



4310-05-P

DEPARTMENT OF INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

**[WV-123-FOR; Docket ID: OSM-2016-0010 S1D1S SS08011000 SX064A000
201S180110; S2D2S SS08011000 SX064A000 20XS501520]**

West Virginia Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendments.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of proposed amendments to the West Virginia regulatory program (hereinafter, the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Through these proposed amendments, West Virginia seeks to revise its program to amend its statutory and regulatory provisions that involve blasting and make organizational changes within the West Virginia Department of Environmental Protection (WVDEP).

DATES: We will accept written comments on these amendments until 4:00 p.m., Eastern Standard Time (e.s.t.), [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. If requested, we will hold a public hearing on the amendments on [INSERT DATE 25 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on [INSERT DATE 15 DAYS AFTER DATE OF

PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments, identified as SATS No. WV-123-FOR, by any of the following methods:

- *Mail/Hand Delivery:* Mr. Ben Owens, Field Office Director, Pittsburgh Field Office, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center South, 2nd Floor, Pittsburgh, Pennsylvania 15220
- *Fax:* (412) 937-2177
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID: OSM-2016-0010. If you would like to submit comments go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” below under the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the West Virginia program, these amendments, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendments by contacting OSMRE’s Charleston Field Office or the full text of the program amendments are available for you to read at www.regulations.gov.

Mr. Ben Owens, Pittsburgh Field Office Director
Office of Surface Mining Reclamation and Enforcement,

3 Parkway Center South, 2nd Floor,
Pittsburgh, PA 15220

Telephone: (412) 937-2827

Email: chfo@osmre.gov

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

West Virginia Department of Environmental Protection

601 57th Street, SE

Charleston, West Virginia 25304

Telephone: (304) 926-0490

Office of Surface Mining Reclamation and Enforcement

Morgantown Area Office

604 Cheat Road, Suite 150

Morgantown, WV 26508

Telephone: (304) 291-4004 (By Appointment only)

Office of Surface Mining Reclamation and Enforcement

Beckley Area Office

313 Harper Park Drive, Suite 3

Beckley, WV 25801

Telephone: (304) 255-5265.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Owens, Pittsburgh Field Office Director. Telephone: (412) 937-2827. Email: chfo@osmre.gov

SUPPLEMENTARY INFORMATION:

- I. Background on the West Virginia Program
- II. Description of the Proposed Amendments
- III. Public Comment Procedures
- IV. Statutory and Executive Order Reviews

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 State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. 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 additional background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval in the January 21, 1981, **Federal Register** (46 FR 5915-5956). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15 and 948.16.

II. Description of the Proposed Amendments

On three occasions, April 4, 2016, (Administrative Record No. 1607), May 3, 2017, (Administrative Record No. 1608), and May 2, 2018, (Administrative Record No.

1613), West Virginia sent us proposed revisions to its approved program. These first two submissions included, among other things, blasting regulations and provisions that OSMRE decided to incorporate with the third submission so as not to cause confusion. In the first submission, the State proposes to eliminate the Office of Explosives and Blasting and consolidate the remaining duties and responsibilities related to blasting under the Division of Mining and Reclamation. This submission also authorizes WVDEP to promulgate its own blasting regulations. The second submission modifies the State's pre-blast survey statutory provisions. In the third submission, the Division of Mining and Reclamation (DMR) submitted its own blasting regulations which relate to blasting plans, public notices, blasting procedures, blast records, pre-blast surveys, certification of blasters, blasting claims and arbitration, and explosive material fee. By combining these, the public will have an opportunity to evaluate and comment on both the State's revised blasting law and the newly promulgated blasting regulations as set forth in these submissions.

First Submission: House Bill (HB) 4726: By letter dated April 4, 2016, WVDEP sent us an amendment to its program under SMCRA (30 U.S.C.1201 *et seq.*) that included provisions enacted by HB 4726. The bill was passed by the West Virginia Legislature on March 11, 2016, and approved by the Governor on April 1, 2016. HB 4726 terminated the Office of Explosives and Blasting (OEB) with the passage of W.Va. Code 22-3-34 and transferred the duties and responsibilities relating to blasting to the Division of Mining and Reclamation (DMR). The bill also provides that the regulatory provisions of the State's *Surface Mining Blasting Rule* set forth in the Code of State Regulations (CSR) 199-1 remain in effect until DMR develops its own blasting rules. The bill

involves changes to West Virginia's statutory provisions relating to blasting, pre-blast surveys, and the authority to promulgate regulations. In addition, the bill added new sections 22-3-35 through 22-3-38 to reflect organizational changes; transfer of functions; disciplinary procedures for certified blasters; blasting damage claims; rules, orders and permits to remain in effect regarding blasting; and the transfer of personnel and assets.

Second Submission: Senate Bill (SB) 687: By letter dated May 3, 2017, WVDEP sent us an amendment to its program under SMCRA (30 U.S.C.1201 *et seq.*). SB 687 was passed by the West Virginia Legislature on April 8, 2017, and approved by the Governor on April 9, 2017. SB 687 modified the State's pre-blast survey statutory requirements for notifications to owners and occupants regarding blasting associated with construction and requests for new pre-blast surveys.

Third Submission: Senate Bill 163: By letter dated May 2, 2018, WVDEP sent us an amendment to its program under SMCRA (30 U.S. C. 1201 *et seq.*) to amend its regulations at CSR 38-2-1. SB 163 was passed by the West Virginia Legislature on February 16, 2018, and signed by the Governor on February 27, 2018. SB 163 authorized WVDEP to promulgate legislative rules filed in the State Register on July 27, 2017. SB 163 consolidated all State blasting requirements under WVDEP's *Surface Mining Reclamation Regulations*. This amendment modifies Section 6 relating to blasting and creates new Sections 25 through 27 relating to certification of blasters, blasting damage claim and arbitration for blasting damage claims, and the explosive material fee. It also modifies the notification requirements for pre-blast surveys to be consistent with changes made at W.Va. Code 22-3-13a.

A. Proposed statutory revisions authorized by HB 4726 to W.Va. Code 22-1-7, 22-3-2, 4, 13a, 22a, 34, 35, 36, 37, and 38 – Abolish Office of Explosives and Blasting; Legislative Findings and Purpose; Duties of Secretary; Pre-Blast Survey Requirements; Site-Specific Blasting Design; Office of Explosives and Blasting Terminated; Legislative Blasting Rules; Disciplinary Procedures for Certified Blasters; Claims Processing for Blasting; Blasting Rules, Orders and Permits to Remain in Effect; Proceedings not Affected; and Transfer of Personnel and Assets.

HB 4726, which was passed by the West Virginia Legislature, repealed section 22-3A of the W.Va. Code and added new sections designated 22-3-34 through 38 as a result of the elimination of the OEB. This bill consolidates the remaining duties and responsibilities related to blasting into the DMR. It also provides that the *Blasting Rule*, CSR 199-1, remains in effect until the DMR develops its own rules for blasting. Some changes, within the bill and subsequent bills, are non-substantive (i.e., changes in organizational structure, prior effective dates, and designated authorities) and will not be further elaborated on within this proposed rule.

1. W.Va. Code 22-1-7 – Offices within the Department of Environmental Protection

West Virginia seeks to revise its statutory provisions by deleting subsection 6. That subsection created the OEB and charged it with administering and enforcing the provisions of article 3 of this chapter.

2. W.Va. Code 22-3-2 – Legislative Findings and Purpose

West Virginia seeks to revise its statutory provisions by adding subdivisions (a)(3) and (b)(9). Section 22-3-2(a)(3) provides that the West Virginia Legislature finds that the reasonable control of blasting associated with surface mining within the State is in the public interest and will promote the protection of the citizens and their property without sacrificing economic development. In addition, it is the policy of the State . . . to use reasonable means and measures to prevent harm from the effects of blasting to its

property and citizens. Section 22-3-2(b)(9) provides in part that it is the purpose of the article to vest in the Secretary the authority to enforce all of the laws, regulations, and rules established to regulate blasting consistent with the authority granted in sections 34 through 39 of this article.

3. W.Va. Code 22-3-4 – Duties and Functions of Secretary

West Virginia seeks to revise its statutory provisions by adding subdivision (b)(6). Section 22-3-4(b)(6) provides that the Secretary may, in relation to blasting on all surface mining operations and all surface blasting activities related to underground mining operations, regulate blasting on all surface mining operations; implement and oversee the pre-blast survey process, as set forth in section 22-3-13a; maintain and operate a system to receive and address questions, concerns and complaints relating to mining operations; set the qualifications for individuals and firms performing pre-blast surveys; educate, train, examine, and certify blasters; and propose rules for legislative approvals pursuant to section 29a-3-15 for the implementation of sections 34 through 39 of this article.

4. W.Va. Code 22-3-13a – Pre-Blast Survey Requirements

West Virginia seeks to revise its statutory provisions by modifying subsection (c), subdivision (f)(7), subsection (g), subsection (h), and subsection (i). Section 22-3-13a(c) provides that the DMR may not determine the pre-blast survey to be incomplete because it indicates that access to a particular structure, underground water supply or well was refused, impossible or impractical. In addition, the operator must send copies of all written waivers and affidavits executed pursuant to this subsection to the DMR. Section 22-3-13a(f)(7) provides that pre-blast survey must include the date of the pre-blast survey and the date it was mailed or delivered to the DMR. Section 22-3-13a(g) provides that

the pre-blast survey must be submitted to the DMR at least 15 days prior to the commencement of any production blasting. The DMR must review each pre-blast survey as to form and completeness only and notify the operator of any deficiencies: Provided, that once all required surveys have been reviewed and accepted by the DMR, blasting may commence sooner than 15 days after submittal. In addition, the DMR must provide a copy of the pre-blast survey to the owner or occupant. Section 22-3-13a(h) provides that the pre-blast survey notice must be on a form prescribed by the DMR. Finally, section 22-3-13a(i) provides that all authority to promulgate blasting rules is transferred from the OEB to the DMR. Other statutory provisions relating to pre-blast surveys are included in this section of the State's submittal.

5. *W.Va. Code 22-3-22a – Site-Specific Blasting Design Requirement*

West Virginia seeks to revise its statutory provisions at subsections (e) and (f). Section 22-3-22a(e) provides that blasting within 1,000 feet of a protected structure must have a site-specific blast design approved by the DMR. In addition, section 22-3-22a(f) provides that the operator must send copies of all written waivers executed pursuant to this subsection to the DMR. Written waivers executed and filed with the DMR are valid during the life of the permit or any renewal of the permit and are enforceable against any subsequent owners or occupants of the protected structure.

6. *W.Va. Code 22-3-34 – Office of Explosives and Blasting Terminated; Transfer of Functions; Responsibilities*

West Virginia seeks to revise its statutory provisions by adding section 22-3-34, which states that the OEB will be terminated.

7. *W.Va. Code 22-3-35 – Legislative Rules on Surface Mining Blasting; Disciplinary Procedures for Certified Blasters*

West Virginia seeks to revise its statutory provisions by adding section 22-3-35, which provides that the DMR will apply and enforce OEB's rules at 199 CSR 1 until it adopts rules of its own. DMR must promulgate rules for legislative approval in accordance with the provisions of section 29(a)-3-15 as necessary to reflect the repeal of section 22-3a-7, as amended. This section includes statutory provisions relating to blasting and blaster certification as submitted by West Virginia.

8. *W.Va. Code 22-3-36 – Claims Process for Blasting*

West Virginia seeks to revise its statutory provisions by adding section 22-3-36, which establishes a blasting claims process. WVDEP must establish and manage the process for filing, administering, and resolving claims related to blasting. Other State statutory provisions relating to the claims process are presented in this section of the submittal.

9. *W.Va. Code 22-3-37 - Rules, Orders, and Permits to Remain in Effect Regarding Blasting; Proceedings not Affected*

West Virginia seeks to revise its statutory provisions by adding section 22-3-37. This section provides that all orders, determinations, rules, permits, grants, contracts, certificates, licenses, waivers, bonds, authorizations and privileges that have been issued, made, granted or allowed to become effective prior to the enactment of this article will remain in effect according to their terms until modified, terminated, superseded, set aside or revoked pursuant to this article, by a court of competent jurisdiction, or by operation of law. Any proceedings, including notices of proposed rulemaking, or any application for

any license, permit, or certificate pending before the DMR are not affected by the enactment of this statute.

10. W.Va. Code 22-3-38 - Transfer of Personnel and Assets

West Virginia seeks to revise its statutory provisions by adding section 22-3-38, which provides that the Secretary must transfer to the DMR any personnel and assets presently used to perform or used in the performance of the duties and functions required by sections 34 through 39.

B. Proposed statutory revisions authorized by SB 687 to W.Va. Code 22-3-13a – Pre-Blast Survey Requirements

1. W.Va. Code 22-3-13a(a)(1), (2), (b) and (f) – Pre-Blast Survey Requirements

West Virginia seeks to revise its statutory provisions at section 22-3-13a(1) for all surface mining operations to send notifications of pre-blast surveys to all owners and occupants of man-made dwellings or structures within one half mile of the permitted area or areas. Section 22-3-13a(2) provides that for blasting associated with permitted surface disturbance of underground mines and blasting associated with specified construction, including but not limited to, haul roads, shafts, and/or drainage structures, the operator may send written request to the Secretary asking that the required notifications be limited to all owner and occupants of man-made dwellings or structures within one-half mile of the proposed blasting area. Other pre-blast survey requirements are included within this section as submitted by the State.

C. Proposed regulatory changes authorized by SB 163 to CSR 38-2-6 regarding Blasting; and CSR 38-2-25 through 27 relating to Certification of Blasters; Blasting Damage Claim and Arbitration for Blasting Damage Claims; Explosive Material Fee

West Virginia seeks to add new language to its regulatory provisions relating to blasting in general; certification of blasters; blasting damage claims; arbitration for blasting

damage claims; and explosive material fee by consolidating all blasting requirements into its *Surface Mining Reclamation Regulations* at CSR 38-2-6, 25, 26 and 27. Most of these requirements are being transferred from the State's *Surface Mining Blasting Rule* at 199 CSR 1 due to the proposed elimination of the OEB. With the consolidation of its rules and approval of these requirements by OSMRE, 199 CSR 1 will be rescinded by the State.

1. CSR 38-2-6.1 – General Requirements

West Virginia seeks to revise its blasting regulations by deleting existing language at subsection 6.1 and adding new language which provides that each blaster will comply with all applicable State and Federal laws in the use of explosives, and each blaster that is certified by the Secretary will be responsible for all blasting operations in accordance with the blasting plan.

2. CSR 38-2-6.2 - Blasting Plans

West Virginia seeks to revise its blasting regulations by deleting existing language at subsection 6.2 and adding new language which provides that all surface mining operations that propose blasting must include a blasting plan that will include, at a minimum, information setting forth the limitation the operator will meet with regard to ground vibration and air blast, the basis for those limitation, and the methods to be applied in preventing the adverse effects of blasting operations. The blasting plan will delineate the type of explosives and detonation equipment, the size, the timing and frequency of blasts, and the effect of geologic and topographic conditions on specific blasts. Other regulatory provisions relating to blasting plans are included within this section.

3. *CSR 38-2-6.3 – Public Notice of Blasting Operations*

West Virginia seeks to add new language to its blasting regulations which provides that at least ten (10) days but not more than thirty (30) days prior to commencing any blasting operations which detonate five (5) pounds or more of explosives at any given time, the operator must publish a blasting schedule in a newspaper of general circulation in all the counties of the proposed permit area. Copies of the schedule shall be distributed by certified mail to local governments, public utilities, and each resident within one half mile of the blasting sites. Unless blasting will occur on drainage structures and roads, these structures will be exempt for the purpose of measuring the notification area. A list of residents, utilities and owners of man-made structures within the notification area will be made a part of the blasting plan, and will be updated on an annual basis. The operator must republish and redistribute the schedule at least every twelve (12) months in the same manner above. The operator will revise, republish, and redistribute the schedule at least ten (10) days, but not more than thirty (30) days prior to blasting whenever the area covered by the schedule changes or actual time periods for blasting significantly differ from that set forth in the prior schedule. Proof of notification must be retained by the permittee. Other specific requirements relating to notifying the public of all blasting operations are included within this section.

4. *CSR 38-2-6.4 – Surface Blasting on Underground Mines (Face-up Area, Slopes and Shafts) and Construction Blasting*

West Virginia seeks to add new language to its blasting regulations which provides that construction blasting means incidental blasting to develop haul roads, mine access roads, coal preparation plants and drainage structures, and cannot include blasting that removes the overburden to expose underlying coal seams for the surface extraction.

Surface blasting activities related to underground coal mining and construction blasting are not subject to the requirements of subdivision 6.3.a. of this rule so long as all local governments and residents and workplaces or owners of dwellings or structures located within one-half (1/2,) mile of the blast site are notified in writing by the operator of proposed times and locations of the blasting operation. Such notice of times that blasting is to be conducted may be announced weekly, but in no case less than twenty-four (24) hours before the blasting will occur.

Blasting activities for underground coal mining and construction blasting will be subject to this rule and regulated as surface blasting and the operator must submit a blast plan that considers all aspects of blasting contained in this section. For shafts and slopes related to underground mining, the operator will submit a blast plan for the initial developmental blast of shafts and slopes, which will consider all aspects of surface coal mine blasting contained in this section. The Secretary will then only regulate and monitor for surface effects from ground vibration and air blast for the remainder of the shaft or slope until it intersects the coal seam to be mined.

5. CSR 38-2-6.5 - Blast Record

West Virginia seeks to add new language to its blasting regulations which provides that a blasting log book on forms formatted in a manner prescribed by the Secretary will be kept current daily and made available for inspection at the site by the Secretary and upon written request by the public. Other provisions relating to what information blasting records should contain are included within this section.

6. CSR 38-2-6.6 – Blasting Procedures

West Virginia seeks to add new language to its blasting regulations which provides that all blasting will be conducted during daytime hours, between sunrise and sunset; provided, that the Secretary may specify more restrictive time periods based on public requests or other consideration, including the proximity to residential areas. No blasting will be conducted on Sunday. Provided, however, the Secretary may grant approval of a request for Sunday blasting if the operator demonstrates to the satisfaction of the Secretary that the blasting is necessary and there has been an opportunity for a public hearing. Blasting cannot be conducted at times different from those announced in the blasting schedule except in emergency situations where rain, lightning, or other atmospheric conditions or operator or public safety requires unscheduled detonations. Blasting will be conducted in such a way so as to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or groundwater outside the permit area. Other specific blasting and safety provisions relating to air blast and ground vibration limits are set forth within this section.

7. *CSR 38-2-6.7 – Blasting Control for “Other Structures”*

West Virginia seeks to add new language to its blasting regulations which provides that all "other structures" in the vicinity of the blasting area which are not defined as protected structures must be protected from damage by the limits specified in paragraph 6.6.c.1 subdivisions 6.6.h., 6.6.i. and 6.6.j of this rule, unless waived in total or in part by the owner of the structure. The waiver of the protective structures may be accomplished by the establishment of a maximum allowable limit on ground vibration or air blast limits or both for the structure in the written waiver agreement between the operator and the

structure owner. The waiver may be presented at the time of application, in the blasting plan, or provided at a later date and made available for review and approval by the Secretary. All waivers must be acquired before any blasts may be conducted as designed based on that waiver. The plan submitted under this subsection cannot reduce the level of protection for other structures otherwise provided for in this rule.

8. *CSR 38-2-6.8 – Pre-Blast Surveys*

West Virginia seeks to add new language to its blasting regulations which provides that at least thirty days prior to commencing blasting, an operator's designee must notify in writing all owners and occupants of manmade dwellings or structures within a 1/2 mile of the permit area or for those that meet the requirements of 6.4 of this subsection within 1/2 mile of the blast site that the operator or operator's designee will perform pre-blast surveys. The operator must conduct the pre-blast survey in a manner that will determine the condition of the dwelling or structure, to document any pre-blasting damage and to document other physical factors that could reasonably be affected by the blasting. Assessments of the pre-blasting condition of structures such as pipes, cables, transmission lines, wells, and water systems must be based on the exterior or ground surface conditions and other available data. Attention must be given to documenting and establishing the pre-blasting condition of wells and other water systems. The pre-blast survey must include a description of the water source and water delivery system. When the water supply is a well, the pre-blast survey must include written documentation about the type of well, and where available, the well log and information about the depth, age, depth and type of casing, the static water level, flow and data, the pump the name of the

drilling contractor and the source or sources of the information. Other specific pre-blast survey requirements are included within this section.

9. CSR 38-2-25 – Certification of Blasters

West Virginia seeks to add new language to its blasting regulations which provides that in every surface mine and surface area of an underground mine when blasting operations are being conducted, a certified blaster must be responsible for the storage, handling, transportation, and use of explosives for each and every blast, and for conducting the blasting operations in accordance with the blasting plans approved in a permit issued pursuant to W. Va. Code 22-3-1 et seq., and the rules promulgated under that article. Each person acting in the capacity of a blaster and responsible for the blasting operations must be certified by the Secretary. Each certified blaster must have proof of certification either on his or her person or on file at the permit area during blasting operations. Other specific provisions relating to the testing and certification of blasters are included within this section.

10. CSR 38-2-26 – Blasting Damage Claim and Arbitration for Blasting Damage Claims

West Virginia seeks to add new language to its blasting regulations which provides that a claim of damage to surface structures from blasting will be the result of one or more of the following:

- Fly rock damage is based on the presence of debris from the blast site and the presence of impact damage;
- Air blast damage is characterized by broken or cracked window glass; and
- Blasting vibration damage is investigated by experienced and specially trained personnel to accurately determine the presence of such damage. Examples are

explained in, but not limited to, the American Insurance Association publication, *Blasting Damage, A Guide for Adjusters and Engineers*.

It is the responsibility of the property owner to notify the Secretary of the alleged blasting damage. An investigation will be conducted to determine the initial merit of the damage claim. Other specific provisions pertaining to filing claims for blaster damage and requests for arbitration involving those claims are included within this section.

11. CSR 38-2-27 – Explosive Material Fee

West Virginia seeks to add new language to its blasting regulations which provides that pursuant to W. Va. Code 22-3A-7 and 5B-2a-2, there is hereby assessed a fee of one-quarter cent (\$.0025) per pound on explosive material used for any purpose on surface mining operations. Provided, that the operators exempted from the application of W. Va. Code 5B-B1-2A et seq. must pay one-eighth (\$.00125) cent per pound on explosive material. Other requirements regarding the payment, collection and use of the material handling fee are more fully described within this section.

III. Public Comment Procedures

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

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any

and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email 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., e.s.t. on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable 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 only one person requests an opportunity to speak, 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 are 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.

IV. Statutory and Executive Order Reviews

Executive Order 12866 - Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB Guidance dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE 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: April 30, 2019

Thomas D. Shope, Regional Director

North Atlantic - Appalachian Region

Editorial Note: This document was received at the Office of the Federal Register on February 5, 2020.

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