



**4310-05-P**

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 948**

**SATS No. WV-126-FOR; Docket ID: OSM-2019-0012; 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 amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment 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). The statutory provisions involve the method in which permit applications are advertised. The regulatory provisions involve non-substantive revisions to definitions, reclamation, environmental security account for water quality, water quality enhancement, and modifying sections on incremental bonding, requirement to release bonds, forfeiture of bonds, and effluent limitations. This document gives the times and locations that the West Virginia program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4:00 p.m., Eastern

Standard Time (e.s.t.) on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. If requested, we may hold a public hearing or meeting on the amendment 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 by SATS No. WV-126-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, 2<sup>nd</sup> Floor, Pittsburgh, PA 15220
- *Fax:* (412) 937-2177
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID; OSM-2019-0012. 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” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* To access the docket to review copies of the West Virginia program, this amendment, a listing of any scheduled public hearing or meetings, 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 amendment by contacting OSMRE's Charleston Field Office or the full text of the program amendment is available for you to read at

<https://www.regulations.gov>.

Mr. Ben Owens, Pittsburgh Field Office Director

Office of Surface Mining Reclamation and Enforcement

3 Parkway Center South, 2<sup>nd</sup> Floor

Pittsburgh, PA 15220

Telephone: (412) 937-2827

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

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

West Virginia Department of Environmental Protection

601 57th Street, SE

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

**SUPPLEMENTARY INFORMATION:**

- I. Background on the West Virginia Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Statutory Orders and Executive 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 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 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 of the Proposed Amendment**

West Virginia submitted two letters, dated May 2, 2018, (Administrative Record Nos. 1613A and 1613B), amending its program under SMCRA (30 U.S.C. 1201 *et seq.*). This amendment involves revisions to statutory provisions at W. Va. Code Chapter 22-3 and regulatory provisions at W. Va. CSR Section 38-2. The revised statutory provisions were enacted through West Virginia Senate Bill 163, which was signed by the Governor on February 27, 2018. The statutory provisions involve the method in which permit applications are advertised. The regulatory provisions involve non-substantive revisions to definitions, reclamation, environmental security account for water quality, water quality enhancement, and modifying sections on incremental bonding, requirement to release bonds, forfeiture of bonds, and effluent limitations.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at <https://www.regulations.gov>

## **III. 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 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, 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., 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 Orders and Executive 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:** December 6, 2019.

Thomas D. Shope, Regional Director

North Atlantic - Appalachian Region

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