

(a) What event or circumstance caused the failure and when the event happened or the circumstance arose. The dates you give should clearly correspond with the failure upon which the information penalty is based.

(b) How that event or circumstance kept you from providing the section 4071 information on time. The explanation you give should relate directly to the failure to provide section 4071 information that is the subject of the information penalty.

(c) Whether the event or circumstance was beyond your control.

(d) Whether you could have anticipated the event or circumstance.

(e) How you responded to the event or circumstance, including what steps you took (and how quickly you took them) to provide the section 4071 information and how you conducted other business affairs. Knowing how you responded to the event or circumstance may help us determine what degree of business care and prudence you were capable of exercising during that period and thus whether the failure to provide section 4071 information could or could not have been avoided by the exercise of ordinary business care and prudence.

#### Section 34 What Are Some Situations That Might Justify a "Reasonable Cause" Waiver?

The following examples illustrate some of the reasons often given for failures to provide section 4071 information for which we may assess penalties. The situation described in each example may constitute reasonable cause, and each example lists factors we consider in determining whether we should grant an information penalty waiver for reasonable cause in a case of that kind.

(a) *An individual with responsibility for taking action was suddenly and unexpectedly absent or unable to act.* We consider such factors as the following: the nature of the event that caused the individual's absence or inability to act (for example, the resignation of the individual or the death or serious illness of the individual or a member of the individual's immediate family); the size of the organization and what kind of backup procedures it had to cope with such events; how close the event was to the deadline that was missed; how abrupt and unanticipated the event was; how the individual's absence or inability to act prevented compliance; how expensive it would have been to comply without the absent individual; whether and how other business operations and obligations were affected; how quickly and prudently a replacement for the absent individual was selected or other arrangements for compliance were made; and how quickly a replacement for the absent individual took appropriate action.

(b) *A fire or other casualty or natural disaster destroyed relevant records or prevented compliance in some other way.* We consider such factors as the following: the nature of the event; how close the event was to the deadline that was missed; how the event caused the failure to provide section 4071 information; whether other efforts were made to get needed information; how expensive it would have been to comply; and how you responded to the event.

(c) *You reasonably relied on erroneous oral or written advice given by a PBGC employee.*

We consider such factors as the following: whether there was a clear relationship between your situation and the advice sought; whether you provided the PBGC employee with adequate and accurate information; and whether the surrounding circumstances should have led you to question the correctness of the advice or information provided.

(d) *You were unable to obtain information (including records and calculations) needed to comply.* We consider such factors as the following: what information was needed; why the information was unavailable; when and how you discovered that the information was not available; what attempts you made to get the information or reconstruct it through other means; and how much it would have cost to comply.

#### Section 35 What Is a Situation That Might Justify a Partial "Reasonable Cause" Waiver?

Assume that a fire destroyed the records needed for a required filing of section 4071 information. If in the exercise of ordinary business care and prudence it should take you one month to reconstruct the records and prepare the filing, but the filing was made two months late, it might be appropriate to waive that part of the information penalty attributable to the first month the filing was late, but not the part attributable to the second month.

Issued in Washington, D.C., this 5th day of January, 2001.

**David M. Strauss,**

*Executive Director, Pension Benefit Guaranty Corporation.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 948

[WV-089-FOR]

#### West Virginia Regulatory Program

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the West Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The program amendment consists of a written response to letters sent to the State by OSM, in accordance with the Federal regulations at 30 CFR 732.17(d), which identify changes to SMCRA and the Federal regulations that require the

State program to be amended. The amendment submitted by the State is intended to render the West Virginia program no less effective than the Federal requirements.

**DATES:** If you submit written comments, they must be received on or before 4:00 p.m. (local time), on February 12, 2001. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. (local time), on February 6, 2001. Requests to speak at the hearing must be received by 4:00 p.m. (local time), on January 29, 2001.

**ADDRESSES:** Mail or hand-deliver your written comments and requests to speak at the hearing to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

You may review copies of the West Virginia program, the proposed amendment, a listing of any scheduled hearings, and all written comments received in response to this document at the addresses below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Charleston Field Office.

Mr. Roger W. Calhoun, 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: [chfo@osmre.gov](mailto:chfo@osmre.gov).

West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759-0515. The proposed amendment will be posted at the Division's Internet page: <http://www.dep.state.wv.us>.

In addition, you may review copies of the proposed amendment 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.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Charleston Field Office; Telephone: (304) 347-7158.

#### SUPPLEMENTARY INFORMATION:

#### I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the

West Virginia program. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 21, 1981, **Federal Register** (46 FR 5915–5956). You can find later actions concerning the conditions of approval and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

## II. Discussion of the Proposed Amendment

By letter dated December 20, 2000 (Administrative Record Number WV–1191), the WVDEP submitted an amendment to its program. The program amendment consists of a written response to letters sent to the State by OSM in accordance with the Federal regulations at 30 CFR 732.17(d). 30 CFR 732.17(d) provides that OSM must notify the State of all changes in SMCRA and the Federal regulations which will require an amendment to the State program. Such letters sent by OSM are often referred to as “732 letters.” The amendment submitted by the State is intended to render the West Virginia program no less effective than the Federal requirements.

In the December 20, 2000, letter, item 2. concerns a 732 letter dated February 7, 1990, and regulations concerning the exemption for coal extraction incidental to the extraction of other minerals removed for purposes of commercial use or sale. The WVDEP stated that it will develop and submit a rule package for the 2002 legislative session which will contain counterparts to the Federal regulations at 30 CFR Part 702. Therefore, when the State legislature approves new provisions that are intended to satisfy the issues concerning the adequacy of the special reclamation fund, and those provisions are submitted to OSM for review and approval, we will announce the proposed provisions in a future proposed rule notice published in the **Federal Register**. At that time we will invite public comment on whether those provisions satisfy the relevant issues that were identified in the February 7, 1990, 732 letter concerning the exemption for coal extraction incidental to the extraction of other minerals removed for purposes of commercial use or sale.

At item 3. in the December 20, 2000, letter, the WVDEP stated that it has addressed the issues presented in the 732 letter dated October 1, 1991, concerning the adequacy of the special reclamation fund. The WVDEP stated that these 732 issues are the same as those codified in the Federal regulations

at 30 CFR 948.16(jjj), (kkk), and (lll). The WVDEP stated that it has addressed its intentions concerning these issues in a letter to OSM dated August 31, 2000. The August 31, 2000, letter states that the WVDEP is actively working to address these issues, and that permanent changes to the West Virginia bonding program must be presented to the state legislature. The WVDEP timeline, the letter stated, provides an opportunity for this issue to be taken up by the 2001 legislature. Therefore, when the State legislature approves new provisions that are intended to satisfy the issues concerning the adequacy of the special reclamation fund, and those provisions are submitted to OSM for review and approval, we will announce the proposed provisions in a future proposed rule notice published in the **Federal Register**. At that time we will invite public comment on whether those provisions satisfy the relevant issues that were identified in the October 1, 1991, 732 letter and the required program amendments codified at 30 CFR 948.16(jjj), (kkk), and (lll).

In its December 20, 2000, letter, at item 4., the WVDEP stated that the State has submitted in a letter to OSM dated April 27, 1997, a program amendment implementing the Energy Policy Act of 1992. On February 9, 1999 (64 FR 6201) we published our final rule notice in the **Federal Register** concerning that amendment. On February 28, 2000 (65 FR 10388), we published a correction notice in the **Federal Register** concerning the February 9, 1999, notice. Since the WVDEP has not submitted any additional information in the December 20, 2000, letter concerning implementation of the Energy Policy Act of 1992, item 4. will not be a part of this rulemaking.

In its December 20, 2000, letter, at item 5. (inadvertently identified as item 6.), the WVDEP stated that OSM is in the process of revising its ownership and control regulations in response to a court decision. The WVDEP further stated that OSM has indicated that it will reissue a 732 letter concerning ownership and control in January 2001. Consequently, the WVDEP has not provided any other response to the 732 letter dated December 24, 1996, concerning changes and additions to existing ownership and control rules at 30 CFR parts 701, 773, 778, 840, and 843. Therefore, item 5. will not be addressed in this rulemaking. On December 19, 2000, OSM published its revised regulations concerning ownership and control in the **Federal Register** (65 FR 79582). In the near future, OSM will provide the WVDEP with a 732 letter detailing the changes

that need to be made to the State program as a consequence of the new Federal provisions.

In its December 20, 2000, letter, the State's responses at item 6.F., 6.G., 6.H., and 6.I. indicate that the WVDEP will submit draft proposed language to the State legislature for consideration for rulemaking during its 2002 session. The WVDEP intends that the draft proposed language would satisfy specific issues identified in the 732 letters. When the State legislature approves new rules that are intended to satisfy specific 732 issues, and those rules are submitted to OSM for review and approval, we will announce the proposed rules in a future proposed rule notice published in the **Federal Register**. At that time we will invite public comment on whether those rules satisfy the relevant 732 letters.

In the December 20, 2000, letter, at item 6.J., concerning bond release requirements, the WVDEP stated that it will revise the bond release application to include a written, notarized statement by the permittee that all applicable reclamation requirements specified in the permit have been completed. Since the WVDEP has not submitted specific program changes in its December 20, 2000, letter concerning this issue, item 6.J. will not be part of this rulemaking.

In the December 20, 2000, letter, item 7., concerning staffing level supporting the approved program, the WVDEP stated that the State has previously submitted a staffing plan and schedule to OSM. Since the WVDEP has not submitted specific program changes in its December 20, 2000, letter concerning this issue, item 7. will not be part of this rulemaking.

You will find West Virginia's program amendment presented below. In each item, the State first identifies the 732 letter and the issue, followed by its response to the issue.

1. 732 letter dated March 6, 1990—30 CFR 816.116(b)(3)(i)—Federal rules have been revised to require that minimum stocking and planting arrangements for areas developed for fish and wildlife habitat, recreation, shelterbelts or forest products be specified by the regulatory authority after consultation with and approval by the state agencies responsible for administration of forest and wildlife programs. Consultation and approval may occur as either a program-wide or permit-specific basis.

*State response:* Consultation and approval occurs on a permit-specific basis. In fact, the wildlife plans are prepared by a biologist from the Division of Natural Resources.

2. 732 letter dated July 22, 1997.

2.A. 30 CFR 701.5 “other treatment facilities”.

*State response:* The state does not need this term. There is a definition for “sediment control or other water retention structure, sediment control or other water retention system or sediment or sediment pond” at [CSR] 38–2–2.110 and “chemical treatment” at [CSR] 38–2–2.21.

2.B. 30 CFR 701.5 “previously mined area”.

*State response:* The state does not need the definition of “previously mined area.” The term is used in the state’s regulations in conjunction with re-mining operations. Furthermore, the federal definition of “previously mined area” and “re-mining” contradicts the definition of “lands eligible for re-mining”.

2.C. 30 CFR 701.5 “siltation structure”.

*State response:* The state does not need the definition of “siltation structure”. This term is defined in the federal rule as “a sedimentation pond” and corresponds to the state’s definition found at [CSR] 38–2–2.110.

2.D. 30 CFR 761.5 “significant recreational, timber, economic, other values incompatible with surface coal mining operations” as it relates to federal lands.

*State response:* The state does not need to define this term since [30 CFR] 740.4 states that this determination is the responsibility of the secretary. Furthermore, there is nothing in state or federal regulation that would restrict the secretary from using [30 CFR] 761.5 in his determination.

2.E. 30 CFR 780.25—Revise the state program to add specific references to NRCS Technical Release No. 60 criteria for dam classification.

*State response:* Since the state references its Dam Control Act (which contains a dam classification similar to TR–60), it does not need to reference the NRCS criteria.

2.F. 30 CFR 816.49—Performance standards were revised for impoundments to impoundments by referencing NRCS TR–60 and require impoundments meeting Class B or C criteria to comply with the same stability, spillway, foundation, etc. as impoundments meeting MSHA criteria in 30 CFR 77.216(a).

*State response:* Since the state references its Dam Control Act, its requirements contain similar standards to those contained in 30 CFR 816.49.

2.G. 30 CFR 816.81(a)— \* \* \* Coal mine waste shall be hauled or conveyed and placed for final placement in a controlled manner to \* \* \*.

*State response:* The state does not need to revise its rules at [CSR] 38–2–22.5 since the state’s rules at [CSR] 38–2–22.3.p. has procedures for the spreading and compaction of refuse material for final placement. It states “the material shall be compacted in layers not exceeding two feet in thickness \* \* \*”. This is similar to 30 CFR 77.215(h).

2.H. 30 CFR 816.104(a)—“Thin Overburden” definition. 30 CFR 816.105(a)—“Thick Overburden” definition.

*State response:* The state does not need to amend its rule. The statute at [W.Va. Code] 22–3–13(b)(3) defines “think” [sic; thin] and “thick” overburden and has similar language to that contained in 30 CFR 816.104(a) and 30 CFR 816.105(a).

30 CFR 840.11(g)(4)–30 CFR 840.11(h)—Inspection frequencies at abandoned sites.

*State response:* The state has existing process that addresses whether and to what extent a forfeited site poses or may reasonably be expected to pose imminent danger to the health and safety of the public or significant harm to land and water resources. This process has not been codified.

3. 732 letter dated August 22, 2000—Subsidence due to underground mining is not a surface coal mining operation and it is not prohibited in areas protected under section 552(e) of the Surface Mining Control and Reclamation Act.

*State response:* The state does not need to amend its rule. Section [W.Va. Code] 22–3–22(d) applies to surface mining operations rather than to underground activities.

4. 732 letter dated August 22, 2000—Valid Existing Rights.

*State response:* The state does not need to amend its rule since the existing rule is as effective as its federal counterpart.

### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments, 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 West Virginia program.

#### Written Comments

If you submit written or electronic comments on the proposed amendment during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able

to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

#### Electronic Comments

Please submit Internet comments as an ASCII, Word Perfect, or Word file avoiding the use of special characters and any form of encryption. Please also include “Attn: SPATS NO. WV–089–FOR” and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field office at (304) 347–7158.

#### Availability of Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review during our regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent’s identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

#### Public Hearing

If you wish to speak at the public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. (local time), on January 29, 2001. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been 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 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**.

#### *Public Meeting*

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with OSM representatives to discuss the proposed amendment, you 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.

#### **IV. Procedural Determinations**

##### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

##### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

##### *Executive Order 13132—Federalism*

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

##### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 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 503 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*

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

##### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the Office of Management and Budget 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 counterpart 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 counterpart federal regulation.

##### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

##### *Unfunded Mandates*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

##### **List of Subjects in 30 CFR Part 948**

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 5, 2001.

**Michael K. Robinson,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 01-1059 Filed 1-11-01; 8:45 am]

**BILLING CODE 4310-05-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 2**

[FRL-6933-1]

#### **Public Information and Confidentiality: Rescheduling of a Previously-Announced Public Meeting**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is rescheduling the public meeting on its advance notice of proposed rulemaking (ANPRM) and potential revision of the confidential business information (CBI) regulations scheduled for January 18, 2001, as advertised in the December 21, 2000 **Federal Register** (65 FR 80394).

**DATES:** This meeting has been rescheduled for Wednesday, March 7, 2001 from 9 a.m. to 4:30 p.m. in the EPA Auditorium, 401 M Street, SW., Washington, DC. The meeting has been rescheduled based on requests from the public to allow additional time for stakeholder participation and to avoid