coal removal. All contour and mountaintop mining operations that were approved prior to March 24, 2000, must complete backfilling and grading within 180 days of final coal removal. Therefore, all contour mining operations and most mountaintop mining operations that have been approved by the State to date would have to complete backfilling and grading within 180 days of final coal removal.

We note that, as required by proposed CSR 38-2-14.15.a.2, the operator through the proposed mining and reclamation operations plan, which will contain detailed site-specific information concerning the timing, sequence, and areal extent of each progressive phase of the mining and reclamation operations, must minimize the amount of disturbed area throughout the life of the mining operation. This information will be supplemented with

progress maps that the operator will have to submit to ensure compliance with the mining and reclamation plan. We anticipate that the permit application will specify the need for any waiver of these requirements, and provide the regulatory authority with sufficient information it needs in granting such waivers.

The Federal time and distance standards for backfilling and grading at 30 CFR 816.101 have been indefinitely suspended (57 FR 33875, July 31, 1992). However, the remaining Federal regulations at 30 CFR 816/817.100 require that reclamation efforts, including backfilling and grading, occur as contemporaneously as practicable with the mining operations. We find that the proposed provisions are reasonable and further limit the amount of disturbed area that can go unreclaimed at any time under the State's contemporaneous reclamation requirements by imposing time and distance limitations on backfilling and grading. Because the proposed revisions are not inconsistent with the Federal regulations at 30 CFR 816/817.100, they can be approved.

5. CSR 38-2-14.15.b.6.B

This provision concerns mountaintop removal mining operations or combination mountaintop removal and contour mining operations that use draglines with a bucket capacity of greater than 45 cubic yards. This provision is amended by deleting existing paragraphs 14.15.b.6.B.1. and B.2, and replacing these provisions with new paragraph 14.15.b.6.B.1. As amended, CSR 38-2-14.15.b.6.B. provides as follows:

14.15.b.6.B. On operations which utilize draglines with a bucket capacity of greater than forty-five (45) cubic yards, the requirements of subparagraph 14.15.b.6.A. of this paragraph is waived and the following contemporaneous reclamation requirements apply:

14.15.b.6.B.1. Pre-stripping or benching operations cannot exceed four hundred (400) acres for any single permit and cannot precede dragline operations more than twenty-four (24) months unless otherwise approved by the Secretary or necessary to satisfy AOC+ requirements, specific post-mining land use requirements or special materials handling facilities requirements. All fill construction must occur during this phase of operation and be conducted in accordance with subdivision 14.15.d. of this rule.

14.15.b.6.B.2. Rough backfilling and regrading shall be completed within one hundred (180) days following coal removal and not more than four (4) spoil ridges behind the pit being worked, the spoil form the active pit constituting the first spoil ridge; and

14.15.b.6.B.3. The ratio of disturbed acreage versus reclaimed or undisturbed acreage shall be shown on progress maps submitted annually or as otherwise required by the Secretary.

Under the proposed rule, mountaintop removal or combination mountaintop removal and contour mining operations that use draglines with a bucket capacity of greater than 45 cubic yards cannot allow pre-stripping activities of more than 400 acres and such activities cannot precede the dragline operation by more than 24 months, unless approved by the Secretary. These criteria represent the maximum amount of acreage disturbance and time that pre-stripping or benching operations can precede the dragline operation. Currently, there are about five draglines operating in West Virginia. Pre-stripping or benching operations include that disturbance which is necessary to prepare an area for the dragline to operate safely and effectively. These operations may involve the mining of one or more coal seams in advance of the dragline in order to prepare for additional coal removal. Under the previous rules, the area of disturbance preceding the dragline could not exceed 400 acres. Under the proposed revision, the State will also impose a time limitation of 24 months on pre-stripping or benching operations, unless otherwise approved by the regulatory authority. In addition, all fill construction is to occur during this phase of the operation.

We must note that, except for pre-stripping or benching operations, the existing requirements at subdivision 14.15.b.6.B. do not impose a limit on the total amount of permitted acreage that can be disturbed at any given time. However, those same provisions do require that backfilling and grading of the area disturbed by the dragline must be completed within 180 days following coal removal and with no more than four spoil ridges behind the pit being worked.

We also note that under subdivision 14.15.a.2, as discussed above, the mining and reclamation operations plan for these kinds of operations will contain detailed, site-specific information concerning the timing, sequence, and areal extent of both the proposed pre-stripping and dragline operations and reflect how the mining and reclamation operations will be coordinated throughout the life of the mining operation. This detailed information, together with the progress maps, should provide the regulatory authority sufficient information to assess the proposed ratio of disturbed versus reclaimed area, and to ensure

compliance with the contemporaneous reclamation rules at CSR 38–2–14.15.

The Federal time and distance standards for backfilling and grading at 30 CFR 816.101 have been indefinitely suspended (57 FR 33875, July 31, 1992). However, the remaining Federal regulations at 30 CFR 816/817.100 require that reclamation efforts, including backfilling and grading, occur as contemporaneously as practicable with the mining operations. For the reasons discussed above, we find that the proposed provision is not inconsistent with the Federal regulations at 30 CFR 816/817.100 and can be approved.

6. CSR 38–2–14.15.c

This provision is amended by adding the words “and meets Phase I standards” at the end of the first sentence. As amended, this provision provides as follows:

14.15.c. Reclaimed Area. For purposes of this subsection, reclaimed acreage shall be that portion of the permit area which has at a minimum been fully regraded and stabilized in accordance with the reclamation plan and meets Phase I standards. The following shall not be included in the calculation of disturbed area:

The addition of the phrase “and meets Phase I standards” appears to clarify the meaning of reclaimed area as previously approved at CSR 38–2–14.15.c. In addition to being fully regraded and stabilized in accordance with the reclamation plan, the proposed revision will require that reclaimed acreage must also meet the Phase I bond release requirements at CSR 38–2–12.2.c.1. We find that the amendment to this provision does not render the West Virginia rule less effective than the Federal regulations concerning contemporaneous reclamation at 30 CFR 816.100 and can be approved.

7. CSR 38–2–14.15.c.1

This provision concerns the identification of those areas that shall not be included in the calculation of disturbed area. This provision is amended by adding a new proviso at the end of the existing provision that limits, with exceptions, the total acreage of semi-permanent ancillary facilities that shall not be included in the calculation of disturbed area to a total of 10 percent of the permitted acreage. As amended, CSR 38–2–14.15.c.1. provides as follows:

14.15.c.1. Semi-permanent ancillary facilities (haulroads, drainage control systems, parking areas, maintenance, storage and supply areas, etc.), and areas cleared but not grubbed, provided, that such areas have appropriate drainage control systems in

place; Provided, that with the exception of permanent haulroads, drainage control systems and material handling facilities (including but are not limited to such facilities as preparation plants, fixed coal stockpiles/transfer areas and commercial forestry topsoil areas) the total acreage of all other semi-permanent ancillary facilities cannot exceed ten percent of the total permit acreage.

The existing rules exempt all semi-permanent ancillary facilities and cleared areas from the contemporaneous reclamation requirements, regardless of size. The revised language limits the size of certain semi-permanent ancillary facilities to no more than 10 percent of the total permitted acreage. Otherwise, the area will have to be considered disturbed area for contemporaneous reclamation purposes. We find that the provision, as amended, is reasonable in that it limits the exemption from the State’s contemporaneous reclamation requirements for certain semi-permanent ancillary facilities to not more than 10 percent of the permitted acreage. Because the proposed revision is more restrictive and not inconsistent with the Federal regulations concerning contemporaneous reclamation at 30 CFR 816/817.100, it can be approved.

8. CSR 38–2–14.15.c.3

This provision concerns the identification of cleared and grubbed acreage that shall not be included in the calculation of disturbed area. This provision is amended by adding the following language to the end of the existing provision:

the Secretary may consider larger acreage for clearing operations where it can be demonstrated that it is necessary to comply with applicable National Environmental Policy Act requirements.

As amended, this provision provides as follows:

14.15.c.3. Areas containing 30 aggregate acres or less which have been cleared and grubbed and have the appropriate drainage control (temporary or permanent) installed and certified, and which will become a part of the operational area within six months or less. Failure to incorporate these areas into the operational area within six months may result in the loss of this exemption; the Secretary may consider larger acreage for clearing operations where it can be demonstrated that it is necessary to comply with applicable National Environmental Policy Act requirements.

The purpose of the amendment is to enable the Secretary of WVDEP to allow coal operators to clear (i.e., cut only, not grub) trees on areas larger than 30 acres. The State is trying to protect the Indiana bat and other endangered plant and animal species by minimizing habitat loss at certain times of the year, notably

mating season. By allowing larger areas to be timbered and still have the reclamation be considered contemporaneous, the WVDEP hopes to discourage clear cutting operations prior to getting permits, when the practices are not subject to SMCRA’s environmental protections and may affect wildlife at critical times. Once permits are issued, operators cannot timber at certain times of the year when certain endangered or threatened species are breeding.

Under SMCRA, the issuance of a SMCRA permit by the State is not considered an action under NEPA. Appendix 8 of the U.S. Department of the Interior Manual provides that “[p]ermit applications under approved State programs are excluded from NEPA compliance.” January 19, 1981; 46 FR 2316. In addition, individual States have no authority to require compliance with NEPA and, therefore, the State’s proposed reference to NEPA has no effect on the West Virginia program. We find that because the proposed reference to NEPA is a nullity and has no practicable effect on the West Virginia program, we are not rendering a decision on the proposed language. Because we are not rendering a decision on the proposed language, this requirement is not part of the approved West Virginia program. To avoid confusion in the future, we recommend that this language be removed from these rules.

9. CSR 38–2–14.15.c.4

This provision has been deleted in its entirety in the revised rule authorized with the passage of Senate Bill 2002. Prior to being deleted, this provision provided that the following area would not be included in the calculation of disturbed area:

14.15.c.4. Areas that have been cleared and grubbed which exceed the thirty aggregate acres and/or those which will not be included in the operational area within six months may be excluded if the appropriate temporary or permanent drainage control structures are installed and certified and have temporary vegetative cover established; and

We find that the deletion of this provision, which provides an exemption for areas that have been cleared and grubbed from the contemporaneous reclamation requirements, does not render the West Virginia program less effective than the Federal regulations at 30 CFR 816/817.100 concerning contemporaneous reclamation and can be approved.

10. CSR 38–2–14.15.d

CSR 38–2–14.15.d., concerning Applicability, has been deleted, relocated to subdivision 14.15.e., and revised (see below). New subdivision 14.15.d. concerns excess spoil disposal fills, and provides as follows:

14.15.d. Excess Spoil Disposal Fills. All fills must be constructed contemporaneously and contiguously with that segment of the operations that contains the material that is designated to be placed in the fill. In addition to all other standards in effect, the following shall apply to excess spoil disposal fills.

14.15.d.1. All fills must be planned for continuous material placement until designed capacity is reached and cannot have a period of inactivity that exceeds 180 days unless otherwise approved by the secretary on a permit specific basis to accommodate AOC+, post-mining land use or special material handling situations.

14.15.d.2. The areas where contour mining is proposed within the confines of the fill are not eligible for the exemption contained in 14.15.c.2.

14.15.d.3. Operations that propose fills that are designed to use single lift top-down construction shall bond the proposed fill areas based upon the maximum amount per acre specified in WV Code 22–3–12(c)(1).

At subdivision 14.15.d, the proposed provision adds a requirement that all excess spoil disposal fills must be constructed contemporaneously and contiguously with that portion of the operation that contains the material that is to be placed in the fill. This provision is to ensure that the construction of excess spoil disposal fills will be done simultaneously with the mining operation. We note that under proposed subdivision 14.15.a.2, discussed above, the mining and reclamation operations plans submitted with each permit application must include a detailed site-specific description of the timing, sequence, and areal extent of each progressive phase of proposed mining and reclamation operations. This information and these requirements should enable the regulatory authority to ensure more timely construction and reclamation of excess spoil fills.

Subsection 14.15.d.1 provides that both the conventional and end-dump fills must be planned for continuous material placement until design capacity is reached and cannot have a period of inactivity exceeding 180 days. We interpret the latter provision to mean that inactivity during fill construction cannot exceed 180 continuous days. This subdivision also provides for permit-specific waiver of the 180-day criterion, on a permit specific basis, to accommodate AOC+, postmining land use, or special material handling situations. Prior to this proposed provision, there was no time

limit on the construction and reclamation of fills. While the proposal does allow for a waiver to the 180-day criterion, it may only be granted on a permit-specific basis.

Subsection 14.15.d.2 provides that the areas where contour mining is proposed within the confines of the fill are not eligible for the exemption contained in subsection 14.15.c.2. Subsection 14.15.c.2 provides that fills that are constructed using conventional methods (constructed in lifts from the toe up) shall not be included in the calculation of disturbed area. Therefore, under subsection 14.15.d.2, areas where contour mining is proposed within the confines of the fill are not eligible to be excluded from the calculation of disturbed area, and are not exempt from the State's contemporaneous reclamation requirements.

Subsection 14.15.d.3 provides that bonds for areas with single lift, top down constructed fills are to be set at the maximum amount per acre (\$5 thousand per acre). These fills are often referred to as end-dump fills. Increasing the bond on such fills to the maximum amount will protect the State's special reclamation fund should an operator forfeit the bond and fail to complete reclamation of end-dump fill areas. We note that there is a typographical error in this provision. The site-specific bond amount per acre is specified at W. Va. Code 22–3–12(b)(1), not 12(c)(1) as specified in this provision.

The Federal time and distance standards for backfilling and grading at 30 CFR 816.101 have been indefinitely suspended (57 FR 33875, July 31, 1992). The remaining Federal regulations at 30 CFR 816/817.100 require that reclamation efforts, including backfilling and grading, occur as contemporaneously as practicable with the mining operations. We find that because the proposed excess spoil fill provisions at CSR 38–2–14.15.d., d.1, d.2 and d.3 enhance the State's contemporaneous reclamation standards and are not inconsistent with the Federal regulations at 30 CFR 816/817.100, they can be approved.

11. CSR 38–2–14.15.e

This subdivision, which concerns applicability, has been relocated from subdivision 14.15.d., and has been revised. As amended, subdivision 14.15.e. provides as follows:

14.15.e. Applicability. Permit applications pending approval on the first day of January, two thousand three, shall within 120 days of permit approval have a mining and reclamation plan which is consistent with the criteria set forth in this subdivision. Permit applications which are submitted

after the first day of January, two thousand three shall not be issued a permit without a mining and reclamation plan which is consistent with the criteria set forth in this subdivision.

14.15.e.1. After the first day of January, two thousand three, the mining and reclamation plan for all active mining operations must be consistent with the applicable time criteria set forth in this paragraph. Where permit revisions are necessary to satisfy this requirement, the revisions shall be prepared and submitted to the Secretary for approval within 180 days. Full compliance with the revised mining and reclamation plan shall be accomplished within twelve (12) months from the date of the Secretary's approval.

14.15.e.2. After the first day of January, two thousand three, the mining and reclamation plan for mining operations which have approved inactive status or when permits have been issued but the operation has not started must be consistent with the applicable time criteria of this paragraph. Where permit revisions are necessary to satisfy this requirement, the revisions shall be prepared and submitted to the Secretary for approval within 180 days. Full compliance with the revised mining and reclamation plan shall be accomplished within twelve (12) months from the date of the Secretary's approval.

14.15.e.3. The Secretary may consider contemporaneous reclamation plans on multiple permitted areas with contiguous areas of disturbance to ensure that contemporaneous reclamation is practiced on a total operational basis. In order to establish a method of orderly transition between operations, plans submitted on multiple permitted areas cannot add allowable disturbed areas in such a manner as to result in increased disturbed areas on a single operation unless a variance is obtained pursuant to subdivision 14.15.g.

The Federal time and distance standards for backfilling and grading at 30 CFR 816.101 have been indefinitely suspended (57 FR 33875, July 31, 1992). However, these provisions provide reasonable time limits for compliance with these revised contemporaneous reclamation regulations. Therefore, we find that the provisions at CSR 38–2–14.15.e. are not inconsistent with and do not render the West Virginia program less effective than the Federal regulations at 30 CFR 700.11 can be approved.

12. CSR 38–2–14.15.g

This provision, concerning variance, was formerly subdivision 14.15.f. and has been recodified and amended by two deletions, and by adding a requirement to comply with the requirements of subsection 3.32 concerning permit issuance findings, to provide as follows:

14.15.g. Variance—Permit Applications. The Secretary may grant approval of a mining and reclamation plan for a permit which seeks a variance to one or more of the

standards set forth in this subsection, if on the basis of site specific conditions and sound scientific and/or engineering data, the applicant can demonstrate that compliance with one or more of these standards is not technologically or economically feasible. The Secretary shall make written findings in accordance with the applicable provisions of section 3.32 of this rule when granting or denying a request for variance under this section.

We find that the recodification and amendment of this provision does not render the provision less effective than the Federal regulations at 30 CFR 816/817.100 and can be approved, except as follows.

The State deleted from preexisting subdivision 14.15.f. a provision that required that the amount of bond for an operation that requests a variance to one or more of the standards set forth in subsection 14.15 concerning contemporaneous reclamation shall be based on the maximum amount per acre specified in W. Va. Code 22–3–12(c)(1). We initially announced the approval of the State contemporaneous reclamation requirements in the **Federal Register** on February 21, 1996 (61 FR 6525). Since then, the State statute has been amended and the site-specific bonding amounts are now set forth at W. Va. Code 22–3–12(b)(1), not 12(c)(1).

On August 18, 2000, OSM approved in the **Federal Register** the revision to subdivision 14.15.f. which requires the maximum amount of bond for operations that request variances to the State's contemporaneous reclamation standards (65 FR 50409, 50424). In approving the requirement, we noted that the proposed change is to ensure that the bond amount will be sufficient to complete the reclamation plan of a revoked permit with a contemporaneous reclamation variance in the event of bond forfeiture. The effect of eliminating the requirement for the maximum bond amount on operations requesting variances will increase the risk of liability on the State's alternative bonding system (ABS) in the event of bond forfeiture. The State's ABS is funded by a special reclamation tax on each ton of coal mined, plus a site-specific bond that can range from \$1,000 to \$5,000 per acre.

On May 29, 2002, OSM concluded that recently approved changes to the West Virginia program (66 FR 67446; December 28, 2001) had satisfied a required program amendment concerning the State's ABS (67 FR 37610). The required amendment, codified at 30 CFR 948.16(III), required that the West Virginia program be amended to eliminate the deficit in the State's ABS and to ensure that sufficient

money will be available to complete reclamation, including the treatment of polluted water, at all existing and future bond forfeiture sites. The State's amendments that we approved on December 28, 2001, included an increase in the special reclamation tax from 3 cents per ton of clean coal mined to 7 cents per ton, plus an additional 7 cents per ton would be levied for up to 39 months. In addition, the State created the Special Reclamation Fund Advisory Council (Advisory Council) to monitor the special reclamation fund and bond forfeiture obligations to ensure "the effective, efficient and financially stable operation of the special reclamation fund." One of the main tasks of the Advisory Council is the elimination of the ABS deficit. It must also ensure that the special reclamation fund remains solvent once the deficit is eliminated. It appears to us that the proposed deletion of the requirement to require maximum bond per acre for operations seeking a variance from one or more of the contemporaneous reclamation requirements at subsection 14.15 inappropriately increases the risk of liability to the ABS in the event of bond forfeiture.

As we discussed in the May 29, 2002, **Federal Register** notice, with respect to future reclamation obligations, the Advisory Council has an obligation under State Law to monitor the special reclamation fund, address funding-related issues, and recommend measures to ensure the long-term solvency of the special reclamation fund. We find that the proposed deletion is an example of an action that could adversely affect the ABS and that should be reviewed by the Advisory Council to determine its potential effect on the solvency of the ABS. Therefore, we are deferring decision on the proposed deletion of the requirement to impose the maximum bond amount of \$5,000 per acre on operations seeking a variance from one or more of the provisions of subsection 14.15. We will reconsider this proposed deletion after such time as the Advisory Council has assessed the potential impact of the proposed deletion and rendered its opinion to the State Legislature and Governor.

Paragraph 14.15.g lacks the transition sentence contained in former paragraph 14.15.f, which stated that "[t]he variance request shall be in writing and must contain the following elements." Without such a transition sentence, paragraphs 14.15.g.1 through g.5. do not flow logically from the introductory paragraph and do not require that the variance request be in writing. We assume that deletion of the last sentence

of former paragraph 14.15.f. was inadvertent. We recommend that the State add the quoted sentence at the end of CSR 38–2–14.15.g. or otherwise amend subsection 14.15.g to improve its clarity and to ensure that the variance request be in writing. The addition of the deleted language will also ensure consistency with subdivision 14.15.h.

13. CSR 38–2–14.15.g.2

This provision identifies part of the required elements for a variance requested under subdivision 14.15.g. This provision was amended by adding the phrase "including a discussion and feasibility analysis of alternatives that were considered" at the end of this provision. As amended, subdivision 14.15.g.2 provides as follows:

14.15.g.2. A statement with supporting documentation and scientific and/or engineering data which describes how site specific conditions make compliance with the standard(s) technologically or economically infeasible, including a discussion and feasibility analysis of alternatives that were considered.

The additional requirement of a discussion and feasibility analysis of alternatives that were considered by the operator in evaluating the contemporaneous reclamation standards should provide the regulatory authority with additional information necessary to help determine whether a variance is justified. We find that the provision does not render the West Virginia program less effective than the Federal regulations at 30 CFR 816/817.100 and can be approved.

14. CSR 38–2–14.15.g.5

This provision was added by House Bill 4163 and then deleted in its entirety in the revised rule authorized with the passage of Senate Bill 2002. Prior to being deleted, the provision provided the following:

14.15.g.5. A detailed economic analysis including a discussion and feasibility analysis of possible alternatives that were considered must be submitted for variance requests that use economics as the basis for the request.

The State has provided no justification for the deletion of this provision. Nevertheless, because the deleted provision was never approved by OSM, it was never part of the approved West Virginia program and our approval of its deletion is not necessary.

15. CSR 38–2–14.15.i

This provision is new and provides as follows:

14.15.i. Notwithstanding any provision of this rule to the contrary, revision of the

mining and reclamation plan contained in a permit is required prior to any change in mining methods which would substantially affect the standards contained in this section.

In essence, the provision would require that, prior to an operator changing the method of mining that would substantially affect the contemporaneous reclamation standards, the mining and reclamation plan would have to be revised and approved by the regulatory authority. We find that this provision, which requires a permit revision for a change in mining methods that would substantially affect the State's contemporaneous reclamation standards is consistent with the Federal requirements concerning permit revisions at SMCRA section 511(a)(2) and at 30 CFR 774.13, and can be approved. We are approving this provision to the extent that any significant changes to the mining and reclamation plan would be done as a significant revision to the permit and subject to the public notice requirements as required by CSR 38-2-3.28.b.

IV. Summary and Disposition of Comments

Public Comments

No public comments were received in response to our request for comments from the public on the proposed amendment (see Section II of this preamble).

Federal Agency Comments.

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on June 14, 2002, and August 7, 2002, we requested comments on these amendments from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record Numbers WV-1314 and WV-1321, respectively). By letters dated July 11, 2002, and September 20, 2002, the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded (Administrative Record Numbers WV-1320 and WV-1331). In addition, the U.S. Department of the Interior, Fish and Wildlife Service (USFWS) responded to our request for comments on September 10, 2002 (Administrative Record Number WV-1329).

MSHA stated that it finds no changes or issues that impact upon coal miner's health and safety and that there is no conflict with MSHA regulations.

USFWS provided comments pursuant to the Fish and Wildlife Coordination Act and the Endangered Species Act. USFWS stated that the proposed

exemptions at subsection CSR 38-2-14.15.c appear to be contrary to the Federal regulations at 30 CFR 701.5 concerning the definition of "disturbed area." In response, the proposed exemption at subsection CSR 38-2-14.15.c that certain areas will not be included in the calculation of disturbed area applies only to the contemporaneous reclamation standards at CSR 38-2-14.15, and not to all of the State's surface mining reclamation requirements. Furthermore, the State has a definition of disturbed area at W. Va. Code section 22-3-3(j) that has been determined to be no less effective than the Federal definition. For these reasons, we disagree that the proposed exemptions at subsection CSR 38-2-14.15.c appear to be contrary to the Federal regulations at 30 CFR 701.5 concerning the definition of "disturbed area."

USFWS stated that the meaning of language at subdivision 14.15.c.3 which states that "[t]he Secretary may consider larger acreage for clearing operations where it can be demonstrated that it is necessary to comply with applicable National Environmental Policy Act requirements" is unclear. This implies, USFWS stated, that NEPA documentation would have to be prepared which is required prior to Federal action. USFWS stated that the sentence should be stricken. USFWS stated that using impacts to fish and wildlife resources as a basis for gauging disturbance, these proposed exemptions from inclusion as disturbed areas are particularly untenable. USFWS recommended that the proposed exemption not be approved.

In response, and for the reasons discussed above in Finding 8, we determined that the State's proposed reference to NEPA has no practicable effect on the West Virginia program. Therefore, we did not render a decision on the proposed language. However, the State will not be allowed to implement this provision as part of its approved program.

USFWS commented on language at CSR 38-2-14.15.g that allows the Secretary of the WVDEP to grant a variance of one or more of the standards set forth at CSR 38-2-14.15. Specifically, USFWS stated that removing the requirement to provide a detailed economic analysis removes the applicant's responsibility to justify a variance based on economic considerations. USFWS stated that under this amendment, conceivably, an applicant could be exempt from all contemporaneous reclamation requirements for any type of mining by merely claiming economic infeasibility.

USFWS recommended that the provision requiring economic analysis be retained in the regulations.

In response, the USFWS comment relates to a portion of the proposed rules at CSR 38-2-14.15.g.5, that was never approved by OSM. As discussed above in Finding 14, because the proposed revision has been deleted by the State, our approval of the deletion is not necessary.

Environmental Protection Agency (EPA) Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued 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.*). On June 14, 2002, we requested concurrence and comments from EPA on House Bill 4163 (Administrative Record Numbers WV-1313). On August 7, 2002, we requested comments from EPA on Senate Bill 2002 (Administrative Record Number WV-1321).

EPA responded by letter dated October 28, 2002 (Administrative Record Number WV-1340), concurred on the proposed amendments and provided the following comments. EPA stated that CSR 38-2-14.15.d includes a requirement that fills be constructed adjacent to the excavated area where the spoil material originates. EPA stated that it is concerned that this requirement could result in unnecessary construction of fills in waters of the United States where the excavated areas are adjacent to such waters. EPA recommended that fill optimization and minimization efforts be provided to avoid construction of fills in waters of the United States where feasible. In response, we note that this provision is only intended to encourage contemporaneous reclamation of fills. All applicable requirements of the Clean Water Act will continue to apply.

EPA also noted that mining-related discharges into waters of the United States, including excess spoil, are subject to permit requirements under the Clean Water Act. Before conducting such activities, EPA stated, the Corps of Engineers and the West Virginia Department of Environmental protection should be contacted regarding necessary permits. In response, we note that the proposed amendments do not supersede any Clean Water Act requirements. All the existing requirements of the West Virginia program continue to apply.

V. OSM's Decision

Based on the above findings, we are approving the amendments to CSR 38–2–14.15 as submitted to us on April 9, 2002 and June 19, 2002, except as indicated below.

At CSR 38–2–14.15.c.3, we are not rendering a finding on the sentence, “the Secretary may consider larger acreage for clearing operations where it can be demonstrated that it is necessary to comply with applicable National Environmental Policy Act requirements.”

At CSR 38–2–14.15.g., concerning variance-permit applications, we are deferring our decision on the proposed deletion of the following sentence, “Furthermore, the amount of bond for the operation shall be based on the maximum amount per acre specified in WV Code section 22–3–12(c)(1).”

We are not rendering a decision concerning CSR 38–2–14.15.g.5 because the deleted provision was never approved by OSM, and therefore never a part of the approved West Virginia program, and our approval of its deletion is not necessary.

CSR 38–2–14.15.i., is approved to the extent that any significant changes to the mining and reclamation plan would be done as a significant permit revision and subject to the public notice requirements as required by CSR 38–2–3.28.b.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 948, which codify decisions concerning the West Virginia program. Our regulations at 30 CFR 732.17(h)(12) specify that all decisions approving or disapproving amendments will be published in the **Federal Register** and that they will be effective upon publication, unless the notice specifies a different date. We are making this final rule effective immediately to expedite the State program amendment process and to assist the State in making its program conform with the Federal standards as required by the Act.

VI. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

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

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, Or Use Of Energy

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

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

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

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the analysis performed under various

laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 1, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

PART 948—WEST VIRGINIA

1. The authority citation for part 948 continues to read as follows:

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

2. Section 948.15 is amended in the table by adding a new entry in chronological order by "Date of publication of final rule" to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission dates	Date of publication of final rule	Citation/description
April 9, 2002	December 3, 2002	CSR 38–2–14.15.a.1, a.2; b.5; b.6.A, b.6.B.1; c, c.1, c.4; d, d.1, d.2, d.3; e, e.1, e.2, e.3; g (partial approval), g.2; i (qualified approval).

[FR Doc. 02–30609 Filed 12–2–02; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 117 and 165

[USCG–2002–13968]

Safety Zones, Security Zones, Drawbridge Operation Regulations and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between July 1, 2002 and September 30, 2002, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, drawbridge operation regulations, security zones, and safety zones of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard rules that became effective and were terminated between July 1, 2002 and September 30, 2002.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20593–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may electronically access

the public docket for this notice on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact LT Sean Fahey, Office of Regulations and Administrative Law, at telephone number (202) 267–2830. For questions on viewing, or on submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation at (202) 366–5149.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to prevent injury or damage to vessels, ports, or waterfront facilities. Drawbridge operation regulations authorize changes to drawbridge schedules to accommodate bridge repairs, seasonal vessel traffic, and local public events. Special local regulations are issued to enhance the safety to participants and spectators at regattas and other marine events.

Timely publication of these rules in the **Federal Register** is often precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by

the rule. Because **Federal Register** publication was not possible before the beginning of the effective period, mariners were personally notified of the contents of these special local regulations, drawbridge operation regulations, security zones, or safety zones by Coast Guard officials on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of all substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, drawbridge operation regulations, security zones, and safety zones.

Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones, special local regulations, drawbridge operation regulations, and security zones listed in this notice have been exempted from review under Executive Order 12866, Regulatory Planning and Review, because of their emergency nature, or limited scope and temporary effectiveness.

The following rules were placed in effect temporarily during the period from July 1, 2002, and through September 30, 2002, unless otherwise indicated. This notice also includes rules that were not received in time to be included on the quarterly notice for the first and second quarters of 2002.

Dated: November 27, 2002.

S.G. Venckus,

Chief, Office of Regulations and Administrative Law.