

persons should determine the appropriate rulemaking to which data should be submitted. Comments on other vaginal drug products or issues should not be submitted at this time.

Submit written comments on or before February 17, 1998 to the Dockets Management Branch (address above). Three copies of any comments are to be submitted, except that individuals may submit one copy. If comments could be submitted to several dockets, they may be submitted to one docket and cross-referenced in the other docket(s). All comments are to be identified with the appropriate docket number(s) found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 12, 1997.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 97-30410 Filed 11-18-97; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 918

[SPATS No. LA-017-FOR]

#### Louisiana Regulatory Program

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Louisiana regulatory program (hereinafter the "Louisiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to and/or additions of regulations pertaining to definitions, request for hearing, permitting requirements, small operator assistance program, bond release requirements, performance standards, and enforcement procedures/civil penalties. The amendment is intended to revise the Louisiana program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Louisiana program and proposed amendment to that program are available for public

inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received by 4:00 p.m., c.s.t., December 19, 1997. If requested, a public hearing on the proposed amendment will be held on December 15, 1997. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t. on December 4, 1997.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

Copies of the Louisiana program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547, Telephone (918) 581-6430.

Department of Natural Resources, Office of Conservation, Injection and Mining Division, 625 N. 4th Street, P.O. Box 94275, Baton Rouge, LA 70804, Telephone: (504) 342-5540.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Wolfrom, Director, Tulsa Field Office, Telephone (918) 581-6430.

#### SUPPLEMENTARY INFORMATION:

##### I. Background on the Louisiana Program

On October 10, 1980, the Secretary of the Interior conditionally approved the Louisiana program. General background information on the Louisiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Louisiana program can be found in the October 10, 1980, **Federal Register** (45 FR 67340). Subsequent actions concerning the Louisiana program and program amendments can be found at 30 CFR 918.15 and 918.16.

##### II. Description of the Proposed Amendment

By letter dated October 24, 1997 (Administrative Record No. LA-362), Louisiana submitted a proposed amendment to its program pursuant to

SMCRA. Louisiana submitted the proposed amendment in response to a June 17, 1997, letter (Administrative Record No. LA-361) that OSM sent to Louisiana in accordance with 30 CFR 732.17(c). Louisiana proposes to amend the Louisiana Surface Mining Regulations. The full text of the proposed program amendment submitted by Louisiana is available for public inspection at the locations listed above under **ADDRESSES**. A brief discussion of the proposed amendment is presented below.

#### A. Section 105. Definitions

1. Louisiana proposes to revise its definition for "other treatment facilities."
2. Louisiana proposes to add a definition for "previously mined area."
3. Louisiana proposes to add a definition for "qualified laboratory."

#### B. Section 2537. Cross-Sections, Maps and Plans

Louisiana proposes to delete paragraph 2537.11. that requires cross-sections, maps and plans in the permit applications to show sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area.

#### C. Section 2725. Reclamation Plan: Ponds, Impoundments, Banks, Dams and Embankments

1. Louisiana proposes to revise paragraph 2725.A. by adding "siltation structure" to the types of ponds, impoundments, banks, dams and embankments requiring a general reclamation plan, and by adding a provision that requires each application to include a detailed reclamation plan for each proposed containment structure.

2. At paragraph 2725.A.2., Louisiana proposes to delete the existing language and to replace it with language that adds specific references to the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 criteria for dam classification and requires compliance with this technical release if structures meet or exceed the size or other criteria of the Mine Safety and Health Administration.

3. Louisiana proposes to revise paragraph 2725.A.3. to refer to structures that are not included in paragraph 2725.A.2.

4. At paragraph 2725.A.3.a., Louisiana proposes to require qualified, registered, professional engineers to certify all coal processing waste dams and embankments covered by sections 5375 through 5395.

5. At section 2725, Louisiana proposes to add new paragraph C.1. that specifies that for impoundments not included in paragraph 2725.A.2., engineering design standards shall ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in section 5333.

6. Louisiana proposes to revise paragraph 2725.F. by deleting the phrase, "If the structure is 20 feet or higher or impounds more than 20 acres-feet," and replacing it with the phrase, "If the structure meets the Class B or C criteria for dams in TR-60 or meets the size or other criteria of 30 CFR 77.216(a)."

#### D. Section 2907. Prime Farmland

At section 2907, Louisiana proposes to add new paragraph C.5. to read as follows:

The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit area must be obtained.

#### E. Section 3705. Eligibility for Assistance

1. At paragraph 3705.A.2., Louisiana proposes to change from 100,000 to 300,000 tons the probable total actual and attributed production of coal that an applicant for small operator assistance cannot exceed during any consecutive 12-month period either during the term of his or her permit or during the first five years after issuance of his or her permit, whichever period is shorter.

2. Currently at paragraph 3705.A.2.a., applicants for small operator assistance, with an ownership interest in other coal production operations, have a pro rata share of coal produced by those operations attributed to their total coal production in any consecutive 12-month period if they have more than a five percent ownership interest in those other coal production operations. Louisiana proposes to change the percentage of ownership interest from more than five percent to more than ten percent.

3. Currently at paragraph 3705.A.2.b., applicants for small operator assistance have a pro rata share of coal produced by other coal production operations attributed to their total coal production in any consecutive 12-month period if the coal operators of the other coal

production operations have more than a five percent ownership interest in the applicant for small operator assistance. Louisiana proposes to change the percentage of ownership interest from more than five percent to more than ten percent.

#### F. Section 3711. Program Services and Data Requirements

1. Louisiana proposes to revise paragraph 3711.A. by adding the phrase, "and provide other services," to closely follow the Federal regulation at 30 CFR 795.9(a).

2. Louisiana proposes to revise paragraph 3711.B.1. by adding the phrase, "including the engineering analyses and designs necessary for the determination," to closely follow the Federal regulation at 30 CFR 795.9(b)(1).

3. Louisiana proposes to revise paragraph 3711.B.2. by adding the phrase, "the drilling and," to closely follow the Federal regulation at 30 CFR 795.9(b)(2).

4. Louisiana proposes to add new paragraph 3711.B.3., "the development of cross-section maps and plans required by § 2537," to closely follow the Federal regulation at 30 CFR 795.9(b)(3).

5. Louisiana proposes to add new paragraph 3711.B.4., "the collection of archaeological and historic information and related plans required by §§ 2505.A.2. and 2731 and any other archaeological and historic information required by the office," to closely follow the Federal regulation at 30 CFR 795.9(b)(4).

6. Louisiana proposes to add new paragraph 3711.B.5., "pre-blast surveys required by § 2707; and" to closely follow the Federal regulation at 30 CFR 795.9(b)(5).

7. Louisiana proposes to add new paragraph 3711.B.6., "the collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by § 2713, and information and plans for any other environmental values required by the office under the act." to closely follow the Federal regulation at 30 CFR 795.9(b)(6).

#### G. Section 3717. Applicant Liability

1. At paragraph 3717.A., Louisiana proposes to revise this paragraph by adding the phrase, "A coal operator," and by deleting the words "laboratory" and "performed" to closely follow the Federal regulation at 30 CFR 795.12(a).

2. Louisiana proposes to revise paragraph 3717.A.2. by replacing the "applicant's" actual and attributed annual production of coal for all

locations with the "operator's" actual and attributed annual production of coal for all locations. Also, Louisiana proposes to change the actual and attributed annual production of coal for all locations from 100,000 to 300,000 tons during the 12 months immediately following the date on which the permit was originally issued.

3. Louisiana proposes to revise paragraph 3717.A.3. concerning permits that are sold, transferred, or assigned by changing the transferee's total actual and attributed annual production of coal from 100,000 to 300,000 tons during the 12 months immediately following the date on which the permit was originally issued.

#### H. Section 4501. Procedures for Seeking Release of Performance Bond

1. Louisiana proposes to add new paragraph 4501.A.3. to read as follows:

The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

2. With the addition of this new paragraph, Louisiana proposes to re-number existing paragraph A.3. as A.4.

#### I. Section 5333. Hydrologic Balance: Impoundments

1. Louisiana proposes to add new paragraph 5333.A.1 that requires impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, October 1985), "Earth Dams and Reservoirs," 1985 to comply with the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60. Louisiana also proposes to incorporate by reference the above technical release.

2. Louisiana proposes to redesignate existing paragraphs 5333.A.1. through 5333.A.12. as paragraphs 5333.A.2 through 5333.A.13.

3. Louisiana proposes to revise redesignated paragraph 5333.A.4. (previously paragraph 5333.A.3.) by deleting all of its language except for the word "Stability." The State also proposes to add new paragraphs a. and b. containing the following language:

a. An impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

b. Impoundments not included in § 5333.A.4.a. except for a coal mine waste

impounding structure, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of § 2725.C.1.

4. At redesignated paragraph 5333.A.6. (previously paragraph 5333.A.5.),

Louisiana proposes to revise this paragraph by adding the following language:

For an impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

5. At redesignated paragraph 5333.A.9. (previously paragraph 5333.A.8.), Louisiana proposes to revise this paragraph by deleting the existing language and replacing it, and by adding new paragraphs A.9.a., a.i., and a.ii., and A.9.b., b.i., b.ii., and b.iii. The new language pertains to the types of spillways that shall be designed and constructed for impoundments: (a.) meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the State; (b.) meeting or exceeding the size or other criteria of 30 CFR 77.216(a), a 100-year 6-hour event, or greater event as specified by the State; and (c.) not included in § 5333.A.9.b.i. and ii., 25-year 6-hour or greater event as specified by the State.

6. At redesignated paragraph 5333.A.12 (previously paragraph 5333.A.11.), Louisiana proposes to revise this paragraph by deleting the existing language and replacing it with language pertaining to impoundments "meeting" and "not meeting" the SCS Class B or C criteria for dams in TR-60, or the size or other criteria in 30 CFR 77.216. The State also proposes how often and by whom these impoundments must be examined and what must be looked for during the examinations.

7. Louisiana proposes to revise paragraph 5333.C.2. by deleting the existing language and replacing it with new language and by adding new paragraphs C.2.a. and C.2.b. The new language pertains to the State's option to approve temporary impoundments that are constructed to control runoff, from the design precipitation event, primarily through storage of the runoff.

*J. Section 5411. Backfilling and Grading: Thin Overburden*

Louisiana proposes to revise paragraph 5411.A. by deleting the

existing language and replacing it with new language, and by adding new paragraphs A.1. and A.2. The proposed new language for these paragraphs contains the definition for and explanations pertaining to "thin overburden."

*K. Section 5413. Backfilling and Grading: Thick Overburden*

Louisiana proposes to revise paragraph 5413.A. by deleting the existing language and replacing it with new language, and by adding new paragraphs A.1. and A.2. The proposed new language for these paragraphs contains the definition for and explanations pertaining to "thick overburden."

*L. Section 5503. Prime Farmland: Soil Removal*

Louisiana proposes to revise paragraph 5503.A.2. by adding language to require coal operators:

to separately remove the B horizon of the soil, a combination of B horizon and underlying C horizon, or other suitable soil material to provide the thickness of suitable soil required by paragraph 5507.A.1. that will create a reconstructed soil of equal or greater productivity capacity than that which existed before mining, except as approved by the regulatory authority where the B or C soil horizons would not otherwise be removed and where soil capabilities can be retained;

*M. Section 5507. Prime Farmland: Soil Replacement*

Louisiana proposes to revise paragraph 5507.A.4. by deleting the existing language and replacing it with the following language:

The operator shall replace the B horizon, C horizon, or other suitable material specified in § 5503.A.2. to the thickness needed to meet the requirements of § 5507.A.1. In those areas where the B or C horizons were not removed but may have been compacted or otherwise damaged during the mining operation, the operator shall engage in deep tilling or other appropriate means to restore premining capabilities.

*N. Section 6507. Service of Notices of Violation and Cessation Orders*

Louisiana proposes to revise paragraph 6507.A.2. by adding language to its regulation regarding how notices of violations and cessation orders are to be served. The added language allows the State to serve the person to whom the notice or order was issued by any means consistent with the rules governing service of a summons and complaint under the Louisiana Rules of Civil Procedure.

*O. Section 6913. Procedures for Assessment of Civil Penalties*

Louisiana proposes to revise paragraph 6913.B by adding language to its regulation regarding how copies of the proposed assessment and the worksheet showing the computation of the proposed assessment are to be served. The added language allows the State to serve the person to whom the notice or order was issued by any alternative means consistent with the rules governing service of a summons and complaint under the Louisiana Rules of Civil Procedure.

*P. Section 6915. Procedures for Assessment Conference*

Louisiana proposes to revise paragraph 6915.B.1 by changing the time when the assessment conference is to be held from "within 60 days from the date of the issuance of the proposed assessment or the end of the abatement period, whichever is later" to "within 60 days from the date the conference request is received or the end of the abatement period, whichever is later." Louisiana also proposes to add that failure by the State to hold the conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

*Q. Section 6917. Request for Hearing*

Louisiana proposes to change from 15 days to 30 days the amount of time a person has to submit a petition for requesting a hearing after the date of service of the conference office's action.

*R. Section 7105. Procedure for Assessment of Individual Civil Penalty*

Louisiana proposes to revise paragraph 7105.C. by adding language to its regulation regarding when service of a notice of proposed assessment and included information shall be deemed complete. The added language states that service is complete upon tender of the notice of proposed assessment and included information or of the certified mail and shall not be deemed incomplete because of refusal to accept.

**III. Public Comment Procedures**

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on 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 Louisiana program.

### Written Comments

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

### Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on December 4, 1997. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

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

### Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

## 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 Environment Policy Act

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

### Paperwork Reduction Act

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

### Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic

impact, the Department relied upon the data an assumptions for the counterpart Federal regulations.

### Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, state, or tribal governments or private entities.

### List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 7, 1997.

### Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-5925-2]

### National Oil and Hazardous Substances; Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of intent to delete Coalinga Asbestos Mine Site from the National Priorities List: request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 9 announces its intent to delete the Coalinga Asbestos Mine Site from the National Priorities list (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of California Department of Toxic Substances Control have determined that all appropriate CERCLA response actions have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State have determined that remedial activities conducted at the site to date have been protective of public health, welfare, and the environment.

**DATES:** Comments concerning the proposed deletion of this Site from the