

commensurate with the public health and safety and environmental considerations present at that specific site. In no case shall Ohio conduct less than one complete inspection per calendar year at each abandoned operation.

Before changing to an alternate inspection frequency for an abandoned operation, Ohio will first conduct a complete inspection of the operation, prepare a written finding justifying the inspection frequency selected for the operation, and publish a public notice of the State's intent to change to the less frequent inspection schedule for the operation. The notice shall provide the public with a 30-day period in which to submit written comments on the State's proposed change to less frequent inspections of the specified operation.

### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment 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 Ohio 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 Columbus 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., E.D.T. on April 26, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to comment at a 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 comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following

those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

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**.

#### Public Meeting

If only one person requests an opportunity to comment 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 at the Columbus Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each public 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 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (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 5034 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 Environmental Policy Act

No environmental 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 corresponding 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 and assumptions for the corresponding Federal regulations.

#### List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 5, 1995.

#### Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95-8888 Filed 4-10-95; 8:45 am]

BILLING CODE 4310-05-M

### 30 CFR Part 948

#### West Virginia Regulatory Program

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

**ACTION:** Announcement of public comment period and opportunity for public hearing.

**SUMMARY:** OSM is requesting public comment that would be considered in deciding how to implement in West Virginia, underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the

implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the West Virginia regulatory program (hereinafter referred to as the "West Virginia program") currently has adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulators. After consultation with West Virginia and consideration of public comments, OSM will decide whether initial enforcement in West Virginia will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

**DATES:** Written comments must be received by 4:00 p.m., E.D.T. on May 11, 1995. If requested, OSM will hold a public hearing on May 8, 1995 concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions should be implemented in West Virginia. Requests to speak at the hearing must be received by 4:00 p.m., E.D.T. on April 26, 1995.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand-delivered to James C. Blankenship, Jr., Director, Charleston Field Office at the address listed below.

Copies of the applicable parts of the West Virginia program, SMCRA, the implementing Federal regulations, information provided by West Virginia concerning its authority to implement State counterparts to SMCRA and the implementing Federal regulations, 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 address listed below during normal business hours, Monday through Friday, excluding holidays.

James C. Blankenship, Jr. Director,  
Charleston Field Office, Office of  
Surface Mining Reclamation and  
Enforcement, 1027 Virginia Street  
East, Charleston, West Virginia  
25301-2816, Telephone: (304) 347-  
7158

In addition, copies of the applicable portions of the approved State program and information provided by West Virginia concerning its authority to implement the State counterparts to section 720 of SMCRA and its implementing regulations are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26506, Telephone: (304) 291-4004

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255-5265.

Office of Surface Mining Reclamation and Enforcement, Logan Area Office, 313 Hudgins Street, 2nd Floor, P.O. Box 506, Logan, West Virginia 25601, Telephone: (304) 752-2851

**FOR FURTHER INFORMATION CONTACT:** James C. Blankenship, Jr., Director, Charleston Field Office, Telephone: (304) 347-7158.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

###### *A. The Energy Policy Act*

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102-486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate the owner for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

The provisions requiring prompt repair or compensation for damage to structures and prompt replacement of water supplies went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

###### *B. The Federal Regulations Implementing the Energy Policy Act*

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a)(1) and (2) of SMCRA (60 FR 16722-16751).

30 CFR 817.121(c)(2) requires in part that:

The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. \* \* \* The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for those operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR Part 732, the State's counterparts to

the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 701.5, 817.41(j), and 817.121(c)(2) and (4) for operations conducted after October 24, 1992.

### *C. Enforcement in West Virginia*

By letter to West Virginia dated December 16, 1994, OSM requested information from West Virginia that would help OSM decide which approach to take in West Virginia to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. WV 965). By letter dated January 11, 1995, West Virginia responded to this OSM request (Administrative Record No. WV 966).

On January 11, 1995, the West Virginia Division of Environmental Protection (WVDEP) notified OSM that there were approximately 650 active underground coal mines operating in West Virginia at the time. West Virginia stated that it believed the existing State program provisions are adequate to fully

implement the letter and intent of section 720 of SMCRA. WVDEP further explained that its continued enforcement of its State program provisions at §§ 22A-3-14(b)(1) and 22A-3-24(b) of the West Virginia Code and/or West Virginia Code of State Regulations (CSR) §§ 38-2-14.5(h) and 38-2-16.2 would ensure compliance with section 720 of SMCRA.

West Virginia noted that § 22A-3-24(b) of the West Virginia Code allows for a waiver of water replacement rights by current landowners. According to WVDEP, this is part of a program amendment that is under review by OSM.

West Virginia also acknowledged that since WVDEP revised its rules on June 1, 1991, it has been requiring operators to either correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensate the owners of such structures or facilities in the full amount of the diminution in value resulting from subsidence. In addition, West Virginia issued a policy directive on March 23, 1993, which provides that permits issued before June 1, 1991, and which have a waiver to subsidence without liability are exempt from the new requirements. Permits issued prior to June 1, 1991, without waivers and all permits issued after that date are required to comply with the revised regulations.

OSM estimates that West Virginia has investigated approximately 190 citizen complaints between June 1, 1991, and October 24, 1992, and approximately 330 citizen complaints after October 24, 1992, that allege subsidence-caused structural damage and/or water supply loss or contamination as a result of underground mining operations. To date, West Virginia has investigated these complaints and determined that the problems: (1) Were not caused by mining, (2) were caused by mining with resultant enforcement and/or corrective measures taken, or (3) are problems under continuing investigation to determine whether caused by mining.

## **II. Public Comment Procedures**

OSM is requesting public comment to assist OSM in making its decision on which approach to use in West Virginia to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

### *A. Written Comments*

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in

support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Charleston Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

### B. Public Hearings

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.D.T. on April 26, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify 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.

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**.

### C. Public Meeting

If only a few persons request 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 recommendations on how OSM and West Virginia should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, 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.

Dated: April 5, 1995.

**Richard J. Seibel,**

*Acting Assistant Director, Eastern Support Center.*

[FR Doc. 95-8889 Filed 4-10-95; 8:45 am]

**BILLING CODE 4310-05-M**

## DEPARTMENT OF TRANSPORTATION

### Saint Lawrence Seaway Development Corporation

#### 33 CFR Part 402

#### Tariff of Tolls: Proposed Revision

**AGENCY:** Saint Lawrence Seaway Development Corporation, DOT.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada have jointly established and presently administer the St. Lawrence Seaway Tariff of Tolls. This Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the Corporation and the Authority. To improve the competitiveness of the Seaway, the Corporation and the Authority are proposing that the Tariff charges for the 1995 season under the Tariff Schedule be the same as for the 1994 season. In addition, the Corporation and the Authority are proposing, for competitive purposes, that the Incentive Tolls Program be continued and that the volume rebate be revised to broaden the base years and clarify the reporting requirements for the volume rebate.

**DATES:** Any party wishing to present views or data on the proposed revision may file comments with the Corporation on or before May 11, 1995.

**ADDRESSES:** Send comments to Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Washington, D.C. 20590.

**FOR FURTHER INFORMATION CONTACT:** Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366-0091.

**SUPPLEMENTARY INFORMATION:** In an effort to improve the Seaway's competitiveness, it is proposed to continue the section 402.8, the Schedule of Tolls, charges for the 1995 at the 1994 season levels. Accordingly, no change would be required to the Schedule as it now appears.

The Corporation and the Authority also are proposing, for competitive purposes, that the Incentive Tolls

Program be continued and be revised. In section 402.9, the discount for new business, subsection (a) would be amended to reflect its applicability to the 1995 navigation season and subsection (c) would be amended in part to change the base years for calculating the discount from 1991 through 1993 to 1992 through 1994. In section 402.11, volume rebates, subsection (a) would be amended to reflect its applicability to the 1995 navigation season and subsections (b) and (c) would be amended to change the base years for calculating the rebate from three years, 1991 through 1993, to four years, 1991 through 1994. The base years for the subsection (c) proviso on mergers or take-overs would also be changed from 1991 through 1994 to 1991 through 1995. Finally, subsection (d) would be amended to change the submission date for the traffic history description for the purposes of calculating the rebate to the end of the 1995 season and to clarify what specific information is required, *i.e.*, the shipper's or receiver's Seaway traffic history for 1991, 1992, 1993, 1994, and 1995 by port, vessel name, transit date, commodity description, and tonnage.

#### Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States, and therefore, Executive Order 12866 does not apply. This proposed regulation has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the proposed regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

#### Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The Saint Lawrence Seaway Tariff of Tolls relates to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

#### Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of human environment.