

3(b)(2) of Executive Order 12988 Civil Justice Reform.

#### *Executive Order 13132*

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

#### *Paperwork Reduction Act*

This rulemaking imposes no recordkeeping or reporting requirements on registrants. No information collection request is necessary.

#### *Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### *Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### *Plain Language Instructions*

The DEA makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307-7297.

#### **List of Subjects in 21 CFR Part 1310**

Drug traffic control, List I and List II chemicals, reporting requirements.

For the reasons set out above, 21 CFR part 1310 is proposed to be amended to read as follows:

#### **PART 1310—[AMENDED]**

1. The authority citation for part 1310 continues to read as follows:

**Authority:** 21 U.S.C. 802, 830, 871(b).

2. Section 1310.04(g)(1) is proposed to be amended by adding a new paragraph to read as follows:

##### **§ 1310.04 Maintenance of records.**

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(ii) Gamma-Butyrolactone (Other names include: GBL; Dihydro-2(3H)-furanone; 1,2-Butanolide; 1,4-Butanolide; 4-Hydroxybutanoic acid lactone; gamma-hydroxybutyric acid lactone)

\* \* \* \* \*

3. Section 1310.08 is proposed to be amended by adding a new paragraph (j) to read as follows:

##### **§ 1310.08 Excluded transactions.**

\* \* \* \* \*

(j) Domestic, import, and export distributions of gamma-butyrolactone weighing 16,000 kilograms (net weight) or more in a single container.

Dated: October 16, 2001.

**Asa Hutchinson,**

*Administrator.*

[FR Doc. 01-26741 Filed 10-23-01; 8:45 am]

**BILLING CODE 4410-09-M**

#### **DEPARTMENT OF THE INTERIOR**

#### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 948**

**[WV-093-FOR]**

#### **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:** The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the West Virginia surface mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the Code of West Virginia (W. Va. Code) as contained in Enrolled Senate Bill 5003. The amendment provides for the creation of a special reclamation fund advisory council, and additional revenues for the West Virginia special

reclamation fund by increasing the special reclamation tax. The amendment is intended to improve the effectiveness of the West Virginia program and to revise the program to be consistent with SMCRA and the Federal regulations.

This document gives the times and locations that the West Virginia program and proposed amendment 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 until 4:30 p.m. (local time), on November 23, 2001. If requested, we will hold a public hearing or meeting on the amendment on November 19, 2001. We will accept requests to speak at the hearing until 4:30 p.m. (local time), on November 8, 2001.

**ADDRESSES:** You may mail or hand-deliver 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 amendment, a listing of any scheduled public 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 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 Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759-0510. The proposed amendment will be posted at the Department's Internet page: <http://www.dep.state.wv.us>.

In addition, you may review copies of the 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. (By Appointment Only)

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
- II. Description of the Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

#### 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, “\* \* \* a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act \* \* \* and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.” 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 5915-5956). 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

By letter dated September 17, 2001 (Administrative Record Number WV-1237), the West Virginia Department of Environmental Protection (WVDEP) notified OSM of proposed legislation that was approved during a special session of the West Virginia Legislature. By letter dated September 24, 2001 (Administrative Record Number WV-1238), the WVDEP sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment was submitted in response to OSM’s 30 CFR part 733 notification of June 29, 2001 (Administrative Record Number WV-1218). It is also intended to improve the effectiveness of the West Virginia program and to address required program amendments at 30 CFR 948.16(jjj), (kkk), and (lll).

While the proposed program amendment consists of Enrolled Senate Bill 5003, which was signed by the Governor on October 4, 2001, we are making available for public review and comment Engrossed Senate Bill 5003.

Engrossed Senate Bill 5003 is identical to Enrolled Senate Bill 5003 except that the former clearly shows, via underline and strikethrough, all the statutory language that has been added or deleted from the W.Va. Code as a result of Senate Bill 5003.

The program amendment adds new W. Va. Code section 22-1-17 concerning the establishment of the special reclamation fund advisory council. The amendment also revises the provisions of W. Va. Code sections 22-3-11 concerning the special reclamation tax, and section 22-3-12 concerning site-specific bonding. You will find the full amended language of West Virginia’s program amendment quoted below.

##### 1. W. Va. Code 22-1-17 *Special Reclamation Fund Advisory Council*

This provision is new, and provides for the creation of a special reclamation fund advisory council. The new language is quoted below.

##### Article 1. Division of Environmental Protection

##### 22-1-17. Special reclamation fund advisory council.

(a) There is hereby created within the department of environmental protection a special reclamation fund advisory council. The council’s purpose is to ensure the effective, efficient and financially stable operation of the special reclamation fund. The special reclamation advisory council shall consist of eight members, including the secretary of the department of environmental protection, or his or her designee, the treasurer of the state of West Virginia, or his or her designee, the director of the national mine land reclamation center at West Virginia university and five members to be appointed by the governor with the advice and consent of the Senate.

(b) Each appointed member of the council shall be selected based on his or her ability to serve on the council and effectuate its purposes. The governor shall appoint, from a list of three names submitted by the major trade association representing the coal industry regulated under article three of this chapter, a member to represent the interests of the industry. The governor shall appoint, from a list of three names submitted by organizations advocating environmental protection, one member to represent the interest of environmental protection organizations. The governor shall appoint, from a list of four names submitted by the coal mining industry and the organizations advocating environmental protection, one member who, by training and profession, is an actuary or an economist. The governor shall appoint, from a list of three names submitted by the united mine workers of America, one member to represent the interest of coal miners. The governor shall appoint a member to represent the interests of the general public.

(c) The terms of all members shall begin on the first day of July, two thousand two. The

secretary shall be an ex officio, nonvoting member and serve as chairperson of the council. The terms of the governor’s appointees shall be for six years. Appointees may be reappointed to serve on the council. The terms of the appointed members first taking office are to be expired as designated by the governor at the time of the nomination, two at the end of the second year, two at the end of the fourth year and one at the end of the sixth year. As the original appointments expire, each subsequent appointment will be for a full six-year term. Any appointed member whose term has expired shall serve until a successor has been duly appointed and qualified. Any person appointed to fill a vacancy is to serve only for the unexpired term.

(d) Appointed members of the council shall be paid the same compensation and expense reimbursement as is provided for members of the Legislature pursuant to sections six and eight, article two-a, chapter four of this code. Council members who are state employees or officials shall be reimbursed for expenses in accordance with the applicable agency’s policy.

(e) The council shall meet at the call of the chairperson or his or her designee, but not less than once every six months. The secretary shall provide funds for necessary administrative and technical services for the council from the special reclamation fund.

(f) The council shall, at a minimum:

(1) Study the effectiveness, efficiency and financial stability of the special reclamation fund with an emphasis on development of a financial process that ensures long-term stability of the special reclamation program;

(2) Identify and define problems associated with the special reclamation fund, including, but not limited to, the enforcement of federal and state law, regulation and rules pertaining to contemporaneous reclamation;

(3) Evaluate bond forfeiture collection, reclamation efforts at bond forfeiture sites and compliance with approved reclamation plans as well as any modifications;

(4) Provide a forum for a full and fair discussion of issues relating to the special reclamation fund;

(5) Contract with a qualified actuary who shall make a determination as to the special reclamation fund’s fiscal soundness. This determination shall be completed on the thirty-first day of December, two thousand four, and every four years thereafter. The review is to include an evaluation of the present and prospective assets and liabilities of the special reclamation fund; and

(6) Study and recommend to the Legislature alternative approaches to the current funding scheme of the special reclamation fund, considering revisions which will assure future proper reclamation of all mine sites and continued financial viability of the state’s coal industry.

(g) On or before the first day of January, two thousand three, and every year thereafter, the council shall submit to the Legislature and the governor a report on the adequacy of the special reclamation tax and the fiscal condition of the special reclamation fund. The report shall, at a minimum, contain:

(1) A recommendation as to whether or not any adjustments to the special reclamation

tax should be made considering the cost, timeliness and adequacy of bond forfeiture reclamation, including water treatment;

(2) A discussion of the council's required study issues as set forth in subsection (f) of this section; and

(3) The availability of federal abandoned mine lands funds for West Virginia reclamation projects.

## 2. W. Va. Code 22-3-11 Bonds

Subsection 22-3-11(a) is amended to provide that the penal amount of the bond shall be not less than one thousand dollars nor more than five thousand dollars for each acre or fraction thereof. The existing requirement that the minimum amount of bond furnished for any type of reclamation bonding is ten thousand dollars is relocated within this subsection.

Subsection 22-3-11(g) is amended by adding a reference to section 22-1-17. As amended, the moneys accrued in the special reclamation fund are reserved only for the purposes set forth in sections 22-3-11 and 22-1-17. Language is added which provides that moneys in the special reclamation fund may be spent to reclaim abandoned lands where the amount of bond posted and forfeited is less than the actual cost of reclamation, "and where the land is not eligible for abandoned mine land reclamation funds under article two of this chapter." Language is deleted that limits expenditures from the special reclamation fund for the purpose of designing, constructing and maintaining water treatment systems when they are required for a complete reclamation of the affected lands to 25 percent of the fees collected. This revision is intended to satisfy the required amendment at 30 CFR 948.16(jjj). As amended, the provision provides that the secretary may use the special reclamation fund for the purpose of designing, constructing and maintaining water treatment systems where they are required for a complete reclamation of the affected lands. Also, the words "articles two and four of this chapter" are deleted from the sentence which identifies the administrative provisions for which up to 10 percent of the special reclamation funds may be spent.

Subsection 22-3-11(h) is amended by adding language that provides for a new per-ton special reclamation tax on surface coal mining operations.

Subsections 22-3-11(i) and (j) are amended by adding references to the special reclamation tax.

Subsection 22-3-11(k) is amended by adding a reference to the special "reclamation" tax and by deleting the

last sentence which provided that the special reclamation tax "shall be collected whenever the liabilities of the state established in this subsection exceed the accrued amount in the fund." This revision is intended to satisfy the required amendment at 30 CFR 948.16 (kkk).

New subsection 22-3-11(n) is added to provide that the amendments to section 22-3-11 will become effective upon the approval by OSM.

The amended section 22-3-11 is quoted below.

### Article 3. Surface Coal Mining and Reclamation Act

22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of bond liability.

(a) After a surface mining permit application has been approved pursuant to this article, but before a permit has been issued, each operator shall furnish a penal bond, on a form to be prescribed and furnished by the secretary, payable to the state of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article and of the permit. The penal amount of the bond shall be not less than one thousand dollars nor more than five thousand dollars for each acre or fraction thereof: Provided, That the minimum amount of bond furnished for any type of reclamation bonding shall be ten thousand dollars. The bond shall cover: (1) The entire permit area; or (2) that increment of land within the permit area upon which the operator will initiate and conduct surface mining and reclamation operations within the initial term of the permit. If the operator chooses to use incremental bonding, as succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the secretary an additional bond or bonds to cover the increments in accordance with this section: Provided, however, That once the operator has chosen to proceed with bonding either the entire permit area or with incremental bonding, the operator shall continue bonding in that manner for the term of the permit.

(b) The period of liability for bond coverage begins with issuance of a permit and continues for the full term of the permit plus any additional period necessary to achieve compliance with the requirements in the reclamation plan of the permit.

(c) (1) The form of the bond shall be approved by the secretary and may include, at the option of the operator, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, self-bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank or of the homeowners' loan corporation; full faith and credit general obligation bonds of the state of West Virginia, or other states, and of any county, district or municipality of the state

of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the department. The cash deposit or market value of such securities or certificates shall be equal to or greater than the penal sum of the bond. The secretary shall, upon receipt of any deposit of cash, securities or certificates, promptly place the same with the treasurer of the state of West Virginia whose duty it is to receive and hold the same in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The operator making the deposit is entitled, from time to time, to receive from the state treasurer, upon the written approval of the secretary, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him or her in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond.

(2) The secretary may approve an alternative bonding system if it will: (1) Reasonably assure that sufficient funds will be available to complete the reclamation, restoration and abatement provisions for all permit areas which may be in default at any time; and (2) provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

(d) The secretary may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the secretary the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure.

(e) It is unlawful for the owner of surface or mineral rights to interfere with the present operator in the discharge of the operator's obligations to the state for the reclamation of lands disturbed by the operator.

(f) All bond releases shall be accomplished in accordance with the provisions of section twenty-three of this article.

(g) The special reclamation fund previously created is continued. The moneys accrued in the fund, including interest, are reserved solely and exclusively for the purposes set forth in this section and section seventeen, article one of this chapter. The fund shall be administered by the secretary who is authorized to expend the moneys in the fund for the reclamation and rehabilitation of lands which were subjected to permitted surface mining operations and abandoned after the third day of August, one thousand nine hundred seventy-seven, where the amount of the bond posted and forfeited on the land is less than the actual cost of reclamation, and where the land is not eligible for abandoned mine land reclamation funds under article two of this chapter. The secretary shall develop a long-range planning process for selection and prioritization of sites to be reclaimed so as to avoid inordinate short-term obligations of the assets in the fund of such magnitude that the solvency of the fund is jeopardized. The secretary may use the special reclamation fund for the purpose of designing, constructing and maintaining water treatment systems when they are required for a complete reclamation

of the affected lands described in this subsection. The secretary may also expend an amount not to exceed ten percent of the total annual assets in the fund to implement and administer the provisions of this article and, as they apply to the surface mine board, articles one and four, chapter twenty-two-b of this code.

(h) Prior to the first day of January, two thousand two, every person conducting coal surface mining operations shall contribute into the fund a sum equal to three cents per ton of clean coal mined. For tax periods commencing on and after the first day of January, two thousand two, every person conducting coal surface mining shall contribute into the fund as follows: (1) For a period not to exceed thirty-nine months, seven cents per ton of clean coal mined; and (2) an additional seven cents per ton of clean coal mined. The tax shall be levied upon each ton of clean coal severed or clean coal obtained from refuse pile and slurry pond recovery or clean coal from other mining methods extracting a combination of coal and waste material as part of a fuel supply on or after the first day of January, two thousand two. The additional seven-cent tax shall be reviewed and, if necessary, adjusted annually by the Legislature upon recommendation of the council pursuant to the provisions of section seventeen, article one of this chapter: Provided, That the tax may not be reduced until the special reclamation fund has sufficient moneys to meet the reclamation responsibilities of the state established in this section.

(i) This special reclamation tax shall be collected by the state tax commissioner in the same manner, at the same time and upon the same tonnage as the minimum severance tax imposed by article twelve-b, chapter eleven of this code is collected: Provided, That under no circumstance shall the special reclamation tax be construed to be an increase in either the minimum severance tax imposed by said article or the severance tax imposed by article thirteen of said chapter.

(j) Every person liable for payment of the special reclamation tax shall pay the amount due without notice or demand for payment.

(k) The tax commissioner shall provide to the secretary a quarterly listing of all persons known to be delinquent in payment of the special reclamation tax. The secretary may take the delinquencies into account in making determinations on the issuance, renewal or revision of any permit.

(l) The tax commissioner shall deposit the fees collected with the treasurer of the state of West Virginia to the credit of the special reclamation fund. The moneys in the fund shall be placed by the treasurer in an interest-bearing account with the interest being returned to the fund on an annual basis.

(m) At the beginning of each quarter, the secretary shall advise the state tax commissioner and the governor of the assets, excluding payments, expenditures and liabilities, in the fund.

(n) To the extent that this section modifies any powers, duties, functions and responsibilities of the department that may require approval of one or more federal agencies or officials in order to avoid disruption of the federal-state relationship

involved in the implementation of the federal Surface Mining Control and Reclamation Act, 30 U.S.C. 1270 by the state, the modifications will become effective upon the approval of the modifications by the appropriate federal agency or official.

### 3. Section 22-3-12 Site-Specific Bonding

Subsection 22-3-12(b) is deleted in its entirety, and the remaining subsections relettered.

Various clarifying word changes have been made to subsections 22-3-12(b) through (d) (formerly (c) through (e)).

Subsection 22-3-12(f) has been deleted in its entirety.

The amended section 22-3-12 is quoted below.

22-3-12. Site-specific bonding; legislative rule; contents of legislative rule; legislative intent.

(a) Notwithstanding the provisions of section eleven of this article, the secretary may establish and implement a site-specific bonding system in accordance with the provisions of this section.

(b) A legislative rule proposed or promulgated pursuant to this section must provide, at a minimum, for the following:

(1) The penal amount of a bond shall be not less than one thousand dollars nor more than five thousand dollars per acre or fraction thereof.

(2) Every bond, subject to the limitations of subdivision (1) of this subsection, shall reflect the relative potential cost of reclamation associated with the activities proposed to be permitted, which would not otherwise be reflected by bonds calculated by merely applying a specific dollar amount per acre for the permit.

(3) Every bond, subject to the provisions of subdivision (1) of this subsection, shall also reflect an analysis under the legislative rule of various factors, as applicable, which affect the cost of reclamation, including, but not limited to: (A) The general category of mining, whether surface or underground; (B) mining techniques and methods proposed to be utilized; (C) support facilities, fixtures, improvements and equipment; (D) topography and geology; and (E) the potential for degrading or improving water quality.

(c) A legislative rule proposed or promulgated pursuant to the provisions of this section may, in addition to the requirements of subsection (b) of this section, provide for a consideration of other factors determined to be relevant by the secretary. For example, the rule may provide for the following:

(1) A consideration as to whether the bond relates to a new permit application, a renewal of an existing permit, an application for an incidental boundary revision or the reactivation of an inactive permit;

(2) A consideration of factors which may result in environmental enhancement, as in a case where reining may improve water quality or reduce or eliminate existing highwalls, or a permitted operation may create or improve wetlands; or

(3) An analysis of various factors related to the specific permit applicant, including, but

not limited to: (A) The prior mining experience of the applicant with the activities sought to be permitted; and (B) the history of the applicant as it relates to prior compliance with statutory and regulatory requirements designed to protect, maintain or enhance the environment in this or any other state.

(d) It is the intent of the Legislature that a legislative rule proposed or promulgated pursuant to the provisions of this section shall be constructed so that when the findings of fact by the division [Sic] of environmental protection with respect to the proposed mining activity and the particular permit applicant coincide with the particular factors or criteria to be considered and analyzed under the rule, the rule will direct a conclusion as to the amount of the bond to be required, subject to rebuttal and refutation of the findings by the applicant. To the extent practicable, the rule shall limit subjectivity and discretion by the secretary and the division [Sic] in fixing the amount of the bond.

### III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments, on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the West Virginia program.

#### Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendation(s). In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Charleston Field Office.

#### Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. WV-093-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

We will make comments, including names and addresses of respondents, available for public review during our normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law.

Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comment. 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, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:30 p.m. (local time), on November 8, 2001. 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 the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a 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.

If you are disabled and need special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### *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 the meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

### **IV. Procedural Determinations**

#### *Executive Order 12630—Takings*

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

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

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

#### *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 allowable 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 because 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 the Federal regulations at 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.

#### *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. Section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

#### *Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not

expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

#### *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 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 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, geographic regions or Federal, State, or local government agencies; and (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: October 4, 2001.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 01-26770 Filed 10-23-01; 8:45 am]

**BILLING CODE 4310-05-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Coast Guard**

#### **33 CFR Part 173**

[USCG-1999-6094]

RIN 2115-AF87

#### **Raising the Threshold of Property Damage for Reports of Accidents Involving Recreational Vessels**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of reopening of comment period.

**SUMMARY:** The Coast Guard is reopening the period for public comment on a partial suspension of rule with request for comments published on June 26, 2001. The chairman of a subcommittee of the National Association of State Boating Law Administrators (NASBLA) asked that we reopen the comment period so his subcommittee could discuss the rule at their meeting in October 2001 and submit a comment to the docket. We are reopening the period for 30 days so the subcommittee and other interested persons can submit comments.

**DATES:** Comments must reach the docket on or before November 23, 2001.

**ADDRESSES:** Identify your comments and related material by the docket number for this rulemaking [USCG-1999-6094]. To make sure they do not enter the docket more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

(2) By hand-delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Internet site for the Docket Management System at <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, at the address listed above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>. You may obtain a copy of this partial suspension of final rule by calling the Infoline of the U.S. Coast Guard at 1-800-368-5647, or read it on the Internet, at the Web site for the Office of Boating Safety, at <http://www.uscgboating.org> or at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** For questions on this notice, contact Bruce Schmidt, Project Manager, Office of Boating Safety, U.S. Coast Guard, by telephone at 202-267-0955 or by e-mail at [bschmidt@comdt.uscg.mil](mailto:bschmidt@comdt.uscg.mil). For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-5149.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory History**

The early regulatory history for this rulemaking appears in the preamble of the final rule entitled "Raising the Threshold of Property Damage for Reports of Accidents Involving Recreational Vessels" [66 FR 21671 (May 1, 2001)].

##### **Reason for Partial Suspension of Effective Date**

After we issued the final rule on May 1, 2001, a State boating-law administrator expressed concern about a provision in the rule requiring reports of all collisions involving two or more vessels resulting exclusively in damage to property, regardless of the amount of such damage.

Currently, few States have statutory authority to require reports of multi-

vessel accidents that result neither in personal injury nor in any damage to property. Further, States' legislative calendars precluded compliance by the published effective date, July 2, 2001. We note that States' legislation would be unnecessary if our provision for reporting collisions of two or more vessels included a threshold of \$500, since all States do now maintain such a threshold. Because of the concern raised about the impact of our provision on States' legislation, the Coast Guard delayed implementation of that provision, in 33 CFR 173.55(a)(3), requiring a report whenever "\* \* \* a collision occurs involving two or more vessels, regardless of the amount of damage to property; \* \* \*", and provided a 90-day comment period on the provision.

##### **Reason for Reopening the Comment Period**

In response to the notice of partial suspension of effective date, we received 28 comments, including a request from the Chairman of the Boating Accident Investigation Reporting and Analysis Committee (BAIRAC) of NASBLA to extend the comment period beyond the meeting of BAIRAC in October 2001. We are reopening the comment period until November 23, 2001 to let BAIRAC discuss the suspended provision at that meeting and submit a comment to the docket. We are also reopening it to anyone else who would like to submit a comment, but please do not re-submit comments already in the docket.

##### **Request for Comments**

We encourage you to participate in this rulemaking by submitting your comments to the Docket Management Facility as specified in **ADDRESSES**. Please submit comments and materials related only to the provision in 33 CFR 173.55(a)(3), requiring a report whenever "\* \* \* a collision occurs involving two or more vessels, regardless of the amount of damage to property; \* \* \*". We will consider comments received during this reopened comment period and may change 33 CFR 173.55(a)(3) in response to the comments.

Dated: October 18, 2001.

**Kenneth T. Venuto,**

*Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Operations.*

[FR Doc. 01-26814 Filed 10-23-01; 8:45 am]

**BILLING CODE 4910-15-U**