

■ 2. Section 772.1 is amended by revising paragraph (e) of the Technical Notes to the definition of "payload", as set forth below:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

\* \* \* \* \*
"Payload". (MTCR context).

- e. Other UAVs—"Payload" includes:
1. Munitions of any type (e.g., explosive or non-explosive);
2. Mechanisms and devices for safing, arming, fuzing or firing;
3. Countermeasures equipment (e.g., decoys, jammers or chaff dispensers) that can be removed without violating the structural integrity of the vehicle;
4. Signature alteration equipment that can be removed without violating the structural integrity of the vehicle;
5. Equipment required for a mission such as data gathering, recording or transmitting devices for mission-specific data and supporting structures that can be removed without violating the structural integrity of the vehicle;
6. Recovery equipment (e.g., parachutes) that can be removed without violating the structural integrity of the vehicle;
7. Munitions supporting structures and deployment mechanisms that can be removed without violating the structural integrity of the vehicle.

PART 774—[AMENDED]

■ 3. The authority citation for 15 CFR part 774 continues to read as follows:
Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 et seq., 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms" & "Toxins", Export Control Classification Number (ECCN) 1C111 is amended by revising paragraphs (b)(1) and (b)(2) of the "items" paragraph in the List of Items Controlled section, to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

\* \* \* \* \*
1C111 Propellants and constituent chemicals for propellants, other than

those specified in 1C011, as follows (see List of Items Controlled).

List of Items Controlled

Unit: \* \* \*
Related Controls: \* \* \*
Related Definitions: \* \* \*
Items:
\* \* \* \* \*
b. Polymeric substances:
b.1. Carboxy—terminated polybutadiene (including carboxyl—terminated polybutadiene) (CTPB);
b.2. Hydroxy—terminated polybutadiene (including hydroxyl—terminated polybutadiene) (HTPB);
\* \* \* \* \*

■ 5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms" & "Toxins", Export Control Classification Number (ECCN) 1C116 is amended by revising the heading, to read as follows:

1C116 Maraging steels (iron alloys generally characterized by high nickel, very low carbon content and the use of substitutional elements or precipitates to produce strengthening and age-hardening of the alloy) having an ultimate tensile strength equal to or greater than 1.5 GPa, measured at 293 K (20 °C), in the form of sheet, plate or tubing with a wall or plate thickness equal to or less than 5 mm.
\* \* \* \* \*

■ 6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B116 is amended by revising paragraph (a) of the "items" paragraph in the List of Items Controlled section, to read as follows:

2B116 Vibration test systems, equipment and components therefor, as follows (see List of Items Controlled).

\* \* \* \* \*
List of Items Controlled
Unit: \* \* \*
Related Controls: \* \* \*
Related Definitions: \* \* \*
Items:
a. Vibration test systems employing feedback or closed loop techniques and incorporating a digital controller, capable of vibrating a system at an acceleration equal to or greater than 10 g rms between 20 Hz to 2,000 Hz while imparting forces equal to or greater than 50 kN (11,250 lbs.), measured 'bare table';
\* \* \* \* \*

■ 7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9B106 is amended:

■ a. By revising the heading; and

■ b. By revising paragraph (a) and the "Technical Notes" to paragraph (a) of the "items" paragraph in the List of Items Controlled section, to read as follows:

9B106 Environmental chambers usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a "range" equal to or greater than 300 km and their subsystems, as follows (see List of Items Controlled).

\* \* \* \* \*

List of Items Controlled

Unit: \* \* \*
Related Controls: \* \* \*
Related Definitions: \* \* \*
Items:
a. Environmental chambers capable of simulating all of the following flight conditions:
a.1. Having any of the following:
a.1.a. Altitude equal to or greater than 15,000 m; or
a.1.b. Temperature range of at least -50 °C to +125 °C; and
a.2. Incorporating, or designed or modified to incorporate, a shaker unit or other vibration test equipment to produce vibration environments equal to or greater than 10 g rms, measured 'bare table', between 20 Hz and 2 kHz imparting forces equal to or greater than 5 kN;
Technical Notes:
1. Item 9B106.a.2 describes systems that are capable of generating a vibration environment with a single wave (e.g., a sine wave) and systems capable of generating a broad band random vibration (i.e., power spectrum).
2. The term 'bare table' means a flat table, or surface, with no fixture or fittings.
3. In Item 9B106.a.2, designed or modified means the environmental chamber provides appropriate interfaces (e.g., sealing devices) to incorporate a shaker unit or other vibration test equipment as specified in this Item.
\* \* \* \* \*

Dated: June 10, 2008.
Matthew S. Borman,
Acting Assistant Secretary for Export Administration.
[FR Doc. E8-13468 Filed 6-13-08; 8:45 am]
BILLING CODE 3510-33-P

DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948
[WV-114-FOR; OSM-2008-0010]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.
ACTION: Interim rule with request for comments.

**SUMMARY:** We are approving, on an interim basis, an amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia revised its Surface Coal Mining and Reclamation Act to effect changes concerning the special reclamation tax and other issues. The tax provisions of the amendment are intended to increase and extend the special reclamation tax, and create the Special Reclamation Water Trust Fund for the purpose of designing, constructing and maintaining water treatment systems on forfeited sites.

We are approving the reinstatement of the seven cents per ton special reclamation tax, its increase to seven and four-tenths cents per ton, as well as the creation of the Special Reclamation Water Trust Fund, on an interim basis, with our approval becoming effective upon publication of this interim rule.

**DATES:** *Effective Date:* This rule is effective June 16, 2008. *Comment Date:* We will accept written comments until 4 p.m., local time July 16, 2008. If requested, we will hold a public hearing on July 11, 2008. We will accept requests to speak until 4 p.m., local time on July 1, 2008.

**ADDRESSES:** You may submit comments by any of the following two methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. The proposed rule has been assigned Docket ID: OSM–2008–0010. If you would like to submit comments through the Federal eRulemaking Portal, go to <http://www.regulations.gov> and do the following. Click on the “Advanced Docket Search” button on the right side of the screen. Type in the Docket ID OSM–2008–0010 and click the “Submit” button at the bottom of the page. The next screen will display the Docket Search Results for the rulemaking. If you click on OSM–2008–0010, you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.

- *Mail/Hand Delivery:* Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, WV 25301. Please include the rule identifier (WV–114–FOR) with your written comments.

*Instructions:* All submissions received must include the agency Docket ID (OSM–2008–0010) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see “IV.

Public Comment Procedures” in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

*Docket:* The interim rule and any comments that are submitted may be viewed over the Internet at <http://www.regulations.gov>. Look for Docket ID OSM–2008–0010. In addition, you may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSM’s Charleston Field Office listed below.

Mr. Roger W. Calhoun, Director,  
Charleston Field Office, Office of  
Surface Mining Reclamation and  
Enforcement, 1027 Virginia Street,  
East, Charleston, WV 25301,  
Telephone: (304) 347–7158. E-mail:  
[chfo@osmre.gov](mailto:chfo@osmre.gov).

West Virginia Department of  
Environmental Protection, 601 57th  
Street, SE., Charleston, WV 25304,  
Telephone: (304) 926–0490.

In addition, you may review a copy of the amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation  
and Enforcement, Morgantown Area  
Office, 604 Cheat Road, Suite 150,  
Morgantown, West Virginia 26508,  
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. E-mail: [chfo@osmre.gov](mailto:chfo@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the West Virginia Program
- II. Description and Submission of the Amendment
- III. OSM’s Findings
- IV. Public Comment Procedures
- V. OSM’s Decision
- VI. 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. Description and Submission of the Amendment**

By letter dated April 8, 2008, and received electronically on April 17, 2008 (Administrative Record Number WV–1503), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment includes changes to the West Virginia Code of State Regulations (CSR) and West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA) as contained in Committee Substitutes for Senate Bills 373 and 751 concerning a variety of topics including new language regarding technical completeness, sediment control, storm water runoff, blasting, excess spoil fills, bonding programs, special reclamation tax, water quality, seismograph records, and definitions. OSM is publishing, under a separate **Federal Register** notice, the proposed rule and request for comments on changes in the amendment that are not specifically addressed by this action.

Committee Substitute for Senate Bill 751 amended Section 22–3–11 of the WVSCMRA. As stated in the April 8, 2008, letter transmitting the amendment, the revisions contained in Senate Bill 751 related “\* \* \* generally to the special reclamation tax by establishing the Special Reclamation Water Trust Fund; continuing and reimposing a tax on clean coal mined for deposit into both funds; requiring the Secretary to look at alternative programs; and authorizing the Secretary to promulgate legislative rules implementing the alternative programs.”

Specifically, the amended language relating to the special reclamation tax and the Special Reclamation Water Trust Fund reads as follows:

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

(g) The Special Reclamation Fund previously created is continued. The Special Reclamation Water Trust Fund is created within the State Treasury into and from which moneys shall be paid for the purpose of assuring a reliable source of capital to reclaim and restore water treatment systems on forfeited sites. The moneys accrued in both funds, any interest earned thereon and yield from investments by the State Treasurer or West Virginia Investment Management Board are reserved solely and exclusively for the purposes set forth in this section and section seventeen, article one of this chapter. The funds shall be administered by the secretary who is authorized to expend the moneys in both funds 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 both funds of such magnitude that the solvency of either is jeopardized. The secretary may use both funds 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 both funds 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)(1) For tax periods commencing on and after the first day of July, two thousand eight, every person conducting coal surface mining shall remit a special reclamation tax as follows: (A) For the initial period of twelve months, ending the thirtieth day of June, two thousand nine, seven and four-tenths cents per ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund; (B) an additional seven cents per ton of clean coal mined, the proceeds of which shall be deposited in the Special Reclamation Fund. 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. 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 and Special Reclamation Water Trust Fund have sufficient moneys to meet the reclamation responsibilities of the state established in this section.

### III. OSM's Findings

Effective upon publication of this interim rule, we are approving the revisions to section 22-3-11(g) and (h)(1) of the WVSCMRA, which reinstate and increase the Special Reclamation Tax and create the Special Reclamation Water Trust Fund on an interim basis. Since these revisions increase revenues into the State's alternative bonding system and establish a Special Reclamation Water Trust Fund to be used to design, construct and maintain water treatment systems on forfeited sites, we find that they are no less effective than the Federal regulations at 30 CFR 800.11(e). Because our approval of these revisions is interim in nature, and in order to satisfy the public participation requirements for approval or disapproval of State program amendments we will accept comments on the reinstatement of and increase in the Special Reclamation Tax and on the creation of the Special Reclamation Water Trust Fund in accordance with section IV of this **Federal Register** notice. Following our review of the comments received, we will issue a final rule announcing the Director's final decision on the revisions to section 22-3-11(g) and (h)(1) of the WVSCMRA that are the subject of this interim rule.

Pursuant to the Administrative Procedure Act at 5 U.S.C. § 553(b)(3)(B), we find that good cause exists to approve the revisions to section 22-3-11(g) and (h)(1) of the WVSCMRA on an interim basis without notice and opportunity for comment, because to require notice and opportunity for comment now would be contrary to the public interest in that it would delay the start of the collection of the increased Special Reclamation Tax. Enrolled Committee Substitute for Senate Bill 751 becomes effective under State law on July 1, 2008, and the public interest in the accomplishment of prompt and thorough reclamation of bond forfeiture sites, including water treatment of discharges therefrom, will be adversely affected if the 7.4 cent per ton Special Reclamation Tax cannot be collected on and after that effective date. In any event, as explained above, the public will have an opportunity to comment on the reinstatement of and increase in the Special Reclamation Tax, and on the creation of the Special Reclamation

Water Trust Fund, before we make a final decision.

### IV. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether these amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If we approve these revisions, they will become part of the West Virginia program.

#### *Written Comments*

Send your written comments to OSM at one of the addresses given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**).

#### *Availability of Comments*

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### *Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (Eastern time), on *July 1, 2008*. If you are disabled and need reasonable accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. 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 a hearing.

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

#### *Public Meeting*

If there is only limited interest in participating in a public hearing, 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 will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Docket for this rulemaking.

#### **V. OSM's Decision**

Based on the above findings, we are approving on an interim basis, the specific revisions outlined above to the West Virginia program as provided to us on April 17, 2008. To implement this decision, we are amending the Federal regulations at 30 CFR Part 948, which codify decisions concerning the West Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this interim rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

#### **VI. Procedural Determinations**

##### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on an analysis of the State submission.

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

This rule is exempt from review by the Office of Management and Budget 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 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 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, 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 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

##### *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*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

##### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

##### *Regulatory Flexibility Act*

The Department of the Interior certifies 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 previously had a special reclamation tax of \$0.07 per ton of clean coal mined which expired on September 1, 2006. The tax was used to reclaim bond forfeiture sites in the State. On March 27, 2008, the Governor signed into law a bill that reinstated and increased the special reclamation tax to \$0.074 per ton for the period July 1, 2008, through June 30, 2009 and created the Special Reclamation Water Trust Fund for the purpose of designing, constructing and maintaining water treatment systems at bond forfeiture sites. Mined coal would also be subject to an additional tax of \$0.07 or a total tax of \$0.144 per ton. The combined tax rate of \$0.144 will yield approximately \$10.7 million in additional revenue for bond forfeiture reclamation, including water treatment, during this 12-month period. The tax is payable by all coal operators mining coal in West Virginia, regardless of size.

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

Based upon the above analysis and discussion, we have determined that 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; 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 analysis performed under various laws and executive orders for the counterpart Federal regulations.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon

the analysis performed under various laws and executive orders for the counterpart Federal regulations.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 22, 2008.

**Thomas D. Shope,**  
*Regional Director, Appalachian Region.*

■ For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

**PART 948—WEST VIRGINIA**

■ 1. The authority citation for part 948 continues to read as follows:

*Authority:* 30 U.S.C. 1201 *et seq.*

■ 2. Section 948.15 is amended by adding a new entry to the table in chronological order by “Date of publication of final rule” to read as follows:

**§ 948.15 Approval of West Virginia regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of publication of final rule	Citation/description of approved provisions
April 17, 2008	June 16, 2008	W. Va. Code 22–3–11(g) (interim approval), 11(h)(1) (interim approval).

[FR Doc. E8–13456 Filed 6–13–08; 8:45 am]  
BILLING CODE 4310–05–P

**DEPARTMENT OF TRANSPORTATION  
Federal Railroad Administration**

**49 CFR Parts 217 and 218**

[Docket No. FRA–2006–25267]

RIN 2130–AB76

**Railroad Operating Rules: Program of Operational Tests and Inspections; Railroad Operating Practices: Handling Equipment, Switches and Fixed Derails**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule; response to petitions for reconsideration.

**SUMMARY:** This document responds to four petitions for reconsideration of FRA’s final rule which was published on February 13, 2008. The rule mandated certain changes to a railroad’s program of operational tests and inspections and mandated new requirements for the handling of equipment, switches, and fixed derails.

**DATES:** This regulation is effective on June 16, 2008.

**FOR FURTHER INFORMATION CONTACT:** Douglas H. Taylor, Staff Director, Operating Practices Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue, SE., RRS–11, Mail Stop 25, Washington, DC 20590 (telephone 202–493–6255); or Alan H. Nagler, Senior Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey

Avenue, SE., RCC–11, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6038).

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

On May 18, 2005, the FRA’s Railroad Safety Advisory Committee (RSAC) accepted a task statement and agreed to establish the Railroad Operating Rules Working Group (Working Group) whose overall purpose was to recommend to the full committee how to reduce the number of human factor caused train accidents/incidents and related employee injuries. After consideration of the Working Group’s recommendations, FRA published a Notice of Proposed Rulemaking (NPRM) on October 12, 2006 to establish greater accountability on the part of railroad management for administration of

railroad programs of operational tests and inspections, and greater accountability on the part of railroad supervisors and employees for compliance with those railroad operating rules that are responsible for approximately half of the train accidents related to human factors. See 71 FR 60372. FRA received written comment on the NPRM as well as advice from its Working Group in preparing a final rule, which was published on February 13, 2008. See 73 FR 8442.

Following publication of the final rule, parties filed petitions seeking FRA’s reconsideration of the rule’s requirements. These petitions principally related to the following subject areas: the implementation dates; shove lights; the need for individual liability and enforcement; good faith challenge procedures; the point protection technology standard for remote control locomotive operations; and FRA’s rulemaking authority.

This document responds to all the issues raised in the petitions for reconsideration except the issue pertaining to FRA’s rulemaking authority which is being addressed in a separate letter to that specific petitioner. FRA will make that response part of the public docket related to this proceeding. The amendments contained in this document in response to the petitions for reconsideration generally clarify the requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, and are within the scope of the issues and