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## DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[SATS No.: WV-118-FOR; Docket ID: OSM-2011-0009]

West Virginia Regulatory Program

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

ACTION: Proposed rule with public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the West Virginia permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). On May 2, 2011, the West Virginia Department of Environmental Protection (WVDEP) submitted a program amendment to OSM that includes both statutory and regulatory revisions. That portion of the

amendment dealing with changes to West Virginia's Surface Mining Reclamation Regulations is the subject of this notice.

DATES: We will accept written comments on this amendment until 4 p.m. EDT, on (Insert date 30 days after date of publication in the Federal Register). If requested, we will hold a public hearing on the amendment on (Insert date 25 days after date of publication in the Federal Register). We will accept requests to speak until 4 p.m. EDT, on (Insert date 15 days after date of publication in the Federal Register).

ADDRESSES: You may submit comments by any of the following two methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. The proposed rule has been assigned Docket ID OSM-2011-0009. If you would like to submit comments through the Federal eRulemaking Portal, go to <http://www.regulations.gov> and follow the instructions.

- **Mail/hand Delivery:** Mr. Roger W. Calhoun, Director

Charleston Field Office

Office of Surface Mining Reclamation and Enforcement

1027 Virginia Street, East

Charleston, West Virginia 25301.

Please include the rule identifier (WV-118-FOR) with your written comments.

***Instructions:*** All submissions received must include the agency Docket ID (OSM-2011-0009) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see “IV. Public Comment Procedures” in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

***Docket:*** The proposed rule and any comments that are submitted may be viewed over the internet at <http://www.regulations.gov>. Look for Docket ID OSM-2011-0009. In addition, you may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSM’s Charleston Field Office listed below.

Mr. Roger W. Calhoun, Director  
Charleston Field Office, Office of Surface Mining Reclamation and Enforcement  
1027 Virginia Street, East  
Charleston, West Virginia 25301

Telephone: (304) 347-7158

E-mail: [chfo@osmre.gov](mailto:chfo@osmre.gov).

West Virginia Department of Environmental Protection

601 57<sup>th</sup> Street, SE

Charleston, West Virginia 25304

Telephone: (304) 926-0490

In addition, you may review a copy of the amendment during regular business hours at the following locations:

Morgantown Area Office

Office of Surface Mining Reclamation and Enforcement

604 Cheat Road, Suite 150

Morgantown, West Virginia 26508

Telephone: (304) 291-4004. (By Appointment Only)

Beckley Area Office

Office of Surface Mining Reclamation and Enforcement

313 Harper Park Drive, Suite 3

Beckley, West Virginia 25801

Telephone: (304) 255-5265.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director,  
Charleston Field Office, Telephone: (304) 347-7158. Email: chfo@osmre.gov.

**SUPPLEMENTARY INFORMATION:**

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

**I. Background on the West Virginia Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "... a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act...; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21,

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

## **II. Description and Submission of the Amendment**

By letter dated April 25, 2011, and received by OSM on May 2, 2011 (Administrative Record Number WV- 1561), the WVDEP submitted an amendment to its program under SMCRA (30 U.S.C. 1201 et seq.). The proposed amendment consists of both statutory and regulatory revisions. However, this notice only addresses that portion of the amendment that concerns revisions to West Virginia's Surface Mining Reclamation Regulations at Code of State Regulations (CSR) Title 38, Series 2.

Enrolled Committee Substitute for Senate Bill No. 121 (SB 121) passed the West Virginia Legislature on March 18, 2011, and was signed by the Governor on March 30, 2011. SB 121 authorized WVDEP to promulgate several revisions to its Surface Mining Reclamation Regulations. SB 121 authorizes regulatory revisions which codifies an Emergency Rule filed on December 2009 which relates to trust funds and annuities; clarifies the format and information necessary for complete application submittal and clarification on the renewal process to take

into account WVDEP's electronic permit filing processes; modifies the provision that an approved person must be capable and maintain the capability of submitting maps, plans and all other technical data in an electronic format proscribed by the Secretary; modifies the provision that pre-subsidence surveys shall be confidential and only used for evaluating damage relating to subsidence; clarifies that bonding for a permit in inactive status shall remain in effect for the life of the operation; and modifies the provision that the Secretary shall provide e-mail notice of the issuance of a show cause order to members of the public who have subscribed to the Secretary's e-mail notification service and otherwise provide notice to any person whose citizen complaint has resulted in the issuance of any violation that led to the issuance of a show cause order.

### **III. Description of West Virginia's Proposed Action**

#### **1. Permit Application Requirements - CSR 38-2-3.1.c.4**

The State proposes adding the words "if available" before "MSHA number" to require the submission of the MSHA number by the applicant if it is available. This proposed State revision falls under the Federal provisions at 30 CFR 778.12(c) and sections 507, 508, 510, and 515 of SMCRA.

#### **2. Permit Application Requirements – CSR 38-2-3.1.d**

The State is proposing to add the language "either in the application or in an

electronic database accessible to the agency which has been updated within three months of submittal” after the word “List” to indicate the kinds of ownership or control information that is to be included in the permit application. This proposed State revision falls under the Federal provisions at 30 CFR 778.12 and sections 507, 508, 510, and 515 of SMCRA.

### 3. Permit Application Requirements – CSR 38-2-3.1.k

The State is proposing to add the language “either in the application or in an electronic database accessible to the agency which has been updated within three months of submittal” after “List” to indicate the kinds of violation information that is to be included in the permit application. This proposed State revision falls under the Federal provisions at 30 CFR 778.12 and 778.14 and sections 507, 508, 510, and 515 of SMCRA.

### 4. Advertisement of Permit – CSR 38-2-3.2.a

The State is proposing to add the word “technically” and removing the word “administratively” before “complete” to indicate that a permit application must be technically complete, not administratively complete, to begin the advertisement. This proposed State revision falls under the Federal provisions at 30 CFR 773.6 and sections 506, 507, and 513 of SMCRA.

### 5. Maps for Permit – CSR 38-2-3.4.b

The State is proposing to add the language “in a format proscribed by the Secretary and either be” on paper 30 by 42 inches after the word “submitted” and “or, if electronic, be capable of being printed on paper of this size.” after the word “less” to allow for the submission of paper or electronic maps in a format proscribed by the Secretary. This proposed State revision falls under the Federal provisions at 30 CFR 779.24 and 783.24 and sections 506 and 507 of SMCRA.

6. Subsidence Control Plan – CSR 38-2-3.12.a.2.B

The State is proposing to add new language in this subsection that will provide “All surveys” of the condition of all non-commercial buildings or residential dwellings and structures related thereto “shall be confidential and only used for evaluating damage relating to subsidence. The Secretary shall develop a procedure for assuring surveys shall remain confidential.” This proposed State revision falls under the Federal provisions at 30 CFR 784.20 and sections 507(a), 508(a), 510(b), 515(b), and 516 of SMCRA.

7. Certifications by Professional Surveyors – CSR 38-2-3.15.a; 3.15.b.1; 4.2.a.7; 4.10.a.1; 4.12; 5.4.d.2; 5.4.d.3; 5.4.e.1; 5.4.e.3; 7.5.b.11; 7.5.g.1.A; 7.5.g.2.A

Throughout the regulations the words “licensed land” have been deleted and the word “professional” added before “surveyor” to clarify that surveyors certified and licensed in West Virginia are considered to be professional surveyors. The proposed State revisions fall under the Federal provisions at 30 CFR 780.14(c), 780.25, 780.37,

784.23, 784.16, 784.24, 816/817.46(b), 816/817.49(a)(11), and 816/817.151 and sections 507(b)(14) and 515(b)(10)(B)(ii) of SMCRA.

8. Approved Persons – CSR 38-2-3.15.b.3

The State is proposing to add new language at the end of the paragraph to read:

“Furthermore, any person seeking an approval must be capable and maintain the capability of submitting maps, plans and all other technical data in an electronic format proscribed by the Secretary.” Although there are no specific Federal requirements governing approved persons, these proposed revisions fall under the provisions at 30 CFR 780.14(c) and sections 507(b)(14) and 515(b)(10)(B)(ii) of SMCRA.

9. Bonding: Trust Fund or Annuity – CSR 38-2-11.3.f

All of subsection 11.3.f is new and can be viewed in its entirety at

<http://www.regulations.gov>. Under the proposed rule, a permittee, with the approval of the Secretary, may establish a trust fund, annuity or both to guarantee treatment of long-term postmining pollutional discharges in lieu of posting a bond. The trust fund or annuity will be subject to certain conditions. The proposed revisions fall under the Federal provisions at 30 CFR 30 CFR 800.4, 800.11, 800.13, 800.14, 800.16, and 800.17, and sections 509 and 519 of SMCRA.

10. Inactive Status Procedures – CSR 38-2-14.11.h

Under the proposed rule, the Secretary may grant inactive status for a term longer than those set forth currently in (e), (f), and now (g). This will allow the Secretary to grant inactive status for coal refuse sites to exceed a period of 10 years. New language is also being added to provide that “Bonding in this manner shall remain in effect for the life of the operation.” This will require the permittee of an operation that receives inactive status approval to furnish and maintain a full-cost reclamation bond for the life of the operation. These proposed revisions fall under the Federal provisions at 30 CFR 30 CFR 816 and 817.131 and sections 509, 510, and 515 of SMCRA.

#### 11. Show Cause Orders - CSR 38-2-20.4.a

The State is proposing to add new language to provide that “The Secretary shall provide e-mail notice of the issuance of a show cause order to members of the public who have subscribed to the Secretary’s e-mail notification service and otherwise provide notice to any person whose citizen’s complaint has resulted in the issuance of any violation that led to the issuance of the show cause order.” This is to ensure that citizens who subscribe to the Secretary’s e-mail notification system get notified of all show cause orders, and any citizen whose complaint resulted in an enforcement action that led to a show cause notice is also notified. These proposed revisions fall under the Federal provisions at 30 CFR 843.14 and sections 521, 525, and 526 of SMCRA.

#### **IV. Public Comment Procedures**

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

##### Written Comments

Send your written comments to OSM at one of the addresses given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**).

##### Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your

personal identifying information from public review, we cannot guarantee that we will be able to do so.

### Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. (local time), on [Insert date 15 days after date of publication in the Federal Register]. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

## Public Meeting

If there is limited interest in participation in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please 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, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

## **V. Procedural Determinations**

### Executive Order 12866 – Regulatory Planning and Review

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

### Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating

receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 27, 2011\_\_\_\_\_

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Thomas D. Shope, Regional Director  
Appalachian Region

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