



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[SATS No. WV-127-FOR; Docket ID: OSM-2020-0003;
S1D1S SS08011000 SX064A000 212S180110
S2D2S SS08011000 SX064A000 21XS501520]

West Virginia Regulatory Program

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

ACTION: Proposed rule

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). West Virginia Department of Environmental Protection (WVDEP) seeks to amend its regulatory provisions related to entities authorized to issue surety bonds and the repair and compensation of damage resulting from subsidence.

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.), [Insert date 30 days after the 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-127-FOR, by any of the following methods:

- *Mail/Hand Delivery:* Mr. Ben Owens, Acting Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street East, Charleston, West Virginia 25301
- *Fax:* (304) 347-7170
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID: OSM-2020-0003. 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: For access to the docket to review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings 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 www.regulations.gov.

Mr. Ben Owens, Acting 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: osm-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

FOR FURTHER INFORMATION CONTACT: Mr. Ben Owens, Acting Director,
Charleston Field Office Telephone: (304) 347-7158. E-mail: osm-chfo@osmre.gov

SUPPLEMENTARY INFORMATION:

- I. Background on the West Virginia Program
- II. Description of the Proposed Amendment
- 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 approved 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 of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning the 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

By letter dated May 5, 2020 (Administrative Record No. 1640), West Virginia sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The State seeks to amend its regulations to modify language which relate to entities that may issue bond instruments. The State also seeks to amend language relating to the repair of, and compensation for, material damage resulting from subsidence caused to any structures and facilities. The full text of the program and/or plan amendment is available for you to read at the locations listed above under **ADDRESSES** or at www.regulations.gov.

House Bill 4217 (HB 4217) was signed by the Governor on March 25, 2020. HB 4217 proposes to modify language relating to companies that execute surety bonds. HB

4217 also proposes to modify language relating to owner compensation of material damage from subsidence to an owner's structures or facilities.

1. CSR 38-2-11.3.a.3

West Virginia seeks to revise its language relating to the existing requirements for any company that executes surety bonds in the State to be included on the United States Department of the Treasury's listing of approved sureties or to be diligently pursuing such listing. The proposed revision would remove the requirement to be diligently pursuing listing on the Treasury Department's listing of approved sureties for any surety company that submits proof to the West Virginia Department of Environmental Protection that it holds a valid license issued by the West Virginia Insurance Commissioner, and agrees to submit on at least a quarterly basis a certificate of good standing from the West Virginia Insurance Commissioner and such other evidence from the insurance regulator of its domiciliary state, if other than West Virginia, demonstrating that it is also in good standing in that state.

2. CSR 38-2-16.2.c.2

West Virginia seeks to revise its language relating to compensating owners for material damage to any structures or facilities resulting from subsidence. The proposal alters the existing requirement of either repairing the damage or compensating the owner for the full amount of diminution in value resulting from the subsidence, by eliminating the option to repair and replacing that option with compensating the owner in the amount of the cost to repair the damage not to exceed one hundred and twenty percent of the premining value of the structure or facility. The proposal clarifies that the election of options, for either compensation in the amount of the repair or compensation in the full amount of diminution in value resulting from the subsidence, is at the owner's election.

The proposal also inserts new language clarifying that this section does not create additional property rights, nor can it be construed as vesting in the secretary the jurisdiction to adjudicate property rights disputes.

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 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 and 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.

Thomas D. Shope, Regional Director

Regional Director, North Atlantic—Appalachian Region.

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