

(3) *Time period and scope determined by CBP; projection when sampling employed.* In conducting an audit under paragraph (d)(1) of this section or authorizing an audited person's self-testing as described in paragraph (d)(2) of this section, CBP will have the sole authority to determine the time period and scope of the audit. An audit employing statistical sampling will be limited to the transactions that the CBP auditors actually examine (*i.e.*, review) during the audit. The results of the sample examination, with respect to properly identified overpayments and over-declarations and properly identified underpayments and under-declarations, will be projected over the universe of transactions to determine the total overpayments and over-declarations that are eligible for offsetting and to determine the total loss of duties, taxes, and fees.

(4) *Same acts, statements, omissions, or entries not required.* Offsetting may be permitted where the overpayments or over-declarations were not made by the same acts, statements, or omissions that caused the underpayments or under-declarations, and is not limited to the same entries that evidence the underpayments or under-declarations, provided that they are within the time period and scope of the audit as established by CBP and as described in paragraph (d)(4) of this section.

(5) *Limitations.* Offsetting will not be allowed with respect to specific overpayments or over-declarations made for the purpose of violating any provision of law, including laws other than customs laws. Offsetting will not be allowed with respect to overpayments or over-declarations resulting from a failure to timely claim or establish a duty allowance or preference. Offsetting will be disallowed entirely where CBP determines that any underpayments or under-declarations identified for offsetting purposes were made knowingly and intentionally.

(6) *Audit report.* Where overpayments or over-declarations have been identified in accordance with paragraph (d)(1) of this section, the audit report will state whether they have been made within the time period and scope of the audit.

(7) *Disallowance determinations referred to FP&F.* Any determination that offsets will be disallowed where overpayments/over-declarations were made for the purpose of violating any law, or where underpayments or under-declarations were made knowingly and intentionally, will be made by the appropriate Fines, Penalties, and Forfeitures (FP&F) office to which the issue was referred. CBP will notify the

audited person of a determination whether to allow offsetting in whole or in part. The FP&F office will issue a notice of penalty and/or demand for lost duties, taxes, and fees where it determines that such action is warranted. Where the FP&F office issues a notice of penalty and/or demand, the audited person may file a petition under 19 CFR part 171.

(8) *Refunds limited.* A net overpayment of duties, taxes, and fees will not be paid as a refund unless the circumstances of the overpayments meet the requirements of 19 U.S.C. 1520 or the requirements of 19 U.S.C. 1514(a) pertaining to clerical error, mistake of fact, or other inadvertence in any entry, liquidation, or reliquidation. In that event, the audited person must file a claim under the applicable statute and regulations at the appropriate CBP port office. Any such overpayment(s) will not be included in the audit's offsetting calculation.

(e) *Sampling not evidence of reasonable care.* The fact that entries were previously within the time period and scope of an audit conducted by CBP in which sampling was employed, in any circumstances described in this section, is not evidence of reasonable care by a violator in any subsequent action involving such entries.

(f) *Exception to procedures.* Paragraphs (a)(5), (a)(6), (b), (d)(7), and (d)(8) of this section do not apply once CBP and/or ICE commences an investigation with respect to the issue(s) involved.

**Jayson P. Ahern,**  
*Acting Commissioner, Customs and Border Protection.*

Approved: October 15, 2009.

**Timothy E. Skud,**  
*Deputy Assistant Secretary of the Treasury.*  
[FR Doc. E9-25222 Filed 10-20-09; 8:45 am]  
**BILLING CODE 9111-14-P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 948

[WV-116-FOR; OSM-2009-0008]

#### 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 Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) that includes both statutory and regulatory revisions.

West Virginia submitted a proposed amendment authorized by Committee Substitute for Senate Bill 153 to revise the West Virginia Code of State Regulations (CSR) concerning the continued oversight by the Secretary of "approved persons" who prepare, sign, or certify mining permit applications and related materials; regarding incidental boundary revisions (IBR) to existing permits, by clarifying that certain types of collateral activities are part of the primary mining operations and therefore subject to the same acreage limitations, while providing more relevant and exacting criteria for the Secretary to consider in evaluating an application for revision; deleting the bonding matrix forms; changing term "Bio-oil" to "Bio fuel"; and clarifying standards in subsection 9.3.f that pertain to areas developed for hayland or pasture use. West Virginia submitted proposed changes as contained in Senate Bill 436 which amends WV Code 22-3-8 by changing references regarding "the commissioner of the Bureau of Employment Programs" and "the executive director of the workers' compensation commissioner" which are considered non-substantive.

West Virginia also submitted proposed changes as contained in Committee Substitute for Senate Bill 600 regarding the Special Reclamation Fund. This bill amends the State's alternative bonding requirements by eliminating the 7 cents per ton additional tax and increasing and extending the special reclamation tax from 7.4 to 14.4 cents per ton of clean coal mined. It also requires the special reclamation tax to be reviewed biannually by the Legislature. This amendment (WV-115-FOR) was announced earlier in the July 22, 2009, **Federal Register** (74 FR 36113-36116) as an interim rule and approved on a temporary basis.

West Virginia also submitted proposed changes as contained in Senate Bill 1011 which amends the WV Code by requiring surface mine reclamation plans to comport with approved master land use plans and authorizing surface mine reclamation plans to contain alternative postmining land uses. Senate Bill 1011 was passed by the Legislature on June 2, 2009, during the 1st extraordinary 2009 session, and approved by the Governor on June 17, 2009.

**DATES:** We will accept written comments on this amendment until 4 p.m. (local time), on November 20, 2009. If requested, we will hold a public hearing on the amendment on November 16, 2009. We will accept requests to speak at a hearing until 4 p.m. (local time), on November 5, 2009.

**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-2009-0008. If you would like to submit comments through the Federal eRulemaking Portal, go to <http://www.regulations.gov>.

- *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-116-FOR) with your written comments.

*Instructions:* All submissions received must include the agency Docket ID (OSM-2009-0008) 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-2009-0008. 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](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 of the Proposed Amendment  
III. Public Comment Procedures  
IV. Procedural Determinations

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

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, " \* \* \* a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). 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 May 11, 2009 (Administrative Record Number WV-1522), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its permanent regulatory program under SMCRA (30 U.S.C. 1201 *et seq.*) and a copy of Committee Substitute for Senate Bill 153. Committee Substitute for Senate Bill 153 modified the West Virginia Code of State Regulations (CSR) concerning the continued oversight of "approved-persons" who prepare, sign,

or certify mining permit applications and related materials. This bill also proposes to modify incidental boundary revision (IBR) requirements for existing permits by clarifying that certain types of collateral activities are part of the primary mining operations and therefore subject to the same acreage limitations, while providing more relevant and exacting criteria for the Secretary to consider in evaluating an application for revision; deleting the bonding matrix forms; changing the term from "bio-oil" to "bio-fuel"; and clarifying standards for hayland and pasture use. The changes regarding the term "Bio-oil" to "Bio-fuel" in the program amendments are non-substantive in nature.

Committee Substitute for Senate Bill 153 authorized revisions to the State's Surface Mining Reclamation Regulations at 38 CSR 2. Committee Substitute for Senate Bill 153 was adopted by the Legislature on April 8, 2009, and signed into law by the Governor on April 30, 2009. West Virginia Code at paragraph 64-3-1 (e) authorized WVDEP to promulgate the revisions to its rules as legislative rules.

By letter date May 22, 2009 (Administrative Record Number WV-1521), the WVDEP submitted copies of Senate Bill 436 and Committee Substitute for Senate Bill 600. Senate Bill 436 was adopted by the West Virginia Legislature on April 3, 2009, and it was approved by the Governor on April 11, 2009. Committee Substitute for Senate Bill 600, which authorized changes to the State's alternative bonding system, was passed by the Legislature on April 10, 2009, and it was approved by the Governor on May 4, 2009, with an effective date of July 1, 2009.

Senate Bill 436 amends WV Code 22-3-8 by changing references to "the commissioner of the Bureau of Employment Programs" to "executive director of the Workforce West Virginia" and "the executive director of the workers' compensation commissioner" to "Insurance Commissioner." The revisions authorized by Senate Bill 436 are considered non-substantive changes by the State, and it requests that they not be included in the amendment. Given the nature of the changes, OSM concurs with the State's assessment and finds them to be essentially non-substantive changes. Therefore, we are not soliciting comments on these revisions. However, though perhaps non-substantive, the revisions proposed would amend a statutory provision of the State's approved program. Therefore, we will seek comments on these revisions; if, after the comment

period, we determine that the changes are indeed non-substantive, we will approve them without specific findings.

Committee Substitute for Senate Bill 600 amended Section 22–3–11 of the West Virginia Surface Mining Control and Reclamation Act (WVSCMRA). As stated in the State's May 22, 2009, letter transmitting the amendment, Committee Substitute for Senate Bill 600 "amends Chapter 22–3–11 of the Code of West Virginia to implement actuarial recommendations relating to the continuing fiscal viability of the Special Reclamation Fund. The legislation consolidates what has been known as "the 7-and-7.4 tax" (the 7.4 [cents] portion of which is currently subject to annual renewal) into a 14.4 cent[s] tax per ton of clean coal mined, reviewable every two years by the Legislature".

By letter dated July 6, 2009 (Administrative Record Number WV 1523), WVDEP submitted a copy of Senate Bill 1011. Senate Bill 1011 amends the WV Code by requiring surface mine reclamation plans to comport with approved master land use plans and authorizing surface mine reclamation plans to contain alternative postmining land uses. Senate Bill 1011 was passed by the Legislature on June 2, 2009, during the 1st extraordinary 2009 session, and approved by the Governor on June 17, 2009.

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 "Bio-oil" to "Bio-fuel" are made but not listed in this Proposed Rule Notice.

West Virginia proposes the following amendments to its regulations as authorized by Committee Substitute for Senate Bill 153:

#### 1. CSR 38–2–3.15. Permit Applications: Approved Persons

This amendment proposes to add language regarding persons approved to prepare, sign, or certify permit applications.

Subdivision a is amended by adding (C) after 13(b)(10) to clarify when an approved person has to be a registered professional engineer or licensed land surveyor.

Subdivision 3.15.b is amended by adding "and subject to be renewed on an annual basis." after writing, "and" is deleted and "Approvals and renewals" is added before "shall."

As amended, subdivision 3.15 reads as follows:

3.15.a. Any person approved by the Secretary, unless otherwise provided in the

Act and this rule, may prepare, sign, or certify permit application, maps, plans, and design specification or other similar materials necessary to complete an application; provided, however, that for purposes of Sections 9(a)(13) and 13(b)(10)(C) of the Act an approved person shall be a registered professional engineer or licensed land surveyor.

3.15.b. The Secretary's approval shall be in writing and subject to be renewed on an annual basis. Approvals and renewals shall be granted on the basis of the following:

Although there are no specific Federal requirements governing approved persons, these proposed revisions fall under the provisions of 30 CFR 777.11, 777.13, and 780.14(c) and sections 507(b)(14) and 515(b)(10)(B)(ii) of SMCRA.

#### 2. CSR 38–2–3.15.b.3 Permit Applications: Approved Persons

This amendment proposes to add a new subparagraph, 3.15.b.3, regarding obtaining a digital signature approved by the Secretary for an approved person to prepare, sign, or certify permit applications.

As amended, 3.15.b.3 reads as follows:

3.15.b.3. Any person seeking an approval must obtain a digital signature approved by the Secretary and maintain the capability of submitting documents bearing digital signatures to the Secretary. A digital signature shall have the same effect when affixed to documents submitted to the Secretary as a signature affixed by other means.

Although there are no specific Federal requirements governing approved persons, these proposed revisions fall under the provisions of 30 CFR 777.11, 777.13, and 780.14(c) and sections 507(b)(14) and 515(b)(10)(B)(ii) of SMCRA.

#### 3. CSR 38–2–3.15.e Permit Applications: Disciplinary Action and Procedures

This amendment proposes to add a new subdivision, 3.15.e, regarding disciplinary action and procedures for people approved to prepare, sign, or certify permit applications.

As amended, 3.15.e reads as follows:

3.15.e. Disciplinary action and Procedures.  
3.15.e.1. The Secretary may:  
3.15.e.1.A. Revoke an approved person authorization;

3.15.e.1.B. Suspend an approved person authorization for a period of time, not exceeding two years, subject to such conditions as the Secretary may specify or  
3.15.e.1.C. Make the continuation of a person's approved person status subject to such conditions as the Secretary may specify.

3.15.e.2. The Secretary may suspend or revoke a person's approved person status, or refuse to approve, restore, or renew any

continuation of a person's approved person status, or impose conditions upon approval, restoration, or renewal, or may reprimand any approved person who has:

3.15.e.2.A. Engaged or has caused others to engage in fraud or deceit in obtaining or renewing his or her approved person status;

3.15.e.2.B. Been negligent, incompetent or committed an act of misconduct as an approved person;

3.15.e.2.C. Failed to comply with any of the provisions of Chapter 22 Article 3 of the Code of West Virginia or any of the rules promulgated thereunder;

3.15.e.2.D. Been disciplined by a professional or occupational licensing body, or by any State or Federal agency;

3.15.e.2.E. Made false statements or signed false statements, certificates or affidavits; or

3.15.e.2.F. Aided or assisted another person in violating any provision of Chapter 22 Article 3 of the Code of West Virginia or any of the rules promulgated thereunder;

Although there are no specific Federal requirements governing approved persons, these proposed revisions fall under the provisions of 30 CFR 777.11, 777.13, and 780.14(c) and sections 507(b)(14) and 515(b)(10)(B)(ii) of SMCRA.

#### 4. CSR 38–2–3.15.f Permit Applications: Imposition of Conditions, Suspension and Revocation

This amendment proposes to add a new subdivision, 3.15.f, regarding the imposition of conditions, suspension and revocation of disciplinary action and procedures for people approved to prepare, sign, or certify permit applications.

As amended, 3.15.f reads as follows:

3.15.f. Imposition of Conditions, Suspension and Revocation.

3.15.f.1. If the Secretary takes one or more of the actions specified in subsection 3.15.e., the person adversely affected shall be notified.

3.15.f.2. Such notice shall inform the person of the conditions or provisions violated and his or her right to request a hearing for the purpose of showing cause why his or her approved person status should not be revoked, suspended, made subject to conditions, or otherwise abridged.

3.15.f.3. Upon request made in writing within fifteen days of service of the notice, the person shall be granted a hearing before the Secretary to show cause why his or her approved person status should not be suspended, revoked, made subject to conditions, or otherwise abridged.

3.15.f.4. If the approved person requests a hearing, a hearing shall be held within thirty (30) days. Within sixty (60) days following the hearing, the Secretary shall determine whether cause exists, and furnish to the approved person a written decision or order setting forth the reasons therefor.

Although there are no specific Federal requirements governing approved persons, these proposed revisions fall under the provisions of 30 CFR 777.11,

777.13, and 780.14(c) and sections 507(b)(14) and 515(b)(10)(B)(ii) of SMCRA.

#### 5. CSR 38–2–3.28.b.1 Permit Revision

This amendment proposes to add the references “subdivisions 3.2.b., 3.2.c., and 3.2.d. of this rule:” for additional clarification of the public notice requirements for a significant permit revision. *As amended, subparagraph 3.28.b.1 reads as follows:*

3.28.b.1. Where the permit revision constitutes a significant departure from the terms and conditions of the existing permit which may result in a significant impact in any of the following areas, it shall be deemed to be a significant revision and be subject to the public notice requirements of subdivisions 3.2.a, 3.2.b., 3.2.c. and 3.2.d. of this rule:

These proposed revisions fall under the provisions of 30 CFR 774.13 and section 511(a)(2) of SMCRA.

#### 6. CSR 38–2–3.29.a Incidental Boundary Revisions

This amendment proposes to delete language regarding incidental boundary revisions (IBRs) that involve the abatement of a violation where encroachment goes beyond the permit boundary, unless an equal amount of acreage covered under the IBR for encroachment is deleted from the permitted area and transferred to the encroachment area. *As amended, subdivision 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.

These proposed revisions fall under the provisions of 30 CFR 774.13 and section 511(a)(3) of SMCRA.

#### 7. CSR 38–2–3.29.b.2 Incidental Boundary Revisions—Acreage Limitation

This amendment proposes to add language regarding the acreage limitation for underground mining and other related mining operations. Under the proposed revision, the State proposes to apply its underground mining acreage limit and waiver provisions to loadout operations, coal refuse disposal operations, and coal preparation operations. *As amended, subparagraph 3.29.b.2 reads as follows:*

3.29.b.2. For purposes of surface mining operations, the maximum total acreage to be permitted under one or more IBR(s) shall not exceed twenty (20) percent of the original permitted acreage or a maximum of fifty (50) acres, whichever is less, throughout the life of the permit. Acreage limitation for IBR(s) on underground mining operations and other mining operations including but not limited to loadout operations, coal refuse disposal operations and coal preparation operations shall be limited to one hundred fifty (150) percent of the original permitted acreage or a maximum of fifty (50) acres, whichever is less, throughout the life of the permit; Provided, That the Secretary may grant a waiver specifying larger acre limits where the applicant demonstrates that the nature and complexity of the operation clearly requires more than fifty (50) acres for additional facilities to include but not be limited to site development, air shafts, fan ways, vent holes, roads, staging areas, etc.

These proposed revisions fall under the provisions of 30 CFR 774.13 and section 511(a)(3) of SMCRA.

#### 8. CSR 38–2–3.29.d Incidental Boundary Revisions

This amendment proposes to delete language regarding the findings the Secretary must make prior to approving IBRs. Currently, the Secretary must make six required findings prior to approving an IBR. As proposed, the State intends to delete language requiring the Secretary to find that the IBR does not constitute a change in postmining land use; will only involve lands for which the approved PHC is applicable; does not constitute a change in the mining method; and will not result in adverse environmental impacts of a larger scope or different nature from those described in the approved permit. Due to the proposed deletion of these four IBR findings, the State proposes to renumber 3.29.d.5 and 3.29.d.6 as 3.29.d.1 and 3.29.d.2, respectively. *As amended, subparagraph 3.29.d now only has two required findings and reads as follows:*

3.29.d. The Secretary shall make the following findings prior to approval of an IBR:

3.29.d.1 The IBR will facilitate the orderly and continuous conduct of mining and reclamation operations.

3.29.d.2 Except for underground operations, an area permitted under an IBR must be contiguous to the original permitted area.

These proposed revisions fall under the provisions of 30 CFR 774.13 and section 511(a)(3) of SMCRA.

#### 9. CSR 38–2–3.29.e Incidental Boundary Revisions—Hydrologic—Consequences/Assessment—Significant or Non-significant

This amendment proposes to delete language which gives the Secretary the authority to require IBR applications to be advertised and to provide for a 10-day public comment period. The amendment also proposes to add new language regarding the review of applications for IBR’s to determine if an updated probable hydrologic consequences determination or cumulative hydrologic impact assessment is required. The State also added language setting forth the basis by which an IBR is determined to be significant or non-significant. *As amended, subparagraph 3.29.e reads as follows:*

3.29.e. Each application for an IBR shall be subject to review and approval by the Secretary. Each application shall be reviewed by the Secretary to determine if an updated probable hydrologic consequences determination or cumulative hydrologic impact assessment is required. The Secretary shall make a determination, on the basis of information provided in the IBR application, whether the IBR is of a significant or non-significant nature. The following criteria shall provide guidance for making such a determination.

3.29.e.1. Where the IBR constitutes a significant departure from the terms and conditions of the existing permit which may result in a significant impact in any of the following areas, it shall be deemed to be significant and be subject to the public notice requirements of subdivisions 3.2.a., 3.2.b., 3.2.c. and 3.2.d. of this rule:

3.29.e.1.A. The health, safety, or welfare of the public;

3.29.e.1.B. The hydrologic balance in the area of operation;

3.29.e.1.C. The postmining land use;

3.29.e.1.D. The method of mining;

3.29.e.1.E. Adverse environmental impacts of a larger scope or different nature from those described in the approved permit;

3.29.e.1.F. Areas prohibited from mining pursuant to the provisions of subsection (d) section 22 of the Act; and

3.29.e.1.G. An individual’s legal right to receive notice, as prescribed by the provisions of this rule.

3.29.e.2. Where the IBR constitutes only an insignificant departure from the terms and conditions of the approved existing permit, it shall be deemed to be non-significant, requiring no public notice.

These proposed revisions fall under the provisions of 30 CFR 774.13 and section 511(a)(2) of SMCRA.

#### 10. CSR 38–2–9.3.f Revegetation Success Standards

This amendment proposes to delete “Where the postmining land use requires legumes and perennial grasses,” and add “For areas to be

developed for hayland or pasture use,” As amended, subparagraph 9.3.f reads as follows:

9.3.f. For areas to be developed for hayland or pasture use, the operator shall achieve at least a ninety (90) percent ground cover and a productivity level as set forth by the Secretary during any two years of the responsibility period except for the first year. Substandard areas shall not exceed one-fourth (¼) acre in size nor total more than ten (10) percent of the area seeded. Exceptions to this standard may be authorized by the Secretary based on the following:

These proposed revisions fall under the provisions of 30 CFR 816.116(b)(1) and 817.116(b)(1).

### 11. Site Specific Bonding Tables

This amendment is proposing to delete the Coal Bonding Calculations Tables 1, 2, 3, and 4 in subsection 11.5. In addition, subdivisions 11.5.c, 11.5.d, 11.5.e, and 11.5.f propose to delete language referring to the Bonding Calculations Tables. The criterion for calculating site specific bonds remains the same in the existing regulations.

Although there are no specific Federal requirements governing bonding calculations, these proposed revisions fall under the provisions of 30 CFR 800.14.

### 12. Section 5B-2A-3: Definitions

This amendment is proposing to add the following definitions to the West Virginia Code 5B-2A-3.

(2) “Master land use plan” means a plan as defined in 145 CSR 8;

(3) Is renumbered (4) and the following definition for “Operator” is added: “Operator” means the definition in section three, article three, chapter twenty-two of this code;

(4) Is renumbered (5) and the following definition for “Renewable and alternative energy” is added: “Renewable and alternative energy” means energy produced or generated from natural or replenishable resources other than traditional fossil fuels or nuclear resources and includes, without limitation, solar energy, wind power, hydropower, geothermal energy, biomass energy, biologically derived fuels, energy produced with advanced coal technologies, coalbed methane, fuel produced by a coal gasification or liquefaction facility, synthetic gas, waste coal, tire-derived fuel, pumped storage hydroelectric power or similar energy sources.

As amended, West Virginia Code 5B-2A-3 reads as follows:

(a) For the purpose of this article, the following terms have the meanings ascribed to them:

(2) “Master land use plan” means a plan as defined in 145 CSR 8;

(4) “Operator” means the definition in section three, article three, chapter twenty-two of this code;

(5) “Renewable and alternative energy” means energy produced or generated from natural or replenishable resources other than traditional fossil fuels or nuclear resources and includes, without limitation, solar energy, wind power, hydropower, geothermal energy, biomass energy, biologically derived fuels, energy produced with advanced coal technologies, coalbed methane, fuel produced by a coal gasification or liquefaction facility, synthetic gas, waste coal, tire-derived fuel, pumped storage hydroelectric power or similar energy sources.

Although there are no specific Federal requirements governing master land use plans, these proposed revisions fall under the provisions of SMCRA 507, 508, and 515(b), (c), (d) and (e) and 30 CFR 780.23, 784.15, 784.16, 816/817.133 and 824.

### 13. Section 5B-2A-5: Powers and Duties

This amendment proposes to add “shall” after “assistance” in West Virginia Code 5B-2A-5(8). As amended, West Virginia Code 5B-2A-5(8) reads as follows:

(8) On its own initiative or at the request of a community in close proximity to a mining operation, offer assistance to facilitate the development of economic or community assets. Such assistance shall include the preparation of a master land use plan pursuant to the provisions of section nine of this article.

Although there are no specific Federal requirements governing master land use plans, these proposed revisions fall under the provisions of SMCRA 508 and 30 CFR 780.23.

### 14. Section 5B-2A-6: Community Impact Statement

This amendment proposes to replace at West Virginia Code 5B-2A-6 (2) “division’s” with “department’s”; add “county” after “local”; delete “economic” after “regional” and add “or redevelopment” after “development”. This amendment proposes to add new language at (9) regarding a master land use plan; and at (9)(d) regarding receipt of a community impact statement. The old (d) is relettered to (e) and in (e)(1), “the effective date of this article” is deleted and “June 11, 1999” is added.

As amended, West Virginia Code 5B-2A-6 reads as follows:

(a)(2) The operator shall provide copies of the community impact statement to the division’s department’s office of mining reclamation and office of explosives and blasting and to the county commissions,

county clerks’ offices and local, county or regional economic development or redevelopment authorities of the areas to be affected by the surface mining operations.

(b) The community impact statement, where practicable, shall not be a highly technical or legalistic document, but shall be written in a clear and concise manner understandable to all citizens. The community impact statement shall include the following:

(9) An acknowledgment of the recommendations of any approved master land use plan that pertains to the land proposed to be mined, including an acknowledgment of the infrastructure components needed to accomplish the designated post-mine land use required by the plan.

(d) Within thirty days of receipt of a community impact statement pursuant to subdivision (2), subsection (a) of this section or a revised community impact statement pursuant to subsection (c) of this section, the local, county or regional development or redevelopment authorities of the areas to be affected by the surface mining operations shall provide a written acknowledgment of the receipt of this community impact statement or revised community impact statement to the department’s Division of Mining Reclamation, to the county commission or county commissions and to the office.

(e) The provisions of this section shall apply as follows:

(1) To all surface mining permits granted after June 11, 1999; and

(2) At the first renewal date of all previously issued permits: *Provided*, That the permittee shall be afforded ninety days from said date to comply with the provisions of this section.

Although there are no specific Federal requirements governing master land use plans, these proposed revisions fall under the provisions of SMCRA 507, 508, and 515(b), (c), (d) and (e) and 30 CFR 780.23, 784.15, 784.16, 816/817.133 and 824.

### 15. Section 5B-2A-9: Securing Developable Land and Infrastructure

This amendment proposes to delete from (f) “Participation in a master land use plan is voluntary.” At (f)(1) delete “State, local, county or regional development or redevelopment authorities may” and add “The county commission or other governing body for each county in which there are surface mining operations that are subject to this article shall” after “may”; delete “that include” after “needs” and add “, including, but not limited to, renewable and alternative energy uses, residential uses, highway uses,”; add new language at the end of (f)(1) regarding designation of development or redevelopment authority and adoption of a master land use plan. (f)(2) is deleted and new language is added to (f)(2), (3)(A), (3)(B), (3)(C), and (3)(D) regarding master land

plan use; (3) is renumbered to (4) and "subdivision (1) of this subsection" is deleted and "a master land use plan" is added; "relevant State, local," is deleted after "the"; "regional" is deleted after "or"; and "its designated" is added after "or"; "State, local," is deleted after "respective" and "regional" is deleted after "or"; "State, local," is added after "relevant" in (4)(ii); "or other county governing body" is added after "commissions"; and (4) is renumbered to (5).

*As amended, West Virginia Code 5B-2A-9(f) reads as follows:*

(f) The office may secure developable land and infrastructure for a development office or county through the preparation of a master land use plan for inclusion into a reclamation plan prepared pursuant to the provisions of section ten, article three, chapter twenty-two of this code. No provision of this section may be construed to modify requirements of article three of said chapter.

(1) The county commission or other governing body for each county in which there are surface mining operations that are subject to this article shall determine land and infrastructure needs within their jurisdictions through the development of a master land use plan which incorporates post-mining land use needs, including, but not limited to, renewable and alternative energy uses, residential uses, highway uses, industrial uses, commercial uses, agricultural uses, public facility uses or recreational facility uses. A county commission or other governing body of a county may designate a local, county, or regional development or redevelopment authority to assist in the preparation of a master land use plan. A county commission or other governing body of a county may adopt a master land use plan developed after July 1, 2009, only after a reasonable public comment period;

(2) Upon the request of a county or designated development or redevelopment authority, the office shall assist the county or development or redevelopment authority with the development of a master land use plan;

(3)(A) The Department of Environmental Protection and the Office of Coalfield Community Development shall review master land use plans existing as of July 1, 2009. If the office determines that a master land use plan complies with the requirements of this article and the rules promulgated pursuant to this article, the office shall approve the plan on or before July 1, 2010;

(B) Master land use plans developed after July 1, 2009, shall be submitted to the department and the office for review. The office shall determine whether to approve a master land use plan submitted pursuant to this subdivision within three months of submission. The office shall approve the plan if it complies with the requirements of this article and the rules promulgated pursuant to this article;

(C) The office shall review a master land use plan approved under this section every three years. No later than six months before

the review of a master land use plan, the county or designated development or redevelopment authority shall submit an updated master land use plan to the department and the office for review. The county may submit its updated master land use plan only after a reasonable public comment period. The office shall approve the master land use plan if the updated plan complies with the requirements of this article and the rules promulgated pursuant to this article;

(D) If the office does not approve a master land use plan, the county or designated development or redevelopment authority shall submit a supplemental master land use plan to the office for approval;

(4) The required infrastructure component standards needed to accomplish the designated post-mining land uses identified in a master land use plan shall be developed by the county or its designated development or redevelopment authority. These standards must be in place before the respective county or development or redevelopment authority can accept ownership of property donated pursuant to a master land use plan. Acceptance of ownership of such property by a county or development or redevelopment authority may not occur unless it is determined that: (i) The property use is compatible with adjacent land uses; (ii) the use satisfies the relevant county or development or redevelopment authority's anticipated need and market use; (iii) the property has in place necessary infrastructure components needed to achieve the anticipated use; (iv) the use is supported by all other appropriate public agencies; (v) the property is eligible for bond release in accordance with section twenty-three, article three, chapter twenty-two of this code; and (vi) the use is feasible. Required infrastructure component standards require approval of the relevant county commission, commissions or other county governing body before such standards are accepted. County commission or other county governing body approval may be rendered only after a reasonable public comment period;

Although there are no specific Federal requirements governing master land use plans, these proposed revisions fall under the provisions of SMCRA 507, 508, and 515(b), (c), (d) and (e) and 30 CFR 780.23, 784.15, 784.16, 816/817.133 and 824.

#### *16. Section 22-3-10: Reclamation Plan Requirements*

This amendment proposes to add new language to West Virginia Code 22-3-10(a)(3) regarding a variety of alternative uses; delete language regarding master plan for postmining land use; add new language regarding postmining land use; delete language regarding surface permit application and add language regarding master land use plan. This amendment also proposes to add new language at the end regarding the effective date of these amendments.

*As amended, West Virginia Code 22-3-10(a)(3) will read as follows:*

Each reclamation plan \* \* \* shall include \* \* \* a statement of:

(3) The use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, including, but not limited to, renewable and alternative energy uses, residential uses, highway uses, industrial uses, commercial uses, agricultural uses, public facility uses or recreational facility uses, and the relationship of the use to existing land use policies and plans and the comments of any owner of the surface, other State agencies and local governments which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation;

(A) The post-mining land use proposed in any reclamation plan for lands proposed to be mined by surface mining methods shall comport with the land use that is specified in the approved master land use plan for the area as provided in section nine, article two-a, chapter five-b of this code: *Provided*, That the secretary may approve an alternative post-mining land use where the applicant demonstrates that:

(i) The proposed post-mining land use is a higher and better use than the land use specified in the approved master land use plan;

(ii) Site-specific conditions make attainment of a post-mining land use which comports with the land use that is specified in the approved master land use plan for the area impractical; or

(iii) The post-mining land use specified in the approved master land use plan would substantially interfere with the future extraction of mineable coal, as that term is defined in 110 CSR 1 or a successor rule, from the land to be mined.

(B) Existing permits with approved reclamation plans may be modified by the operator through an appropriate permit revision to include a post-mining land use which comports with the land use that is specified in the approved master land use plan for the area as provided in section nine, article two-a, chapter five-b of this code;

(C) By complying with a master land use plan that has been approved in accordance with article two-a, chapter five-b of this code, a post-mining land use satisfies the requirements for an alternative post-mining land use and satisfies the variance requirements set forth in subsection (c), section thirteen, article three, chapter twenty-two of this code if applicable to the proposed use;

(b) A reclamation plan pending approval as of the effective date of this section may be amended by the operator to provide for a post-mining land use that comports with a master land use plan that has been approved in accordance with article two-a, chapter five-b of this code.

(d) The amendments to this section by the first extraordinary session of the Legislature in 2009 are effective upon the approval of the corresponding amendments to West Virginia's State program, as that term is defined in the Federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1291, by the Federal Office of Surface Mining Reclamation and Enforcement.

Although there are no specific Federal requirements governing master land use plans, these proposed revisions fall under the provisions of SMCRA 507, 508, and 515(b), (c), (d) and (e) and 30 CFR 780.23, 784.15, 784.16, 816/817.133 and 824.

#### 17. Section 22–3–11 Bonds

Subsection 22–3–11(h)(1) of the WVSCMRA is amended by deleting the year 2008, and adding language to provide that, “For tax periods commencing on and after July 1, 2009, every person conducting coal surface mining shall remit a special reclamation tax \* \* \*” Former subparagraph (A) is revised by deleting language which provides that the special reclamation tax be remitted for the initial period of twelve months, ending June 30, 2009, and the word “seven” is deleted. As modified, the special reclamation tax is increased from seven and four-tenths to fourteen and four-tenths cents per ton of clean coal mined.

Former subparagraph (B) is amended by deleting language which provides that “[A]n additional seven cents per ton of clean coal mined, the proceeds of which shall be deposited in the Special Reclamation Fund.” This revision eliminates the additional seven cents tax which previously funded the Special Reclamation Fund.

Furthermore, language is deleted which provides that the additional seven cents tax shall be reviewed and, if necessary, adjusted annually by the Legislature upon the recommendation of the council pursuant to the provisions of section seventeen, article one of this chapter. This provision is modified to provide that, “Beginning with the tax period commencing on July 1, 2009, and every two years thereafter, the special reclamation tax shall be reviewed by the Legislature to determine whether the tax should be continued:”

*As amended, West Virginia Code 22–3–11(h)(1) reads as follows:*

(h)(1) For tax periods commencing on and after July 1, 2009, every person conducting coal surface mining shall remit a special reclamation tax of fourteen 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. 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. Beginning with the tax period commencing on July 1, 2009, and every two years thereafter, the special reclamation tax shall be reviewed by the Legislature to determine whether the tax

should be continued: *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.

This proposed amendment was announced earlier in the July 22, 2009, **Federal Register** (74 FR 36113–36226) as an interim rule (WV–115–FOR) and approved on a temporary basis.

### 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** until 4 p.m. (local time), on November 5, 2009. 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 only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings 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 the analysis performed for the counterpart Federal regulation.

#### 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: August 8, 2009.

**Michael K. Robinson,**

*Acting Regional Director, Appalachian Region.*

[FR Doc. E9–25314 Filed 10–20–09; 8:45 am]

BILLING CODE 4310–05–P

**GENERAL SERVICES ADMINISTRATION****41 CFR Parts 300–70 and 302–1**

[FTR Case 2009–306; Docket 2009–0011, Sequence 1]

RIN 3090–AI94

**Federal Travel Regulation (FTR); FTR Case 2009–306; Relocation Allowances**

**AGENCY:** Office of Governmentwide Policy (OGP), General Services Administration (GSA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule defines a process for collecting transaction-level data regarding relocation of Federal civilian employees. Specifically, this proposed rule would require that agencies that spend more than \$5 million per year on travel and relocation send transaction-level data on relocation to GSA at least quarterly. GSA will store this data in a data warehouse that the agencies will be able to query to answer operational, managerial, and policy questions. In addition to the transaction-level reporting process, this proposed rule also would establish an annual reporting requirement for data regarding employee relocation and would modify the existing requirement for large agencies to collect and report data on temporary duty travel on an annual basis, instead of biennially.

**DATES:** Comments must be received on or before December 21, 2009.

**ADDRESSES:** Submit comments identified by FTR case 2009–306 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search for any document by typing in the FTR case number (for example, FTR case 2009–306) and clicking on the “Go” button.

- *Fax:* 202–501–4067.

- *Mail:* General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FTR case 2009–306 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.