

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 948**

[WV-094-FOR]

West Virginia Regulatory Program**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.**ACTION:** Proposed rule; opening of public comment period and opportunity for public hearing on an amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM) are announcing the opening of a public comment period and an opportunity for public hearing or meeting on the effectiveness of a recently approved 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) to satisfy the Federal requirements regarding an alternative bonding system (ABS). We announced approval of an amendment to the West Virginia program concerning the State's ABS in a final rule document that appears elsewhere in this **Federal Register** issue. The amendment consisted of changes to the Code of West Virginia (W. Va. Code) as contained in Enrolled Senate Bill 5003, and: established the Special Reclamation Fund Advisory Council; increased the special reclamation tax rate to provide additional revenue for the reclamation of bond forfeiture sites; and deleted language that limited expenditures from the State's ABS for water treatment.

We are opening this comment period to provide all interested parties additional time to review the relevant materials and to submit comments on whether the State amendment, as submitted on September 24, 2001, and approved by OSM elsewhere in this **Federal Register** issue fully resolves all ABS deficiencies and satisfies the required program amendment codified at 30 CFR 948.16(l)(l). That requirement provides that the State must eliminate the deficit in its ABS and ensure that sufficient money will be available in the future to complete reclamation, including the treatment of polluted water, at all existing and future bond forfeiture sites. We are seeking comment on whether the State's amendment provides a permanent, long-term solution to the State's ABS problems.

Comments previously submitted in response to our October 24, 2001 (66 FR 53749), **Federal Register** notice on the

State's amendment need not be resubmitted.

This document gives the times and locations that the State's amendment and other relevant documents are available for your inspection, the comment period during which you may submit written comments on whether the amendment fully satisfies all outstanding requirements concerning West Virginia's ABS, and the procedures that we will follow for the public hearing or meeting, if one is requested.

DATES: We will accept written comments until 4:30 p.m. (local time), on March 28, 2002. If requested, we will hold a public hearing or meeting on the amendment on March 25, 2002. We will accept requests to speak at the hearing until 4:30 p.m. (local time), on March 18, 2002.

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 recently approved amendment, a listing of any scheduled public hearings, and all written comments received in response to both this document and the recently approved amendment at the addresses below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the State's amendment, our **Federal Register** notice approving the amendment, our Financial Analysis on the amendment, and comments submitted in response to the State's 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.

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759-0510. The approved amendment is posted at the Division of Mining and Reclamation's Internet Web page: <http://www.dep.state.wv.us/mr>.

In addition, you may review copies of the approved amendment, our **Federal Register** notice approving the amendment, our Financial Analysis on the amendment, and comments submitted in response to the State's 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, 313 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. Background on West Virginia's Alternative Bonding System
- III. Description of the Issues Being Considered
- IV. Public Comment Procedures
- V. 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). 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. Background on West Virginia's Alternative Bonding System (ABS)

You can find background information on West Virginia's ABS in Section II of the final rule document that appears elsewhere in this **Federal Register** issue.

III. Description of the Amendment and Issues Being Considered

By letter dated September 24, 2001 (Administrative Record Number WV-1238), the WVDEP sent us a proposed amendment to its program under SMCRA. The amendment was submitted in response to our 30 CFR part 733

notification of June 29, 2001 (Administrative Record Number WV-1218). The program amendment added new W. Va. Code section 22-1-17 which established the Special Reclamation Fund Advisory Council (Advisory Council). The amendment also revised the provisions of W. Va. Code sections 22-3-11 by increasing the special reclamation tax rate from 3 cents to 14 cents per ton of clean coal mined for 39 months and reducing it to 7 cents thereafter, and modified section 22-3-12 by deleting certain site-specific bonding provisions.

We announced receipt of the amendment on October 24, 2001 (66 FR 53749), and we approved the amendment in the final rule document that appears elsewhere in this **Federal Register** issue.

Why We Are Asking For Your Comments Now

In our approval of the State's amendment elsewhere in this **Federal Register** issue, we announced that we were deferring our decision on the broader question of whether the amendment fully satisfies the requirement at 30 CFR 948.16(III), concerning the adequacy of the State's ABS. We need the additional time to fully evaluate the long-term solvency of the State's ABS. This is a complex issue requiring not only a review of known reclamation costs at existing bond forfeiture sites, but also a projection of future reclamation costs associated with perpetual water treatment and additional forfeitures. It also requires an evaluation of ABS revenue estimates, given the increased special reclamation tax rate, and of whether the new rate is sufficient to meet existing and future bond forfeiture reclamation demands.

As provided by State law, the Advisory Council is required to study and recommend to the Legislature alternative approaches to the current funding scheme of the ABS. In addition, the Advisory Council must study the effectiveness, efficiency and financial stability of the ABS with an emphasis on the development of a financial system that ensures the long-term stability of the State's special reclamation program. We are interested in receiving public comments on whether the State's current ABS, with its reliance on a coal production tax and a monitoring board, will fully satisfy the Federal requirement at 30 CFR 948.16(III), which provides that the State must eliminate the deficit in its ABS and ensure that sufficient money will be available in the future to complete reclamation, including the

treatment of polluted water, at all existing and future bond forfeiture sites.

Other related issues that must be considered and for which we are seeking public comment include, but are not limited to: accuracy of bond forfeiture rates; accuracy of land reclamation and water treatment cost estimates; accuracy of State and Federal bond forfeiture acid mine drainage (AMD) inventories; accuracy of coal production projections; compliance with reclamation plans; timeliness of bond forfeiture reclamation and bond forfeiture collections; adequacy of the increased special reclamation tax rate; and adequacy and effectiveness of bond forfeiture reclamation.

Additional time is also needed by all interested parties, including OSM, to complete a comprehensive review of all documents that have been generated as a result of this amendment and submitted in response to our earlier request for public comments. These comments, together with any additional comments that we may receive in response to this notice, will help us determine if the State's ABS amendment fully satisfies the outstanding required amendment at 30 CFR 948.16(III), or if additional measures are needed by the State to ensure consistency with Federal ABS requirements.

IV. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the State's September 24, 2001, amendment that we have approved and appears elsewhere in this **Federal Register** issue renders the West Virginia ABS sufficient and fully satisfies the requirements of 30 CFR 948.16(III). We are interested in receiving additional comments on those bonding related issues identified above in Section III to assist us in determining whether or not the State's amendment fully satisfies the outstanding required amendment at 30 CFR 948.16(III). Comments previously submitted in response to our October 24, 2001 (66 FR 53749), **Federal Register** notice on the State's amendment need not be resubmitted.

Written Comments

Send your written 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.

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 names or address from public review, except for the city or town, must state this prominently at the beginning of their 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, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:30 p.m. (local time), on March 18, 2002. 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.

V. 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 exempt 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: December 13, 2001.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

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