temporary regulations also serves as the text of these proposed regulations.

DATES: Comments or a request for a public hearing must be received by October 6, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–164965–04), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–164965–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–164965–04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Grace Matuszeski, (202) 622–7900; concerning submission of comments or a request for a public hearing, Richard Hurst, at *Richard.A.Hurst@irscounsel.treas.gov* or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR Part 1) to implement the changes to sections 195, 248, and 709 of the Code made by section 902 of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

This notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Grace Matuszeski of the Office of the Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.195–1 is revised to read as follows:

§ 1.195–1 Election to amortize start-up expenditures.

[The text of this section is the same as the text of § 1.195–1T(a) through (d) published elsewhere in this issue of the **Federal Register**.]

Par. 3. Section 1.248–1 is amended by revising paragraphs (a) and (c), and adding paragraphs (d) through (f), to read as follows:

§ 1.248–1 Election to amortize organizational expenditures.

(a) [The text of this proposed amendment to § 1.248–1(a) is the same as the text of § 1.248–1T(a) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(c) through (f) [The text of these proposed amendments to § 1.248–1(c) through (f) are the same as the text of § 1.248–1T(c) through (f) published elsewhere in this issue of the **Federal Register**.]

Par. 4. Section 1.709–1 is amended by revising the section heading and paragraph (b) to read as follows:

§ 1.709–1 Treatment of organizational expenses and syndication costs.

* * * * *

(b) [The text of this proposed amendment to § 1.709–1(b) is the same as the text of § 1.709–1T(b)(1) through (b)(5) published elsewhere in this issue of the **Federal Register**.]

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–15457 Filed 7–7–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–113–FOR; OSM–2008–0009]

West Virginia Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the West Virginia regulatory program (the West Virginia program) under the Federal Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia is submitting a proposed amendment to revise its Code of State Regulations (CSR) and the West Virginia Code, as contained in Committee Substitutes for Senate Bills 373 and 751. The proposed amendment covers a variety of issues including, but not limited to, statutory changes involving the special reclamation tax, the creation of alternative programs for the purpose of paying for the reclamation of forfeited sites including water treatment where required, and incremental bonding.

Other provisions include regulatory revisions relating to public notice of permit applications, incidental boundary revisions, permit issuance findings, inspection of certain impoundments, reclamation of natural drainways subsequent to sediment pond removal, storm water runoff analysis,

contemporaneous reclamation standards regarding excess spoil fills and bonding of certain types of excess spoil fills, and effluent limits and bond releases on remining operations.

In addition, most blasting provisions have been removed from the State's Surface Mining Reclamation Regulations at Title 38 CSR 2 and will now only be found in the State's Surface Mining Blasting Rule at Title 199 CSR 1.

On June 16, 2008, OSM published in a separate **Federal Register** notice, an interim approval of the State's alternative bonding provisions at section 22–3–11 of the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA) that specifically relates to the special reclamation tax and the creation of the Special Reclamation Water Trust Fund. OSM will accept comments on all other provisions of the program amendment pursuant to this proposed rule notice.

DATES: We will accept written comments until 4 p.m., EDT August 7, 2008. If requested, we will hold a public hearing on August 4, 2008. We will accept requests to speak until 4 p.m., EDT on July 23, 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–2008–0009. 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–2008–0009 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–2008–0009, 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, West Virginia 25301. Please include the rule identifier (WV–113–FOR) with your written comments.

Instructions: All submissions received must include the agency Docket ID (OSM–2008–0009) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT** .

Docket: The proposed rule and any comments that are submitted may be viewed over the internet at *http://www.regulations.gov.* Look for Docket ID OSM–2008–0009. 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, West Virginia 25301, Telephone: (304) 347–7158. E-mail: *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.*

SUPPLEMENTARY INFORMATION:

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 of the Proposed 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 consists of changes to the West Virginia Code of State Regulations (CSR) and the West Virginia Code, as contained in Committee Substitutes for Senate Bills 373 and 751.

Committee Substitute for Senate Bill 373 authorizes revisions to the State's Surface Mining Reclamation Regulations at 38 CSR 2 and its Surface Mining Blasting Regulations at 199 CSR 1. Committee Substitute for Senate Bill 373 was adopted by the Legislature on March 6, 2008, and signed into law by the Governor on March 28, 2008. West Virginia Code at paragraphs 64–3–1 (o) and (p) authorize WVDEP to promulgate the revisions to its rules as legislative rules. This amendment contains a variety of topics, including new language for technical completeness, sediment control, storm water runoff, blasting, excess spoil fills, bonding programs, water quality, seismograph records, and definitions. In addition, the amendment contains Committee Substitute for Senate Bill 751, which was adopted by the Legislature on March 8, 2008, and approved by the Governor on March 27, 2008. Committee Substitute for Senate Bill 751 amended and reenacted section 22–3–11 of the WVSCMRA. As mentioned above, OSM has approved, on an interim basis, under a separate **Federal Register** (73 FR 33884) notice a portion of the bill relating to the special reclamation tax and the Special Reclamation Water Trust Fund. Through this notice, we are requesting public comment on the remaining revisions to the State's

alternative bonding system that are authorized by Committee Substitute for Senate Bill 751.

The amendment is intended to improve the effectiveness of the West Virginia program and to render the West Virginia program no less effective than the Federal regulations. Throughout this proposed amendment, nonsubstantive changes from ''Office'' to ''Secretary'', ''Office'' to ''office'', ''Office of Explosives and Blasting'' to ''Secretary'' are made but not listed in this Proposed Rule Notice.

Pursuant to Committee Substitute for Senate Bill 373, West Virginia proposes the following amendments to its Surface Mining Reclamation Regulations at Title 38 CSR 2:

1. CSR 38–2–3.2.g Notice of Technical Completeness

Notice of technical completeness is new language that is to be added to the State's regulations. It is to provide the public an opportunity to review and comment on a permit application once technical review is completed by the State and the application has been supplemented by the applicant after the close of the public comment period.

As amended, subparagraph 3.2.g is new and reads as follows:

3.2.g. Notice of Technical Completeness. After the Secretary deems a Surface Mine Application technically complete, the Secretary shall cause the applicant to advertise that the application is technically complete. The one time notice shall state that the application has been deemed technically complete by the Secretary and include a fifteen (15) day public review period: Provided, that, Notice of Technical Completeness is not necessary if the application was technically complete prior to the end of the comment period of the original advertisement or a decision is made within ninety (90) days of the end of the comment period or informal conference.

These proposed revisions fall under the provisions of Section 513 of SMCRA and 30 CFR 773.6.

2. CSR 38–2–3.29.a Incidental Boundary Revisions (IBRs)

This amendment proposes to delete language regarding incidental boundary revisions that provides ''or where it has been demonstrated to the satisfaction of the Secretary that limited coal removal on areas immediately adjacent to the existing permit''. This proposal is in response to earlier OSM concerns about the State's incidental boundary revision requirements. See the March 2, 2006, **Federal Register** for further explanation (71 FR 10768).

As amended, subparagraph 3.29.a reads as follows:

3.29.a. Incidental Boundary Revisions (IBRs) shall be limited to minor shifts or extensions of the permit boundary into non-coal areas or areas where any coal extraction is incidental to or of only secondary consideration to the intended purpose of the IBR. IBRs shall also include the deletion of bonded acreage which is overbonded by another valid permit and for which full liability is assumed in writing by the successive permittee. Incidental Boundary Revisions shall not be granted for any prospecting operations, or to abate a violation where encroachment beyond the permit boundary is involved, unless an equal amount of acreage covered under the IBR for encroachment is deleted from the permitted area and transferred to the encroachment area.

These proposed revisions fall under the provisions of 30 CFR 774.13(d).

3. CSR 38–2–3.32.b Findings—Permit Issuance

This amendment proposes to delete the following language at subparagraph 3.32.b relating to required written findings for permit issuance:

The Secretary will systematically prioritize the data collection and data compilation effort required by this paragraph on the ownership and control of violators in the following order: bond forfeitures, outstanding unabated cessation orders, delinquent civil penalties, and delinquent reclamation fees.

To accomplish this objective, the Secretary will utilize the data in the Federal Applicant Violator System, the Environmental Resources Information Network, the Mine Safety and Health Administration R.31 Data Base, and the Energy Information Administration Data Base together with such other information as may be readily available. In addition, the Secretary will make reasonable efforts to identify and include the Mine Safety and Health Administration identification number for sites on the violation listing.

As amended, subparagraph 3.32.b reads as follows:

3.32.b. Based on the information provided by applicants for surface mining permits pursuant to subdivisions 3.1.a, 3.1.b, 3.1.c, 3.1.d, 3.1.i, 3.1.j, and 3.1.k of this rule and any other reasonably available information, the Secretary will compile and maintain an accurate and up-to-date computerized listing of all persons who own or control surface mining operations with outstanding unabated cessation orders, delinquent civil penalties, delinquent reclamation fees, and bond forfeitures of record in the state since May 3, 1978. The listing will include, to the extent reasonably possible, all owners and controllers of the violator(s), described in subdivision 3.1.c of this rule. The Secretary will make reasonable efforts to determine the owners and controllers of the permittee, the operator if different from the permittee, and the lessor or mineral owner, where a contract mining situation exists. The procedures and listings described in this subsection do not apply to notices of violations and are subject to rights of rebuttable presumption. The Secretary is not obligated to use this information to conduct a systematic review of all existing permits for the purpose of identifying and subsequently suspending those, if any, which may have been improvidently issued.

The Secretary will, using the computerized data bases, review prior to permit issuance all applications received after the effective date of this rule and make all reasonable efforts to determine at a minimum in each case whether outstanding violations (except for notices of violations), unabated cessation orders, delinquent civil penalties, and/or bond forfeitures exist on the part of the applicant, the owners or controllers of the operator, and the lessor and entities controlled by the lessor, (if the lessor retains rights to the coal after extraction) and, if so, withhold approval of the application until all violations are abated or otherwise resolved in accordance with the requirements of the Act and this rule.

Where the information in the subject data bases is incomplete and where the information is not available or has not been made available to the Secretary prior to issuance of the permit, the Secretary shall not be held in violation of any of the requirements of the Act and this rule. However, where it is later determined that permits were improvidently issued as a result of inadequate information in the subject data bases or other sources available at the time the permit is issued, the Secretary shall initiate the procedures set forth in subsection 3.34 of this section.

These proposed revisions delete unnecessary language and fall under the provisions of section 510 of SMCRA and 30 CFR 773.8 and 773.11.

4. CSR 38–2–5.4.e.1 Sediment Control: Inspections

This amendment proposes to remove the words ''Impoundments meeting'' after ''30 CFR 77.216(a).'' This revision is to delete language that OSM previously disapproved relating to impoundments. See the March 2, 2006, **Federal Register** for further explanation (71 FR 10771).

As amended, subparagraph 5.4.e.1 reads as follows:

5.4.e.1. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect each impoundment or sediment control structure provided, that a licensed land surveyor may inspect those impoundments or sediment control or other water retention structures which do not meet the size or other criteria of 30 CFR 77.216(a); the Class B or C criteria for dams in Earth Dams and Reservoirs, TR–60 or W. Va. Code § 22–14 *et seq.*, and which are not constructed of coal processing waste or coal refuse. The professional engineer, licensed land surveyor, or specialist shall be experienced in the construction of impoundments and sediment control structures.

These proposed revisions fall under the provisions of 30 CFR 816/817.49(a)(1).

5. CSR 38–2–5.4.h.2 Abandonment Procedures

This amendment proposes to delete language and add new language regarding the construction of natural drainways subsequent to sediment pond removal. WVDEP proposes to delete the following:

''The natural drainway shall be returned as nearly as practicable to its original profile and cross section with the channel sides and bottom rock riprapped up to the top of the channels banks. The riprap requirement may be waived where the bottom and sides of the channel consist of bedrock,'' and proposes to add the following:

The natural drainway shall be returned as nearly as practicable to its original pattern, profile, and dimensions and stabilized to control erosion and be in accordance with the reclamation plan. The reclamation plan should also take into consideration channel and bank stability and habitat enhancement.

As amended, subparagraph 5.4.h.2 reads as follows:

5.4.h.2. Embankment type sediment dams, embankment type excavated sediment dams and crib and gabion dams, and all accumulated sediment behind the dam shall be removed from the natural drainway. The natural drainway shall be returned as nearly as practicable to its original pattern, profile, and dimensions and stabilized to control erosion and be in accordance with the reclamation plan. The reclamation plan should also take into consideration channel and bank stability and habitat enhancement.

These proposed revisions fall under the provisions of 30 CFR 816/817.56.

6. CSR 38–2–5.6.a Storm Water Runoff

This amendment proposes to clarify what operations may be exempt from conducting a ''Storm Water Runoff Analysis'' by adding the following language:

''Provided, however, an exemption may be considered on a case by case basis for mining operations with permitted acreage less than 50 acres. Furthermore, haulroads, loadouts, and ventilation facilities are excluded from this requirement. The storm water runoff analysis shall include''

As amended, subparagraph 5.6.a reads as follows:

5.6.a. Each application for a permit shall contain a storm water runoff analysis. Provided, however, an exemption may be considered on a case by case basis for mining operations with permitted acreage less than 50 acres. Furthermore, haulroads, loadouts, and ventilation facilities are excluded from this requirement. The storm water runoff analysis shall include the following:

These proposed revisions fall under the provisions of 30 CFR 780.21 and 784.14.

7. CSR 38–2–5.6.b Storm Water Runoff Plan

This amendment proposes to change the time period from twenty-four (24) to forty-eight (48) hours in which the monitoring results of a one (1) year, twenty-four (24) hour storm event or greater must be reported to the Secretary by the permittee.

As amended, subparagraph 5.6.b reads as follows:

5.6.b. Each application for a permit shall contain a runoff-monitoring plan which shall include, but is not limited to, the installation and maintenance of rain gauges. The plan shall be specific to local conditions. All operations must record daily precipitation and report monitoring results on a monthly basis and any one (1) year, twenty-four (24) storm event or greater must be reported to the Secretary within forty eight (48) and shall include the results of a permit wide drainage system inspection.

These proposed revisions fall under the provisions of 30 CFR 780.21 and 784.14.

8. CSR 38–2–5.6.d Phase-in Compliance Schedule

This amendment proposes to delete language regarding the phase-in compliance schedule for the submission of the storm water runoff analysis that expired in June 2006. Because the deadline for the submission of storm water runoff analysis has expired, the State is proposing to delete subparagraphs 5.6.d, d.1, d.1.a, d.1.b, d.1.c, d.1.d, and d.1.e.

There is no Federal counterpart for this proposed revision.

9. CSR 38–2–6 Blasting

This amendment proposes to remove duplication of rules for blasting at Section 6.

At Subsections 6.1 and 6.2, this amendment proposes to add, ''and be in accordance with the requirements with Surface Mining Blasting Rule, Title 199 Series 1.'' at the end of the subsections.

Subsections 6.3, 6.4, 6.5, 6.6, 6.7, and 6.8 are proposed to be deleted entirely. As amended, Subsections 6.1 and 6.2 read as follows:

6.1. General Requirements. Each operator shall comply with all applicable state and federal laws in the use of explosives. A blaster certified by the Department of Environmental Protection shall be responsible for all blasting operations including the transportation, storage and use of explosives within the permit area in accordance with the blasting plan and be in accordance with the requirements with Surface Mining Blasting Rule, Title 199 Series 1.

6.2. Blasting Plan. Each application for a permit, where blasting is anticipated, shall include a blasting plan. The blasting plan shall explain how the applicant will comply with the blasting requirements of the Act, this rule, and the terms and conditions of the permit. This plan shall include, at a minimum, information setting forth the limitations the operator will meet with regard to ground vibration and airblast, the basis for those limitations, the methods to be applied in controlling the adverse effects of blasting operations and be in accordance with the requirements with Surface Mining Blasting Rule, Title 199 Series 1.

These proposed cross references to the State's blasting rules at Title 199, Series 1 fall under the provisions of the Federal blasting regulations at 30 CFR 816/817.61–68.

10. CSR 38–2–7.4.b.1.J.1.(c) Front Faces of Valley Fills

This amendment proposes to add language that was previously removed and not approved by OSM in the March 2, 2006, **Federal Register** (71 FR 10776). This proposed revision falls under the provisions of 30 CFR 816.22(d)(1) and 816.71(e)(2).

West Virginia is proposing to reinstate the language as follows:

7.4.b.1.J.1.(c) Surface material shall be composed of soil and the materials described in subparagraph 7.4.b.1.D.

11. CSR 38–2–14.15.c.2 Reclaimed Areas: Calculation of Disturbed Areas

This amendment proposes to clarify contemporaneous reclamation rules and bonding of excess spoil disposal fills by deleting ''area is available to do so;'' and adding ''first two lifts are in and are seeded'' at the end of the subparagraph.

As amended, subparagraph 14.15.c.2 reads as follows:

14.15.c.2. Areas within the confines of excess spoil disposal fills which are under construction provided the fill is being constructed in the ''conventional'' method, *i.e.* , completed from the toe up, or those fills which are being constructed progressively in lifts from the toe up or are being progressively completed from the toe up by constructing benches and appropriate drainage control structures (ditches, flumes, channels, etc.) from the toe up as soon as the first two lifts are in and are seeded.

These proposed revisions fall under the provisions of 30 CFR 816.71 and 816.100.

12. CSR 38–2–14.15.d.3 Excess Spoil Disposal Fills: Bonding Proposed Fill Areas

This amendment proposes to clarify the contemporaneous reclamation and bonding requirements of certain excess spoil disposal fills by deleting the phrase ''to use single lift top down

construction'' and adding ''with erosion protection zones'' after the word ''designed''.

As amended, subparagraph 14.15.d.3 reads as follows:

14.15.d.3. Operations that propose fills that are designed with erosion protection zones shall bond the proposed fill areas based upon the maximum amount per acre specified in WV Code § 22–3-12(b)(1).

These proposed revisions are to further clarify the requirements pursuant to the provisions of 30 CFR 800.14 and 816.71.

13. CSR 38–2–14.15.e Applicability

This amendment proposes to remove the applicability schedule that expired in 2004. The applicability schedule regarding the implementation of contemporaneous reclamation plans at subparagraphs 14.15.e, 14.15.e.1 and 14.15.e.2 are removed completely and 14.15.e.3 is renumbered as 14.15.e.

There are no Federal counterparts to the subparagraphs that the State proposes to delete.

14. CSR 38–2–23.3 Water Quality—Coal Remining Operations

This amendment proposes to make the State's remining rule consistent with the proposed changes in the State's National Pollutant Discharge Elimination System (NPDES) rules by deleting the phrase ''which began after February 4, 1987, and on a site which was mined prior to August 3, 1977,'' after ''operation''; deleting ''water quality exemptions'' and adding ''effluent limitations'' after ''the''; adding ''Title 47 Series 30 subdivision'' and deleting ''Subsection'' and adding ''6.2.d.'' after ''in''; and finally, deleting ''subsection (p), section 301 of the Federal Clean Water Act, as amended or a coal remining operation as defined in 40 CFR Part 434 as amended may qualify for the water quality exemptions set forth in 40 CFR Part 434 as amended.''

As amended, Subsection 23.3 reads as follows:

23.3 Water Quality

A coal remining operation may qualify for the effluent limitations set forth in Title 47 Series 30 subdivision 6.2.d.

These proposed revisions fall under the provisions of the U.S. Environmental Protection Agency (EPA) coal remining requirements at 40 CFR 434.70–75.

15. CSR 38–2–23.4 Requirements to Release Bonds

This amendment, which relates to bond release, proposes to delete the following language: ''and the terms and conditions set forth in the NPDES Permit in accordance with subsection (p), section 301 of the Federal Clean Water Act, as amended or 40 CFR Part 434 as amended.''

This proposed revision is to eliminate language in its rules that the State finds is no longer essential due to changes in EPA's coal remining requirements (72 FR 68000–68031).

Pursuant to Committee Substitute for Senate Bill 373, West Virginia proposes the following amendments to its Surface Mining Blasting Regulations at Title 199 CSR 1:

16. Title 199 Surface Mining Blasting Rule CSR 199–1–2–2.39

Definitions

Various definitions relating to blasting at CSR 199–1–2–2.39 are amended by nonsubstantive grammatical changes, such as putting all definition terms in quotation marks; changing the term ''Office of Explosives and Blasting'' to ''Secretary''; and renumbering due to additions and/or deletions of terms. Because they are nonsubstantive in nature, these proposed changes are not addressed herein.

The following definitions at CSR 199–1–2 are revised as follows:

At Subsection 2.8, ''*Blast Site*'' is amended and means the area where explosive material is handled during loading into boreholes. This includes the perimeter area formed by the loaded blast holes as measured, 50 feet in all directions from the collar of the outermost loaded borehole; or that area protected from access by a physical barrier to prevent entry to the loaded blast holes.

At Subsection 2.27, ''*Other Structure*'' is amended and means any man made structure excluding ''*protected structures*'' within or outside the permit areas which includes but is not limited to, gas wells, gas lines, water lines, towers, airports, underground mines, tunnels, bridges, and dams. The term does not include structures owned, operated, or built by the permittee for the purpose of carrying out surface mining operations.

At Subsection 2.35, ''*Secretary*'' is substantively identical to former Subsection 2.23 and means the Secretary of the Department of Environmental Protection or the Secretary's authorized agent.

At Subsection 2.36, ''*Structure*'' is amended and means ''a *protected structure*'' or ''*other structure*'' which is any manmade structures within or outside the permit areas which include, but is not limited to, dwellings, outbuildings, commercial buildings, public buildings, community buildings, institutional buildings, gas lines, water lines, towers, airports, underground mines, tunnels and dams. The term does not include structures built and/or utilized for the purpose of carrying out the surface mining operation.

At Subsection 2.37, ''*Supervised a Blasting Crew*'' is amended and means a person that is responsible for the conduct of a blasting crew(s) and/or that the crew(s) is directed by that person.

At Subsection 2.38, ''*Surface Mine Operations*'' is amended and means all areas of surface mines, and surface area of underground mines (including shafts and slopes), areas ancillary to these operations, and the reclamation of these areas, including adjacent areas ancillary to the operations, i.e. , preparation and processing plants, storage areas, shops, haulageways, roads, and trails, which are covered by the provisions of W. Va. Code § 22–3–1 *et seq.,* and rules promulgated under that article.

At Subsection 2.39, ''*Worked on a Blasting Crew*'' is amended and means that a person has first-hand experience in storing, handling, transporting, and using explosives, and has participated in the loading, connecting, and initiation processes of blast, and has experience in blasting procedures, and preparation of blast holes.

These proposed revisions fall under the provisions of section 515(b)(15) of SMCRA and 30 CFR 816/817.61–68 and Part 850.

17. CSR 199–1–3.2. Blasting Plans

Subparagraph 3.2.a.5, regarding blasting plans, is amended by adding language to minimize, not reduce, dust outside the permit area.

Subparagraph 3.2.b, regarding blasting plans, is amended by requiring that the person conducting the review shall be experienced in common blasting practices utilized on surface mining operations and shall be a certified inspector. In addition, the reviewer will take into consideration the proximity of individual dwellings, structures, or communities to the blasting operations.

Subparagraph 3.2.c is amended to provide that the blasting plan shall also contain an inspection and monitoring procedure to insure that all blasting operations are conducted to minimize, not eliminate, to the maximum extent technically feasible, adverse impacts to the surrounding environment and surrounding occupied dwellings. In addition, this subsection is amended to provide that all seismographs used to monitor airblast or ground vibrations or both shall comply with the ISEE Performance Specifications for Blasting Seismographs.

Subparagraph 3.2.d is amended to provide that for operations where a blasting related notice of violation (NOV) or cessation order (CO) has been issued; the Secretary shall review the blasting plan as soon as possible, but within thirty (30) days of final disposition of the NOV or CO.

Subparagraph 3.2.e relating to the review of a blasting plan where an enforcement action has been taken by the State is deleted in its entirety.

These proposed revisions fall under the provisions of 30 CFR 816/817.61.

18. CSR 199–1–3.3 Public Notice of Blasting Operations

Subparagraph 3.3.a, relating to public notice of blasting operations, is amended by requiring that at least ten (10) days but not more than thirty (30) days prior to commencing any blasting operations which detonate five (5) pounds or more of explosives at any given time, the operator must publish a blasting schedule in a newspaper of general circulation in all the counties of the proposed permit area. The operator must republish and redistribute the schedule at least every twelve months in the same manner above. In addition, new language provides that the permittee must retain proof of publication.

At subparagraph 3.3.b.1, new language is added that states, ''Conspicuously place signs reading 'Blasting Area' along the edge of any blasting area that comes within 100 feet of any public road right-of-way, and at the point where any other road provides access to the blasting area; and'' and the existing language as follows is deleted ''Warning signs shall be conspicuously displayed at all approaches to the blasting site, along haulageways and access roads to the mining operation and at all entrances to the permit area. The sign shall at a minimum be two feet by three feet (2′ x 3′) reading 'WARNING! Explosives in Use' and explaining the blasting warning and the all clear signals.''

At subparagraph 3.3.b.2, new language is added that states, ''At all entrances to the permit area from public roads or highways, place conspicuous signs which state 'Warning! Explosives in Use,' which clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use,' and which explain the marking of blasting areas and charged holes awaiting firing within the permit area. The signs shall at a minimum be two feet by three feet (2′ x 3′)'' and the existing language as follows is being deleted ''Where blasting operations will be conducted within one hundred (100) feet of the outside right-of-way of a public road, signs reading ''Blasting Area'', shall be conspicuously placed along the perimeter of the blasting area''.

These proposed revisions fall under the provisions of 30 CFR 816/817.44 and 816/817.66.

19. CSR 199–1–3.4 Surface Blasting at Underground Mines

This amendment proposes to add a new subparagraph, 3.4.b, regarding the regulation of surface blasting at underground mines.

Subparagraph 3.4.b is amended by adding new language that provides that blasting activities for the development of slopes and shafts will be subject to this rule and regulated as surface blasting. The operator will submit a blast plan for the initial developmental blast of shafts and slopes, which will consider all aspects of surface coal mine blasting contained in 199 CSR 1. The Secretary will then only regulate and monitor for surface effects from ground vibration and airblast for the remainder of the shaft or slope until it intersects the coal seam to be mined.

These proposed revisions fall under the provisions of 30 CFR 817.64.

20. CSR 199–1–3.5 Blast Record

Subparagraph 3.5.a is amended to require that a blasting log book be on forms formatted in a manner prescribed by the Secretary.

Subparagraph 3.5.c is amended to provide that the blasting log shall contain, at a minimum, but not limited to, the following information:

Subparagraph 3.5.c.1 is amended to require the name of the company conducting blasting;

Subparagraph 3.5.c.2 is amended to require the Article 3 permit number and shot number;

Subparagraph 3.5.c.4 is amended to require the identification of nearest other structure not owned or leased by the operator, and indicate the direction and distance, in feet, to both such structures;

Subparagraph 3.5.c.5 is amended to require estimated wind direction and speed;

Subparagraph 3.5.c.6 is amended by adding a proviso to identify material blasted, including rock type and description of conditions;

Subparagraph 3.5.c.9 is amended to require a description of different quantities of explosives used;

Subparagraph 3.5.c.14 is amended to require type and length of decking;

Subparagraph 3.5.c.15 is amended to require a description of use of blasting mats or other protective measures used;

Subparagraph 3.5.c.16 is amended to require the quantities of delay detonators used;

Subparagraph 3.5.c.17 is amended by adding the words ''when required'' in relation to seismograph records and air blast records;

Subparagraph 3.5.c.17.A is amended to require that seismograph and air blast readings include trigger levels, frequency in Hz, and full waveform readings shall be attached to the blast log;

Subparagraph 3.5.c.17.B is amended to require the name of the person who installed the seismograph, also the name of the person taking the readings;

Subparagraph 3.5.c.17.D is amended to require certification of annual calibration;

Subparagraph 3.5.c.18 is amended to require that the shot location be identified with use of blasting grids as found on the blast map, GPS, or other methods as defined by the approved blast plan;

Subparagraph 3.5.c.19 is amended by deleting the requirement for a sketch of the delay pattern for all decks and to require a detailed sketch of delay pattern, including the detonation timing for each hole or deck in the entire blast pattern, borehole loading configuration, north arrow, distance and directions to structures; and

Subparagraph 3.5.c.20 is amended to require the reasons and conditions to be noted in the blasting log for misfires, any unusual event, or violation of the blast plan.

These proposed revisions fall under the provisions of 30 CFR 816/817.68.

21. CSR 199–1–3.6. Blasting Procedures

Subparagraph 3.6.b.2 is amended to require that all approaches to the blast area remain guarded until the blaster signals the ''all clear''.

Subparagraph 3.6.c.1 regarding airblast limits is amended to provide that the maximum level in Hz be no more than –3dB. In addition, Footnote 1 was added to clarify that airblast is a flat response from 4 to 125 Hz range; at 2 Hz airblast, the microphone can have an error of no more than –3dB. Footnote 2 was added to clarify that the use of the frequency limits of 0.1 Hz or lower—flat response or C-weighted—slow response requires the Secretary's approval.

Subparagraph 3.6.c.3 is amended to require that all seismic monitoring follow the International Society of Explosives Engineers (ISEE) Field Practice Guidelines for Blasting Seismographs, unless otherwise approved in the blasting plan.

Subparagraph 3.6.g is amended to provide that blasting within five hundred (500) feet of an underground mine not totally abandoned requires the concurrence of the Secretary, and the West Virginia Office of Miners Health Safety and Training.

Subparagraph 3.6.i is amended to require that all seismic monitoring follow the ISEE Field Practice Guidelines for Blasting Seismographs, unless otherwise approved in the blasting plan.

Subparagraph 3.6.l is amended by adding a reference to 3.6.i in relation to the maximum airblast and ground vibration standards that do not apply to structures owned by the permittee and leased or not leased to another person.

These proposed revisions fall under the provisions of 30 CFR 816/817.66, 816/817.67 and 816.79.

22. CSR 199–1–3.7 Blasting Control for ''Other Structures''

Subparagraph 3.7.a is amended by adding language to require that all ''other structures'' in the vicinity of the blasting area be protected from damage by the limits specified in paragraph 3.6.c.1 subdivisions 3.6.h. and 3.6.i. of this rule, unless waived in total or in part by the owner of the structure.

In addition, the waiver of the protective [limits] may be accomplished by the establishment of a maximum allowable limit on air blast limits for the structure in the written waiver agreement between the operator and the structure owner. The waiver may be presented at the time of application in the blasting plan or provided at a later date and made available for review and approval by the Secretary.

All waivers must be acquired before any blasts may be conducted [as] designed on that waiver. Language requiring that the operator specify the waiver in the blasting plan and that the Secretary approve all waivers is being deleted. In addition, language providing for alternative maximum allowable limits is being deleted.

These proposed revisions fall under the provisions of 30 CFR 816/817.67.

23. CSR 199–1–3.8 Pre-Blast Surveys

Subparagraph 3.8.a is amended by adding language to provide that at least thirty days prior to commencing blasting, an operator's designee shall notify in writing all owners and occupants of man made dwellings or structures that the operator or operator's designee will perform preblast surveys.

In addition, language is added to require that attention be given to documenting and establishing the pre-blasting condition of wells and other water systems.

Subparagraph 3.8.b is amended by adding language to require that surveys requested more than ten (10) days before the planned initiation of the blasting shall be completed and submitted to the Secretary by the operator before the initiation of blasting.

These proposed revisions fall under the provisions of 30 CFR 816/817.62.

24. CSR 199–1–3.9 Pre-blast Surveyors

Subparagraph 3.9.a is amended to require that, at a minimum, individuals applying as a pre-blast surveyor must have a combination of at least two (2) of the following;

3.9.a.1 experience in conducting pre-blast surveys, or

3.9.a.2 technical training in a construction, or engineering related field, or

3.9.a.3 other related training deemed equivalent by the Secretary.

In addition, language was added to clarify that all applicants must complete the pre-blast surveyor training provided by the Secretary prior to approval to conduct pre-blast surveys. The Secretary may establish a fee for approval of pre-blast surveyors. Language is being deleted which provides that experience working as a pre-blast surveyor may be acceptable in lieu of the education requirement.

Subparagraph 3.9.c is amended to clarify that every three (3) years after meeting initial qualifications for performing pre-blast surveys, those individuals that have met the requirements of subparagraph 3.9.a. of this rule must submit a written demonstration of qualifications of and ongoing experience performing pre-blast surveys.

In addition, language was added to provide that those individuals who have no ongoing experience must attend the training required in 3.9.a. and all applicants for re-approval must attend a minimum of 4 hours continuing education training in a subject area relative to knowledge required for conducting pre-blast surveys. Furthermore, the Secretary must approve these training programs.

Subparagraph 3.9.d is amended by adding language to require that individuals who assist in the collection of information for pre-blast surveys must complete, or be registered for, the pre-blast surveyor training provided by the Secretary in 3.9.a. Those registered to attend the next available training on the pre-blast survey requirements may assist in the collection of information for a period of no more than three (3) months, and only under the direct supervision of an approved Pre-blast Surveyor. The Secretary shall maintain a list of all those individuals who have completed the pre-blast survey requirement training.

Subparagraph 3.9.d is also amended by deleting language which provides that an individual who is not an approved pre-blast surveyor may conduct pre-blast surveys, working as a pre-blast surveyor-in-training, only if he or she has registered to attend pre-blast surveyor training at the next available opportunity. Pre-blast surveyors-in-training may conduct pre-blast surveys, only if he or she is conducting the survey under the direct supervision of an approved pre-blast surveyor. The approved pre-blast surveyor must co-sign any survey conducted by a pre-blast surveyor-in-training. Individuals may work as pre-blast surveyors-in-training for a period of no more than three months, prior to becoming approved pre-blast surveyors.

Subparagraph 3.9.e is amended to provide that the Secretary may disqualify an approved pre-blast surveyor and remove the person from the list of approved pre-blast surveyors, if the person allows surveys to be submitted that do not meet the requirements of W. Va. Code 22–3-13a and subsection 3.8 of this rule. In addition, language was added to provide that any person who is disqualified may appeal to the Secretary, and if not resolved to the Surface Mine Board.

These proposed revisions fall under the provisions of 30 CFR 816/817.62.

25. CSR 199–1–3.10 Pre-Blast Survey Review

Subparagraph 3.10.f is amended by adding language to provide that all persons employed by the Secretary, whose duties include review of pre-blast surveys and training of pre-blast surveyors, shall meet the requirements for pre-blast surveyors as set forth in section 3.9.

These proposed revisions fall under the provisions of 30 CFR 816/817.62.

26. CSR 199–1–4.1 Blaster Certification Requirements

Subparagraph 4.1.a is amended to require each person acting in the capacity of a blaster and responsible for the blasting operation be certified by the Secretary.

Subparagraph 4.1.b is amended to require that each applicant for certification be a minimum of twenty one (21) years old. In addition, new language was added to provide that applicants who have blasting experience prior to the last three years, with documentation, may be considered by

the Secretary on a case-by-case basis as qualifying experience for initial certification and re-certification; provided the requirements of 4.6.c. apply.

Subparagraph 4.1.c is amended to clarify that the application for certification be on forms prescribed by the Secretary.

These proposed revisions fall under the provisions of 30 CFR 816/817.61 and 850.14.

27. CSR 199–1–4.2 Training

Subsection 4.2 is amended by adding language to provide that the training program will consist of the West Virginia Surface Mine Blasters Self-Study Guide Course and a classroom review of the self-study guide course.

In addition, language was added to provide that completion of the classroom review part of the training program may not be required for first time applicants.

Furthermore, applicants for certification or applicants for re-certification, who cannot document the experience requirements specified in subdivision 4.1.b. of this rule, must complete the West Virginia Surface Mine Blasters Self-Study Guide.

Subparagraph 4.2.a is amended to provide that, prior to certification, all applicants, not just those who choose self study, attend a two (2) hour Blaster's Responsibilities training session addressing certified blasters' responsibilities and the disciplinary procedures contained in subsections 4.9 and 4.10 of this rule.

These proposed revisions fall under the provisions of the Federal blaster certification requirements at 30 CFR 850.13.

28. CSR 199–1–4.3 Examination

Subparagraph 4.3.b is amended to clarify that the examination for certified blaster consists of three parts.

Subparagraph 4.3.d is amended to clarify that any person who fails to pass any part of the exam on the second attempt or every other subsequent attempt must certify that he/she has taken or retaken the classroom review training program described in subsection 4.2 of this rule prior to applying for another examination.

These proposed revisions fall under the provisions of the Federal blaster certification requirements at 30 CFR 850.14.

29. CSR 199–1–4.5 Blaster Certification Prohibitions

Subparagraph 4.5.d is amended by adding language to provide that persons who have had their blasters certification suspended or revoked in any other state may be required to show cause as to why they should be considered for certification.

These proposed revisions fall under the provisions of the Federal blaster certification requirements at 30 CFR 850.15.

30. CSR 199–1–4.6 Retraining

Subparagraph 4.6.c is amended to clarify that an applicant for recertification who does not meet the experience requirements of subdivision 4.1.b of this rule must take the training course defined in section 4.2.

These proposed revisions fall under the provisions of the Federal blaster certification requirements at 30 CFR 850.15.

31. CSR 199–1–4.7 Blaster's Certificate

Subparagraph 4.7.d is amended by adding language to clarify that a certified blaster shall not take any instruction or direction on blast design, explosives loading, handling, transportation and detonation from a person not holding a West Virginia blasters certificate, if such instruction or direction may result in an unlawful act, or an improper or unlawful action that may result in unlawful effects of a blast.

In addition, a person not holding a West Virginia blasters certification who requires a certified blaster to take such action may be prosecuted under W. Va. Code 22–3–17(c) or (i).

These proposed revisions fall under the provisions of the Federal blaster certification requirements at 30 CFR 850.15.

32. CSR 199–1–4.9.a Suspension and Revocation

Subparagraph 4.9.a.2 is amended by adding language relating to Imminent Harm Suspension. The new language is as follows:

A certified inspector has the authority to issue a temporary suspension order to a certified blaster when an imminent danger to the health or safety of the public exists, or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resource by any condition, practice, or violation of this rule or any permit condition. The temporary suspension order shall take effect immediately.

4.9.a.2.A. The Secretary shall formally investigate the incident(s) and provide written findings to the blaster within fifteen days following the effective date of the temporary suspension.

4.9.a.2.B. Informal Conference—Unless waived in writing by the certified blaster, an informal conference shall be held at or near the site relevant to the violation. This informal conference shall be held within twenty-four hours after the temporary suspension order becomes effective. The conference shall be held before the Secretary, who shall evaluate the blasters' performance and upon conclusion of the hearing shall; determine if the temporary suspension of the blaster shall remain in force, withdraw the suspension, or uphold in part.

4.9.a.2.C. Appeal to the Secretary—If a blaster chooses to appeal the results of the informal conference or the written findings of the initial investigation; they may appeal the results within in five days to the Secretary. The appeal shall include written reasons for the appeal. The Secretary shall conduct a hearing within ten days of receipt of the appeal.

4.9.a.2.D. Any blaster receiving a temporary suspension may appeal the decision of the Secretary to the Surface Mine Board.

4.9.a.5 is amended by adding language to provide that any blaster receiving a suspension or revocation may appeal the decision to the Secretary and to the Surface Mine Board.

These proposed revisions fall under the provisions of the Federal blaster certification requirements at 30 CFR 850.15.

33. CSR 199–1–4.13 Blasting Crew

Subsection 4.13 is amended to provide that persons who are not certified and who are assigned to a blasting crew, or assist in the use of explosives, shall receive directions and on-the-job training from the certified blaster in the technical aspects of blasting operations, including applicable state and federal laws governing the storage, transportation, and proper use of explosives.

These proposed revisions fall under the provisions of the Federal blaster certification requirements at 30 CFR 816/817.61 and 850.13.

34. CSR 199–1–4.14 Reciprocity With Other States

Subsection 4.14 is amended by adding language to clarify that reciprocity is a one time only process. Any blaster who has been issued a certification through reciprocity and fails to meet the recertification requirements will be required to reexamine and may be required to provide refresher training documentation, as per section 4.6.a of this rule.

These proposed revisions fall under the provisions of Section 719 of SMCRA and 30 CFR Part 850.

35. CSR 199–1–5.2 Filing a Blasting Damage Claim

Subparagraph 5.2.a is amended to clarify that only a certified inspector will be assigned to conduct a field investigation to determine the initial merit of the damage claim and what such an investigation by a certified inspector is to include.

Subparagraph 5.2.a.3 is amended to require that the inspector will make a

written report on the investigation that describes the nature and extent of the alleged damage, taking into consideration the condition of the structure, observed defects, or pre-existing damage that is accurately indicated on a pre-blast survey, conditions of the structure that existed where there has been no blasting conducted by the operator, or other reliable indicators that the alleged damage actually pre-dated the blasting by the operator.

In addition, the language was revised to clarify that the inspector will make one of the initial determinations in 5.2.a.3.A. through 5.2.a.3.C., notify the claims administrator, make a recommendation on the merit of the claim, and supply information that the claims administrator needs to sufficiently document the claim.

The possible determinations are:

5.2.a.3.A. There is merit that blasting caused the alleged damage; or

5.2.a.3.B. There is no merit that blasting caused the alleged damage.

5.2.a.3.C. The determination of merit as to whether blasting caused or did not cause the alleged damage cannot be made.

Subparagraph 5.2.a.4 is amended by deleting former 5.2.a.3.C and adding similar language to clarify that the inspector will inform the property owner of the following four resolution options available for the alleged blasting damage:

5.2.a.4.A. Withdraw the claim, with no further action required by the Secretary;

5.2.a.4.B. File a claim with the operator or the operator's general liability insurance carrier;

5.2.a.4.C. File a claim with the homeowner's insurance carrier; or

5.2.a.4.D. Submit to the Secretary's claims process.

Subparagraph 5.2.a.5 is amended by deleting and adding language to provide that if the property owner declines part 5.2.a.4.D of this rule, the Secretary's involvement will be concluded.

Subparagraph 5.2.a.6 is amended to clarify that the determination as to the merit of a claim is to be made by the inspector.

These proposed revisions fall under the provisions of 30 CFR 816/817.62.

36. CSR 199–1–6 Arbitration for Blasting Damage Claims

Subsection 6.1, relating to the listing of arbitrators, is amended by adding language to provide that once a year the Environmental Advocate, and industry representatives (selected by the West Virginia Coal Association, Inc.) may move to strike up to twenty-five percent (25%) of the list, with cause.

Subsection 6.4 is amended by adding language to require the parties for arbitration shall choose an arbitrator within fifteen (15) days of receipt of the notice.

These proposed revisions fall under the provisions of Section 515(b)(15) of SMCRA and 30 CFR 816/817.62.

37. CSR 199–1–7 Explosive Material Fees

Subsection 7.2 is amended by adding language to require copies of blast logs to verify the accuracy of the report and fee calculation made by operators.

Subsection 7.3 is amended by adding language that for the purpose of this section; detonators, caps, detonating cords, and initiation systems are exempt from the calculation for explosive material fees. However, the Secretary may require reporting on the use of these products.

These proposed revisions fall under the provisions of sections 515(b)(15) and 719 of SMCRA.

Pursuant to Committee Substitute for Senate Bill 751, West Virginia proposes the following amendments to section 22–3–11 of the WVSMCRA:

38. WVSCMRA 22–3–11 Bonds; Amount and Method of Bonding; Bonding Requirements; Special Reclamation Tax and Funds; Prohibited Acts; Period of Bond Liability.

This amendment revises section 22–3–11 of the WVSCMRA relating to the State's alternative bonding system. As stated in the WVDEP's April 8, 2008, letter transmitting the program amendment, the revisions contained in Committee Substitute for 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 secretary to promulgate legislative rules implementing the alternative programs.'' Only substantive statutory revisions are addressed herein. Nonsubstantive editorial, formatting or recodification changes are not addressed in this rule.

The provisions relating to the creation of the Special Reclamation Water Trust Fund and the reinstatement and increase in the special reclamation tax to seven and four-tenths cents per ton as contained in section 22–3–11 (g) and (h)(1), respectively, have been approved by OSM on an interim basis in a separate **Federal Register** notice (June 16, 2008; 73 FR 33884). These provisions, while summarized in this amendment, are subject to public notice and comment in that separate **Federal Register** notice. OSM will render a final decision either separately or jointly on those provisions and all other provisions identified herein relating to the State's alternative bonding system after the close of both public comment periods.

Subsection 22–3–11(a) of the WVSCMRA is amended by adding language to provide that the penal amount of the bond shall be for each acre or fraction of an acre.

Subsection 22–3–11(g) of the WVSCMRA is amended by adding language to provide that the Special Reclamation Fund previously created is continued. In addition, 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.

Subsection 22–3–11(h)(1) of the WVSCMRA is amended by adding language to provide that 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.

Subsection 22–3–11(h)(2) of the WVSCMRA is amended to clarify that in managing the Special Reclamation Program, the secretary shall:

(A) Pursue cost-effective alternative water treatment strategies; and

(B) Conduct formal actuarial studies every two years and conduct informal reviews annually on both the Special Reclamation Fund and Special Reclamation Water Trust Fund.

Subsection 22–3–11(h)(3) of the WVSCMRA is amended to delete obsolete language relating to tasks that were to be completed by the secretary by December 31, 2005, and adding language to provide that prior to the thirty-first day of December, two thousand eight, the secretary shall:

(A) Determine the feasibility of creating an alternate program, on a voluntary basis, for financially sound operators by which those operators pay an increased tax into the Special Reclamation Fund in exchange for a maximum per acre bond that is less than the maximum established in subsection (a) of this section;

(B) Determine the feasibility of creating an incremental bonding program by which operators can post a reclamation bond for those areas actually disturbed within a permit area, but for less than all of the proposed disturbance and obtain incremental release of portions of that bond as reclamation advances so that the released bond can be applied to approved future disturbance; and

(C) Determine the feasibility for sites requiring water reclamation by creating a separate water reclamation security account or bond for the costs so that the existing reclamation bond in place may be released to the extent it exceeds the costs of water reclamation.

Subsection 22–3–11(h)(4) of the WVSCMRA is amended to provide that if the secretary determines that the alternative program, the incremental bonding program or the water reclamation account or bonding programs reasonably assure that sufficient funds will be available to complete the reclamation of a forfeited site and that the Special Reclamation Fund will remain fiscally stable, the secretary is authorized to propose legislative rules in accordance with article three, chapter twenty-nine-a of this code to implement an alternate program, a water reclamation account or bonding program or other funding mechanisms or a combination thereof.

Subsection 22–3–11(l) of the WVSCMRA is amended by adding language to clarify that the Tax Commissioner shall deposit the moneys collected with the Treasurer of the State of West Virginia to the credit of the Special Reclamation Fund and Special Reclamation Water Trust Fund. Existing language providing that the moneys in the fund are to be placed by the Treasurer in an interest bearing account with the interest being returned to the fund on an annual basis is being deleted.

Subsection 22–3–11(m) of the WVSCMRA is amended by adding the words ''in both funds'' at the end of the sentence. The provision now reads, ''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 both funds.''

These proposed revisions fall under the provisions of section 509(c) of SMCRA and 30 CFR 800.11(e).

III. 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. EDT on July 23, 2008. If you are disabled and need reasonable accommodations 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 limited interest in participation 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 Administrative Record.

IV. 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 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. 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 regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; 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: June 9, 2008.

Thomas D. Shope,

Regional Director, Appalachian Region.

[FR Doc. E8–15438 Filed 7–7–08; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0422]

RIN 1625–AA00

Safety Zones: Central Massachusetts August Swim Events

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing safety zones for two swimming events in the Captain of the Port Boston zone. This rule is intended