

(PS-013-88) contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing (PS-013-88), which was the subject of FR Doc. 95-10765, is corrected as follows:

1. On page 21476, column 1, under the caption **DATES**:, last line, the language "July 31, 1995" is corrected to read "July 10, 1995".

2. On page 21478, column 3, in the preamble under the paragraph heading "Comments and Public Hearing", paragraph 4, lines 3 through 5, the language "written comments and an outline of the topics to be discussed (a signed original and eight (8) copies) by July 31, 1995." is corrected to read "written comments (a signed original and eight (8) copies) by July 31, 1995. The outline of topics to be discussed at the hearing must be received by July 10, 1995."

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Program Amendment

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

ACTION: Notice of availability and opportunity for public comment.

SUMMARY: OSM is making available for public review and comment its draft decision document on a proposed amendment to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program). The amendment concerns revisions to State law and regulations governing the Special Reclamation Fund and bonding requirements for surface coal mining operations. OSM has evaluated the proposed changes and made tentative findings on whether they can be approved as part of the West Virginia program. Where necessary, OSM proposed required amendments to bring the program into compliance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

OSM is inviting public comment on the proposed amendment and the tentative findings contained in the draft decision document. A public meeting is also scheduled.

DATES: Written comments must be received on or before 4 p.m., E.D.T. on June 5, 1995. A public meeting will be held at 1 p.m., E.D.T. on May 30, 1995, at the Holiday Inn, Heart-Of-Town, Washington and Broad Streets, Charleston, West Virginia.

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

Copies of the proposed amendment and draft decision document, the West Virginia program, and the administrative record on the West Virginia program are available for public review and copying at the address below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment and draft decision document by contacting OSM's Charleston Field Office.

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

West Virginia Division of
Environmental Protection, 10
McJunkin Road, Nitro, West Virginia
25143, Telephone: (304) 759-0515.

In addition, copies of the proposed amendment and draft decision document are available for inspection 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 26507, 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:

Mr. James C. Blankenship, Jr., Director,
Charleston Field Office; Telephone:
(304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

SMCRA was passed in 1977 to address the growing environmental and safety problems associated with coal mining. Under SMCRA, OSM works with States to ensure that coal mines are operated in a manner that protects citizens and the environment during mining, that the land is restored to beneficial use following mining, and that the effects of past mining at abandoned coal mines are mitigated.

Many coal-producing States, including West Virginia, have sought and obtained approval from the Secretary of the Interior to carry out SMCRA's requirements within their borders. In becoming the primary enforcers of SMCRA, these "primacy" states accept a shared responsibility with OSM to achieve the goals of the Act. Such States join with OSM in a shared commitment to the protection of citizens—our primary customers—from abusive mining practices, to be responsive to their concerns, and to allow them full access to information needed to evaluate the effects of mining on their health, safety, general welfare, and property. This commitment also recognizes the need for clear, fair, and consistently applied policies that are not unnecessarily burdensome to the coal industry—producers of an important source of our Nation's energy.

Under SMCRA, OSM sets minimum regulatory and reclamation standards. Each primacy State ensures that coal mines are operated and reclaimed in accordance with the standards in its approved State program. The States serve as the front-line authorities for implementation and enforcement of SMCRA, while OSM maintains a State performance evaluation role and provides funding and technical assistance to States to carry out their approved programs. OSM also is responsible for taking direct enforcement action in a primacy State, if needed, to protect the public in cases of imminent harm or, following appropriate notice to the State, when a State acts in an arbitrary and capricious manner in not taking needed enforcement actions required under its approved regulatory program.

Currently there are 24 primacy states that administer and enforce regulatory programs under SMCRA. These states may amend their programs, with OSM approval, at any time so long as they remain no less effective than Federal regulatory requirements. In addition, whenever SMCRA or implementing Federal regulations are revised, OSM is

required to notify the States of the changes so that they can revise their programs accordingly to remain no less effective than the Federal requirements.

A major goal of SMCRA is to ensure adequate reclamation of all areas disturbed by surface coal mining operations. To accomplish this, mining is allowed to proceed only after an operator has filed a performance bond of sufficient amount to ensure completion or reclamation. In the event of bond forfeiture, the regulator authority uses the performance bond money to contract for the necessary reclamation work. SMCRA also allows for the adoption of an alternative bonding system (ABS) so long as it achieves the purposes and objectives of the conventional bonding system described above. Under an ABS, rather than posting full-cost reclamation bonds, an operator is allowed to participate in a bond pool which is to provide sufficient revenue at any time to complete reclamation in the event of bond forfeiture.

As part of their approved programs, primacy States have adopted procedures consistent with Federal bonding requirements. The Secretary conditionally approved West Virginia's ABS on January 21, 1981 (46 FR 5326). After receipt of a required actuarial study, the Secretary fully approved the State's ABS on March 1, 1983 (48 FR 8448), by finding it consistent with section 509(c) of SMCRA.

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

II. Discussion of the Proposed Amendment

On October 1, 1991, OSM notified West Virginia that it needed to amend its ABS to be in compliance with sections 509(c), 519(b) and 519(c) of SMCRA (Administrative Record No. 878). OSM's annual reviews of the West Virginia program had found that the State's ABS no longer met the requirements for such systems because, as of June 30, 1990, liabilities exceeded assets by \$6.2 million dollars. OSM also informed the State that its ABS must provide for the abatement or treatment of polluted water flowing from permanent program bond forfeiture sites unless its approved program included some other form of financial guarantee to provide for water treatment. The

proposed amendment now under consideration was submitted to OSM in response to this letter and concurrent State initiatives to address bonding and water quality problems.

In a series of three letters dated June 28, 1993, and July 30, 1993 (Administrative Record Nos. WV-888, WV-889 and WV-893), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program that included numerous revisions to the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA § 22A-3-1 *et seq.*) and the West Virginia Surface Mining Reclamation Regulations (CSR § 38-2-1 *et seq.*). OSM grouped the proposed revisions that concern bonding into one amendment which is the subject of this notice. The proposed amendment will:

- Allow for the selection and prioritization of bond forfeiture sites to be reclaimed;
- Limit administrative expenditures from the Special Reclamation Fund to an amount not to exceed 10 percent of the total annual assets in the Fund;
- Raise the special reclamation tax from one cent to three cents per ton and provide for the collection of the tax whenever liabilities exceed assets;
- Limit the amount of money that can be used for water treatment to 25 percent of the annual amount of the fees collected;
- Require site-specific bonds that reflect the potential cost of reclamation but do not exceed \$5,000 per acre;
- Require penal bonds instead of performance bonds; and
- Require bond forfeiture sites to be reclaimed in accordance with the approved reclamation plan or modifications thereof.

By letter dated April 1, 1994, OSM informed the WVDEP of probable deficiencies in the proposed amendment (Administrative Record No. WV-916). The WVDEP and OSM met on April 25, May 5, June 20, and August 5, 1994, to resolve these issues. During this time, WVDEP and OSM exchanged technical studies, policy statements, legal opinions, and explanations to clarify positions and where possible reach agreement. On August 30, 1994, OSM sent WVDEP a letter stating the tentative resolutions of the issues listed in the April 1, 1994, letter. These documents and a summary of the meetings are in Administrative Record Nos. WV-916 through 933.

OSM announced receipt of the proposed amendment in the August 12, 1993, **Federal Register** (58 FR 42903) and invited public comment on its adequacy. Following this initial

comment period, WVDEP revised the amendment on March 12, 1994, and September 1, 1994 (Administrative Record Nos. WV-933 and WV-937). OSM reopened the comment period on August 31, 1994, and September 29, 1994, and held public meetings in Charleston, West Virginia on September 7, 1993, and October 27, 1994 (Administrative Record No. WV-958).

III. Public Comment Procedures

OSM is reopening the comment period on the West Virginia program amendment to provide the public an opportunity to review OSM's draft decision document and to comment prior to making a final decision. OSM is seeking comments on whether the proposed amendment satisfies the applicable program criteria of 30 CFR 732.15. Additional public comment is requested on how OSM and WVDEP should address the following:

1. State records show that as of June 30, 1994, there was a backlog of 243 bond forfeiture sites totalling 10,996 acres that had not been completely reclaimed. Total liabilities of the Special Reclamation Fund exceeded total assets by 22.2 million dollars. This estimate does not include the cost of treating water at bond forfeiture sites. How can this backlog in reclamation work be completed in a timely manner and how should the Special Reclamation Fund be made financially sound?

2. The WVDEP identified 89 bond forfeiture sites that were producing approximately 10 percent of the acid mine drainage in the State. WVDEP estimated that it would cost two to four million dollars annually to treat this water to meet Federal and State effluent limitations and water quality standards. What is the best approach to dealing with acid mine drainage from these and future bond forfeiture sites?

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 OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Meeting

Persons requesting to speak at the meeting should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. Submission of written statements in advance of the meeting

will allow OSM to study the remarks and ask questions of the speakers.

The meeting 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 meeting will end after all persons who wish to speak have spoken.

Any disabled individual who has need for a special accommodation to attend the public meeting should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

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 programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 502 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 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 12, 1995.

Richard J. Seibel,

Acting Regional Director, Appalachian Regional Coordinating Center.

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National Park Service

36 CFR Part 7

Cape Cod National Seashore Off-Road Vehicle Use Negotiated Rulemaking Committee

AGENCY: National Park Service, Interior.
ACTION: Notice of Intent to Establish a Negotiated Rulemaking Committee.

SUMMARY: As required by section 3 of the Negotiated Rulemaking Act of 1990, 5 U.S.C. section 564, the National Park Service (NPS) is giving notice of its intent to establish a Negotiated Rulemaking Committee to negotiate and develop a proposed rule revising off-road vehicle use regulations at Cape Cod National Seashore. NPS has determined that the establishment of this Committee is in the public interest and supports the NPS in performing its duties and responsibilities under the National Park Service Organic Act, 16 U.S.C. 1 *et seq.*, and the Endangered Species Act, 16 U.S.C. 1531 *et seq.* Copies of the Committee's charter will be filed with the appropriate committees of Congress and with the Library of Congress in accordance with section 9(c) of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appx.

DATES: NPS invites any interested person to comment on the proposal to create this Committee. In addition, NPS invites persons who believe that they will be significantly affected by the proposed rule and who believe their interests will not be adequately represented by the persons identified in this Notice, to apply for, or nominate another person for membership on the Committee. Each application must contain the information described in the "Application for Membership" section below. Applications or nominations for membership on the Committee should be submitted on or before June 19, 1995.

ADDRESSES: Comments and applications should be submitted to: Andrew T. Ringgold, Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663. Comments and applications received will be available for inspection at the address listed above from 8:00 a.m. to 4:30 p.m. EST, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Andrew T. Ringgold, Superintendent, Cape Cod National Seashore, at the address listed above, or by telephone at (508) 349-3785, ext. 202.

SUPPLEMENTARY INFORMATION: The Committee's function will be to negotiate and develop a proposed rule to revise regulations that govern off-road vehicle use at Cape Cod National Seashore. It will attempt, via face-to-face negotiations, to reach consensus on concepts and language to use as the basis for a proposed rule to be published by the NPS in the **Federal Register** that would revise existing regulations codified at 36 CFR 7.67(a). The existing regulations have not been effective in resolving longstanding and controversial resource management and public use conflicts at the Seashore. With the participation of knowledgeable, affected parties, NPS expects to develop a practical approach to addressing these management and public use issues involving the protection of beach environments, their associated floral and faunal communities, and the public's desire for access to beach areas by motorized vehicle for fishing and other recreational activities.

Scope of the Proposed Rule: Within the constraints of NPS statutory responsibilities to preserve natural and cultural resources and to provide for their enjoyment, the Committee will evaluate and address key issues including, but not limited to, the designation of specific off-road vehicle routes and areas, the periods of the year and times of day during which off-road vehicles may be operated, and other