

Second, the FAA has included two classes of TAWS equipment in the current version of the proposed TSO. On August 26, 1998, the FAA published in the **Federal Register** (63 FR 45628, August 26, 1998) a notice of proposed rulemaking (NPRM). That NPRM proposed to amend 14 CFR part 91, General Operating and Flight Rules, by adding new rules that prohibit the operation of certain airplanes unless those airplanes are equipped with a TAWS that meets the requirements of the proposed TSO-C151. In response to the NPRM, the FAA received over 250 comments. Having reviewed the comments, the FAA is making changes to its proposed rule based on those comments. One significant change is to develop two classes of TAWS equipment, known as Class A and Class B. TSO-C151 Class A equipment will be required for all turbine powered airplanes operated under 14 CFR part 121 and for turbine powered airplanes configured for 10 or more passenger seating operating under 14 CFR part 135. TSO-C151 Class B equipment will be the minimum requirement for turbine powered airplanes configured with 6 or more passenger seats operating under 14 CFR part 91 and for turbine powered airplanes configured with 6 to 9 passenger seating operating under 14 CFR part 135. The proposed TSO-C151 has been revised to include the airworthiness requirements for both Class A and Class B equipment. The original proposed TSO associated with the initial notice of availability did not include two classes of TAWS equipment.

Both classes of equipment—Class A and Class B—include the TAWS features of comparing airplane position information to an on board terrain database then providing appropriate caution and warning alerts if necessary. The Class A equipment includes, in addition to the TAWS features, ground proximity warning system (GPWS) functions. There currently are International Civil Aviation Organizations (ICAO) and FAA (14 CFR parts 121 & 135) requirements for all part 121 and certain part 135 airplanes to carry GPWS. Therefore Class A equipment includes both TAWS and GPWS features. The existing 14 CFR parts 121 and 135 rules for GPWS are being revised to make them compatible with the proposed new 14 CFR part 91 TAWS rule. Class B equipment is the basic TAWS equipment and is required as minimum equipment by the new FAR Part 91 TAWS rule. Class A equipment, which includes both TAWS and GPWS, is required by the revised part 121 and

part 135 rules for those airplanes that currently must carry GPWS. The FAA is requiring one level of safety for TAWS while still maintaining existing ICAO and FAA GPWS requirements for turbine-powered commercial airplanes. This TSO will be the means to obtain FAA approval of TAWS product(s).

#### How To Obtain Copies

A copy of the revised proposed TSO-C151 may be obtained via Internet (<http://www.faa.gov/avr/air/airhome.htm>) or on requests from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The revised proposed TSO references several RTCA, Inc. documents that contain specific requirements related to the TSO. RTCA Document No. DO-161A, "Minimum Performance Standards—Airborne Ground Proximity Warning Equipment," dated May 27, 1976; DO-160D, "Environmental Conditions and Test Procedures for Airborne Equipment," dated July 29, 1997; DO-178B, "Software Considerations in Airborne Systems and Equipment Certification," dated December 1, 1992; and DO-200A, "Preparation, Verification and Distribution of User-Selectable Navigation Data Bases," dated November 28, 1998, may be purchased from the RTCA Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 22036. Copies of the RTCA documents may be inspected at the location specified under **ADDRESSES**. However, those documents are copyrighted and may not be copied without the written consent of RTCA, Inc.

Issued in Washington, DC, on May 19, 1999.

**James C. Jones,**

*Manager, Aircraft Engineering Division,  
Aircraft Certification Service.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 948

[WV-082-FOR]

### West Virginia Permanent Regulatory Program

#### AGENCY:

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

**ACTION:** Proposed rule.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises the West Virginia regulations concerning definitions of "area mining operations" and "mountaintop mining operations;" variances from approximate original contour in steep slope areas; and emergency spillway designs. The amendment is intended to improve the operational efficiency of the State program, and to make the regulations consistent with the counterpart Federal regulations.

**DATES:** Written comments must be received on or before 4:00 p.m. on June 28, 1999. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on June 21, 1999. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on June 11, 1999.

**ADDRESSES:** Your written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

Copies of the proposed amendment, the West Virginia program, and the administrative record on the West Virginia program are available for public review and copying at the addresses below, during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting the OSM 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.

West Virginia Division of  
Environmental Protection, 10 McJunkin  
Road, Nitro, West Virginia 25143,  
Telephone: (304) 759-0515.

In addition, copies of the proposed amendment are available for inspection 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.

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 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**

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval in the January 21, 1981, **Federal Register** (46 FR 5915-5956.) You can find later actions concerning the West Virginia program and previous amendments codified at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

### **II. Discussion of the Proposed Amendment**

By letter dated May 5, 1999 (Administrative Record Number WV-1127), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to the West Virginia program pursuant to 30 CFR 732.17. The amendment concerns changes to the West Virginia regulations made by the State legislature in House Bill 2533. In addition, the WVDEP requested that OSM reconsider its disapproval of parts of CSR 38-2-3.12 (concerning subsidence control plan) and 38-2-16.2 (concerning subsidence control, surface owner protection) and remove the corresponding required regulatory program amendments specified in the February 9, 1999, **Federal Register** (64 FR 6201-6218) in light of the April 27, 1999, United States Court of Appeals decision on Case No. 98-5320.

The amendments submitted by the WVDEP are identified below.

1. *CSR 38-2-2.11 Definition of "Area Mining Operation."* In this new definition, "Area Mining Operation" is defined to mean a mining operation where all disturbed areas are restored to approximate original contour (AOC) unless the operation is located in steep slope areas and a steep slope AOC variance in accordance with subsection 14.12 of this rule has been approved. An area mining operation may remove all or part of coal seam(s) in the upper fraction of a mountain, ridge, or bill. However, it is not classified as a mountaintop operation for one or more of the following reasons:

- 2.11.a. The site may be restored to AOC; or
- 2.11.b. The entire coal seam may not be removed.

2. *CSR 38-2-2.78 Definition of "Mountaintop Mining Operation."* In

this new definition, "Mountaintop Mining Operation" is defined to mean a mining operation that removes an entire coal seam or seam(s) in an upper fraction of a mountain, ridge, or hill and creating a level plateau or a gently rolling contour with no highwalls. The approved postmining land use must be in accordance with 22-3-13(c)(3).

3. *CSR 38-2-3.12 Subsidence control plan.* Subdivision 3.12.a.2. is amended to change the words "could contaminate, diminish or \* \* \*" to read "could be contaminated, diminish or \* \* \*."

The second paragraph of subdivision 3.12.a.2. is amended by adding the word "building" to read as follows: "A survey of the condition of all non-commercial building or residential \* \* \*."

Subdivision 3.12.a.2.B. is amended to change the words "Non-commercial building as used in this section means, other than \* \* \*" to read "Non-commercial building as used in this section means any building, other than \* \* \*."

4. *CSR 38-2-3.32.b. Findings-permit issuance.* In the third paragraph, the name of the database "Surface Mining Information System" is deleted and replaced by "Environmental Resources Information Network."

5. *CSR 38-2-2.35 Construction tolerance.* This subsection is amended by adding the title "Construction Tolerance."

6. *CSR 38-2-14.12.a.1. Variance from approximate original contour requirements.* This provision is amended by adding the following language: "and the land after reclamation is suitable for industrial, commercial, residential or public use (including recreational facilities)." As amended the provision reads as follows.

"The permit area is located on steep slopes as defined in subdivision 14.8.a. of this rule and the land after reclamation is suitable for industrial, commercial, residential or public use (including recreational facilities)."

7. *CSR 38-2-16.2. Surface owner protection.* Subdivision 38-2-16.2.c. is amended by adding the word "damage" after the word "Material" at the beginning of the first sentence. In addition, the words "or facility" are added after the word "structure" and before the word "from" near the end of the first sentence.

Subdivision 38-2-16.2.c.3. is amended to delete the word "occurs" after the words "subsidence damage" and before the words "to any."

8. *CSR 38-2-22.4.g. Primary and emergency spillway design.* The Subdivision is amended by changing the probable maximum precipitation event

for impoundments meeting the size or other criteria of 30 CFR 77.216(a) from a 24-hour storm event to a "six (6)" hour storm event.

### **III. Public Comment Procedures**

We are seeking comments, in accordance with the provisions of 30 CFR 732.17(h), on the proposed amendment submitted by the State of West Virginia by letter dated May 5, 1999. Your comments should address whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the West Virginia program.

#### *Written Comments*

Your written comments should be specific, pertain only to the issues proposed in this notice and include explanations in support of your recommendations. Comments received after the time indicated under **DATES** or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

#### *Public Hearing*

If you wish to comment at the public hearing, you should contact the person listed above at **FOR FURTHER INFORMATION CONTACT** by close of business on June 11, 1999. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

If you file a written statement at the same time that you request a hearing, the statement will greatly assist the person who will make a transcript of the hearing.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

#### *Public Meeting*

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with us to discuss the proposed amendments, may request a meeting at the Charleston Field Office by contacting the person listed above at **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations

listed above at **ADDRESSES**. A written summary of each public meeting will be made part of the Administrative Record.

If you are disabled and have need for a special accommodation to attend a public hearing, please contact the person listed above at **FOR FURTHER INFORMATION CONTACT**.

#### IV. Procedural Determinations

##### *Executive Order 12866*

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

##### *Executive Order 12988*

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

##### *National Environmental Policy Act*

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

##### *Paperwork Reduction Act*

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

##### *Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based

upon corresponding 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 determinations as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

##### *Unfunded Mandates*

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

##### **List of Subjects in 30 CFR Part 948**

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 19, 1999.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 287

#### **Defense Information Systems Agency (DISA) Freedom of Information Act (FOIA) Program**

**AGENCY:** Department of Defense.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule provides guidance on the implementation of the FOIA program within the Defense Information and the Office of the Manager National Communications System. It was written to comply with the Electronic FOIA Amendments of 1996.

**DATES:** Comments must be received by July 26, 1999.

**ADDRESSES:** Forward comments to the Defense Information Systems Agency, Attention: RGC (FOIA Officer), 701 South Courthouse Road, Arlington, VA 22204.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin M. Berger, 703-607-6515.

#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Order 12866, "Regulatory Planning and Review"**

It has been determined that 32 CFR part 287 is not a significant regulatory action. The rule does not:

(1) Have an annual effect of the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

#### **Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)**

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

This part would provide guidance on the implementation of the Freedom of Information Act Program within the Defense Information Systems Agency and the Office of the Manager, National Communications System (OMNCS). It was written to comply with the Freedom of Information Act, as amended by the Electric Freedom of Information Act amendments of 1996.

#### **Public Law 96-51 1, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)**

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

#### **List of Subjects in 32 CFR Part 287**

Freedom of information.

Accordingly, 32 CFR part 287 is revised to read as follows:

#### **PART 287—DEFENSE INFORMATION SYSTEMS AGENCY (DISA) FREEDOM OF INFORMATION ACT PROGRAM**

Sec.

287.1 Purpose.

287.2 Applicability.

287.3 Authority.

287.4 Duties of the FOIA officer.

287.5 Responsibilities.

287.6 Duties of the DITCO and the DTIC FOIA officers.

287.7 Fees.

287.8 Appeal rights.