

19. Section 416.1417 is amended by revising paragraph (d) to read as follows:

**§ 416.1417 Disability hearing—disability hearing officer's reconsidered determination.**

\* \* \* \* \*

(d) *Effect.* The disability hearing officer's reconsidered determination, or, if it is changed under § 416.1418, the reconsidered determination that is issued by the Associate Commissioner for Disability Determinations or his or her delegate, is binding in accordance with § 416.1421, subject to the exceptions specified in that section.

20. Section 416.1418 is revised to read as follows:

**§ 416.1418 Disability hearing—review of the disability hearing officer's reconsidered determination before it is issued.**

(a) *General.* The Associate Commissioner for Disability Determinations or his or her delegate may select a sample of disability hearing officers' reconsidered determinations, before they are issued, and review any such case to determine its correctness on any grounds he or she deems appropriate. The Associate Commissioner or his or her delegate shall review any case within the sample if:

- (1) There appears to be an abuse of discretion by the hearing officer;
- (2) There is an error of law; or
- (3) The action, findings or conclusions of the disability hearing officer are not supported by substantial evidence.

**Note to paragraph (a):** If the review indicates that the reconsidered determination prepared by the disability hearing officer is correct, it will be dated and issued immediately upon completion of the review. If the reconsidered determination prepared by the disability hearing officer is found by the Associate Commissioner or his or her delegate to be deficient, it will be changed as described in paragraph (b) of this section.

(b) *Methods of correcting deficiencies in the disability hearing officer's reconsidered determination.* If the reconsidered determination prepared by the disability hearing officer is found by the Associate Commissioner for Disability Determinations or his or her delegate to be deficient, the Associate Commissioner or his or her delegate will take appropriate action to assure that the deficiency is corrected before a reconsidered determination is issued. The action taken by the Associate Commissioner or his or her delegate will take one of two forms:

- (1) The Associate Commissioner or his or her delegate may return the case file either to the component responsible

for preparing the case for hearing or to the disability hearing officer, for appropriate further action; or

(2) The Associate Commissioner or his or her delegate may issue a written reconsidered determination which corrects the deficiency.

(c) *Further action on your case if it is sent back by the Associate Commissioner for Disability Determinations or his or her delegate either to the component that prepared your case for hearing or to the disability hearing officer.* If the Associate Commissioner for Disability Determinations or his or her delegate sends your case back either to the component responsible for preparing the case for hearing or to the disability hearing officer for appropriate further action, as provided in paragraph (b)(1) of this section, any additional proceedings in your case will be governed by the disability hearing procedures described in § 416.1416(f) or if your case is returned to the disability hearing officer and an unfavorable determination is indicated, a supplementary hearing may be scheduled for you before a reconsidered determination is reached in your case.

(d) *Opportunity to comment before the Associate Commissioner for Disability Determinations or his or her delegate issues a reconsidered determination that is unfavorable to you.* If the Associate Commissioner for Disability Determinations or his or her delegate proposes to issue a reconsidered determination as described in paragraph (b)(2) of this section, and that reconsidered determination is unfavorable to you, he or she will send you a copy of the proposed reconsidered determination with an explanation of the reasons for it, and will give you an opportunity to submit written comments before it is issued. At your request, you will also be given an opportunity to inspect the pertinent materials in your case file, including the reconsidered determination prepared by the disability hearing officer, before submitting your comments. You will be given 10 days from the date you receive the Associate Commissioner's notice of proposed action to submit your written comments, unless additional time is necessary to provide access to the pertinent file materials or there is good cause for providing more time, as illustrated by the examples in § 416.1411(b). The Associate Commissioner or his or her delegate will consider your comments before taking any further action on your case.

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 946

[VA-122-FOR]

#### 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 Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment revises the Virginia Coal Surface Mining Reclamation Regulations. The amendment reflects changes in renumbering of the Virginia Code section references of the Virginia Administrative Process Act; clarifies the filing of requests for formal hearing and judicial review; revisions of the Virginia rules to be consistent with amendments to the Federal rules; revisions to allow approval of natural stream restoration channel design; regulation changes to implement requirements of Virginia HB 2573 (enacted as emergency legislation); and corrections of typographical errors.

**DATES:** We will accept written comments on this amendment until 4 p.m. (local time), on July 18, 2005. If requested, we will hold a public hearing on the amendment on July 12, 2005. We will accept requests to speak at the hearing until 4 p.m. (local time), on July 5, 2005.

**ADDRESSES:** You may submit comments, identified by VA-122-FOR, by any of the following methods:

- E-mail: [rpenn@osmre.gov](mailto:rpenn@osmre.gov). Include VA-122-FOR in the subject line of the message.
- Mail/Hand Delivery: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**Instructions:** All submissions received must include the agency docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading in the **SUPPLEMENTARY INFORMATION** section of

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

*Docket:* You may review copies of the 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 receive one free copy of the amendment by contacting OSM's Big Stone Gap Field Office.

Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (540) 523-4303. E-mail: [rpenn@osmre.gov](mailto:rpenn@osmre.gov).

Mr. Leslie S. Vincent, Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (540) 523-8100. E-mail: [lsv@mme.state.va.us](mailto:lsv@mme.state.va.us).

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert A. Penn, Director, Big Stone Gap Field Office; Telephone: (540) 523-4303. Internet: [rpenn@osmre.gov](mailto:rpenn@osmre.gov).

#### **SUPPLEMENTARY INFORMATION:**

- I. Background on the Virginia Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

### **I. Background on the 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 Virginia program on December 15, 1981. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Virginia program in the December 15, 1981, **Federal Register** (46 FR 61088). You can also find later actions concerning Virginia's program and program amendments at 30 CFR 946.12, 946.13, and 946.15.

### **II. Description of the Proposed Amendment**

By letter dated May 9, 2005 (Administrative Record Number VA-1048), the Virginia Department of Mines, Minerals and Energy (DMME) submitted an amendment to the Virginia program. In its letter, the DMME stated that the program amendment revises Virginia Coal Surface Mining Reclamation Regulations to reflect the changes in the renumbering of the Virginia Code section references of the Virginia Administrative Process Act; clarifies the filing of requests for formal hearing and judicial review; revises the Virginia rules to make them consistent with amendments to the Federal rules; revises its rules to allow approval of natural stream restoration channel design; changes its regulation to implement requirements of Virginia HB 2573 (enacted as emergency legislation in Chapter 3 of the 2005 Virginia Acts of Assembly); and corrects typographical errors. Specifically, the following amendments are proposed:

1. 4 VAC 25-130-700.12 Petitions to initiate rulemaking.

The proposed amendment revises subsection (e) by changing the citation of the Virginia Code section from “9-6.14:1” to “2.2-4000A.”

2. 4 VAC 25-130-773.21 Improvidently issued permits; Rescission procedures.

The proposed amendment revises subsection (c), right to appeal, by changing the citation of Virginia Code section from “9-6.14:1” to “2.2-4000A.”

3. 4 VAC 25-130-775.11 Administrative Review.

The proposed amendment revises subsection (b)(1) by changing the citation of the Virginia Code section from “9-6.14:12” to “2.2-4020.” In addition, new subsection (d) is added to provide as follows:

(d) All requests for hearing or appeals for review and reconsideration made under this section shall be filed with the Director, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

4. 4 VAC 25-130-775.13 Judicial Review.

New subsection (c) is added to provide as follows:

(c) All notices of appeal for judicial review of a Hearing Officer's final decision, or the final decision on review and reconsideration, shall be filed with the Director, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

5. 4 VAC 25-130-784.20 Subsidence Control Plan.

Subsection (a)(3) is amended by deleting language concerning presubsidence survey requirements. The DMME stated that the provision was amended to delete those requirements that are counterpart to Federal regulations that were suspended effective December 22, 1999 (64 FR 71652). The following language is being deleted: “condition of all noncommercial buildings or occupied residential dwellings and structures related thereto, that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the area encompassed by the applicable angle of draw; as well as a survey of the.” In addition, the following language is being deleted: “premining condition or value of such noncommercial buildings or occupied residential dwellings and structures related thereto and the.” As revised, Subsection (a)(3) provides as follows:

(3) A survey of the quantity and quality of all drinking, domestic and residential water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the applicant will notify the owner in writing of the effect that denial of access will have as described in 4VAC25-130-817.121(c)(4). The applicant must pay for any technical assessment or engineering evaluation used to determine the quantity and quality of drinking, domestic, or residential water supplies. The applicant must provide copies of the survey and any technical assessment or engineering evaluation to the property owner and the division.

6. 4 VAC 25-130-800.51 Administrative review of performance bond forfeiture.

Subsection (c)(1) is amended by changing the citation of the Virginia Code sections from “9-6.14:12” to “2.2-4020.”

Subsection (e) is amended by clarifying that the “Division of Mined Land Reclamation” is now the “Department of Mines, Minerals and Energy.” As amended, Subsection (e) provides as follows:

(e) All requests for hearing, or appeals for review and reconsideration made under this section; and all notices of appeal for judicial review of a Hearing Officer's final decision, or the final decision on review and reconsideration shall be filed with the Director, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

7. 4 VAC 25-130-816.11 Signs and markers.

New Subsection (a)(4) is added and existing (a)(4) is redesignated as (a)(5).

As amended, Subsection (a) provides as follows:

- (a) Specifications. Signs and markers required under this Part shall—
  - (1) Be posted, maintained, and removed by the person who conducts the surface mining activities;
  - (2) Be of a uniform design throughout the operation that can be easily seen and read;
  - (3) Be made of durable material;
  - (4) For permit boundary markers on areas that are located on steep slopes above private dwellings or other occupied buildings, be made of or marked with fluorescent or reflective paint or material; and
  - (5) Conform to local ordinances and codes.

#### 8. 4 VAC 25–130–816.43 Diversions.

New Subsection (d) is added, and existing Subsection (d) is redesignated as Subsection (e). New Subsection (d) provides as follows:

(d) In lieu of the requirements of paragraphs (a)(2) through (a)(9), (b)(2) through (b)(6) and (c)(1) through (c)(3) of this section, a natural stream restoration channel design approved by the U.S. Army Corps of Engineers as part of an approved U.S. Army Corps of Engineers permit shall be deemed to meet the requirements of this section.

#### 9. 4 VAC 25–130–816.64 Use of explosives; blasting schedule.

New Subsection (a)(4) concerning seismic monitoring is added and provides as follows:

(4) Seismic monitoring shall be conducted when blasting operations on coal surface mining operations are conducted within 1,000 feet of a private dwelling or other occupied building.

#### 10. 4 VAC 25–130–816.105 Backfilling and grading; thick overburden.

This proposed change is intended to revise Virginia's rule to be consistent with the counterpart Federal rule. Thin overburden is addressed under Virginia rule 4 VAC 25–130–816.104. This provision is amended as follows: The term "Thin" is deleted and replaced by the term "Thick" in subsection (a); the term "insufficient" is deleted and replaced by "more than sufficient" in subsection (a); the term "less" is deleted and replaced by the term "more" in subsection (a); and the term "thin" is deleted and replaced by the term "thick" in subsection (b). As amended this provision provides as follows:

(a) Thick overburden exists when spoil and other waste materials available from the entire permit area is more than sufficient to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is more than the combined thickness of the overburden and coal bed prior to removing the coal, so that after

backfill and grading the surface configuration of the reclaimed area would not:

- (1) Closely resemble the surface configuration of the land prior to mining; or
  - (2) Blend into and complement the drainage pattern of the surrounding terrain.
- (b) Where thick overburden occurs within the permit area, the permittee at a minimum shall:
- (1) Restore the approximate original contour and then use the remaining spoil and other waste materials to attain the lowest practicable grade, but not more than the angle of repose;
  - (2) Meet the requirements of 4VAC25–130–816.102(a)(2) through (j); and
  - (3) Dispose of any excess spoil in accordance with 4VAC25–130–816.71 through 4VAC25–130–816.75.

#### 11. 4 VAC 25–130–817.11 Signs and markers.

New Subsection (a)(4) is added and existing subsection (a)(4) is redesignated as (a)(5). New subsection (a)(4) provides as follows:

- (a) Specifications. Signs and markers required under this Part shall —
  - (4) For permit boundary markers on areas that are located on steep slopes above private dwellings or other occupied dwellings, be made of or marked with fluorescent or reflective paint or material; and

#### 12. 4 VAC 25–130–817.43 Diversions.

New Subsection (d) is added and existing Subsection (d) is redesignated as Subsection (e). As amended, new Subsection (d) provides as follows:

(d) In lieu of the requirements of paragraphs (a)(2) through (a)(9), (b)(2) through (b)(6) and (c)(1) through (c)(3) of this section, a natural stream restoration channel design approved by the U.S. Army Corps of Engineers as part of an approved U.S. Army Corps of Engineers permit shall be deemed to meet the requirements of this section.

#### 13. 4 VAC 25–130–817.64 Use of explosives; general performance standards.

New Subsection (d) is added and provides as follows:

(d) Seismic monitoring shall be conducted when blasting operations on coal surface mining operations are conducted within 1,000 feet of a private dwelling or other occupied building.

#### 14. 4 VAC 25–130–817.121 Subsidence control.

This provision is amended by deleting Subsections (c)(4)(i)–(iv) and redesignating Subsection (c)(4)(v) as subsection (c)(4). The DMME stated that this provision was amended to delete those requirements that are counterpart to Federal regulations that were suspended effective December 22, 1999 (64 FR 71652). This provision had created a rebuttable presumption that underground mining caused subsidence, where the subsidence damage occurred

within the angle of draw. As amended, Subsection (c)(4) provides as follows:

(4) Information to be considered in determination of causation. In a determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the division.

#### 15. 4 VAC 25–130–842.15 Review of decision not to inspect or enforce.

The proposed amendment revises Subsection (d) by changing the citation of the Virginia Code section from "9–6.14:1" to "2.2–4000A."

#### 16. 4 VAC 25–130–843.12 Notices of violation.

The proposed amendment revises Subsection (j) by changing the citation of the Virginia Code section from "9–6.14:1" to "2.2–4000A."

#### 17. 4 VAC 25–130–843.13 Suspension or revocation of permits; pattern of violations.

The proposed amendment revises Subsection (b) by changing the citation of the Virginia Code section from "9–6.14:12" to "2.2–4020." Subsection (e) is amended by clarifying that the "Division of Mined Land Reclamation" is now the "Department of Mines, Minerals, and Energy." As amended, Subsection (e) provides as follows:

(e) All requests for hearing, or appeals for review and reconsideration made under this section; and all notices of appeal for judicial review of a Hearing Officer's final decision, or the final decision on review and reconsideration shall be filed with the Director, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

#### 18. 4 VAC 25–130–843.15. Informal public hearing.

The amendment revises Subsection (c) by changing the citation of the Virginia Code section from "9–6.14:11" to "2.2–4019."

#### 19. 4 VAC 25–130–843.16 Formal review of citations.

Subsection (e) is amended by clarifying that the "Division of Mined Land Reclamation" is now the "Department of Mines, Minerals, and Energy." As amended, Subsection (e) provides as follows:

(e) All requests for hearing before a Hearing Officer, or appeals for review and reconsideration, made under this section, and all notices of appeal for judicial review of a Hearing Officer's final decision or a final decision on review and reconsideration, shall be filed with the Director, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

#### 20. 4 VAC 25–130–845.13 Point System.

Subsections (c)(1) and (d) are amended to correct typographical errors.

At Subsection (c)(1), the phrase “(a) and” is added immediately before “(b),” and the phrase “and (c)” is deleted. As amended, Subsection (c)(1) provides as follows:

(c) Credit for good faith in attempting to achieve compliance.

(1) The division shall deduct from the total points assigned under Subsections (a) and (b) points based on the demonstrated good faith of the permittee in attempting to achieve rapid compliance after notification of the violation. Points shall be deducted as follows.

Subsection (d) is amended by adding “(a),” immediately before “(b);” adding “and” immediately following “(b),” and deleting “and (d)” immediately following (c). As amended, the language of Subsection (d) provides as follows:

(d) Determination of base penalty. The division shall determine the base amount of any civil penalty by converting the total number of points calculated under Subsections (a), (b), and (c), of this section to a dollar amount, according to the following schedule.

Subsection (e), concerning credit for additional penalties for previous history is amended at (e)(1) by adding the words “[e]xcept for a violation that resulted in personal injury or fatality to any person.” As amended, Subsection (e)(1) provides as follows:

(1) Except for a violation that resulted in personal injury or fatality to any person, the division shall reduce the base penalty determined under Subsection (d) by 10% if the permittee has had no violations cited by the division within the preceding 12-month period.

Subsection (f), concerning maximum penalty which the division may assess, is amended by adding the words “except that if the violation resulted in a personal injury or fatality to any person, then the civil penalty determined under Subsection (d) shall be multiplied by a factor of twenty (20), not to exceed \$70,000.” As amended, Subsection (f) provides as follows:

(f) The maximum penalty which the division may assess under this section for each cessation order or notice of violation shall be \$5,000, except that if the violation resulted in a personal injury or fatality to any person, then the civil penalty determined under Subsection (d) shall be multiplied by a factor of twenty (20), not to exceed \$70,000. As provided in 4 VAC 25–130–845.15, each day of continuing violation may be deemed a separate violation for the purpose of assessing penalties.

21. 4 VAC 25–130–845.15  
Assessment of separate violations for each day.

Subsection (a) is amended in the last sentence by adding the words “or more” immediately following the words “a

penalty of \$5,000.” As amended, Subsection (a) provides as follows:

(a) The division may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the division shall consider the factors listed in 4 VAC 25–130–845.13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days and which has been assigned a penalty of \$5,000 or more under 4 VAC 25–130–845.13, the division shall assess a penalty for a minimum of two separate days.

22. 4 VAC 25–130–845.18  
Procedures for assessment conference.

The proposed amendment revises subsection (b)(1) by changing the citation of the Virginia Code sections from “9–6.14:11” to “2.2–4019.”

23. 4 VAC 25–130–845.19 Request for hearing.

The proposed amendment revises Subsection (c) by changing the citation of the Virginia Code sections from “9–6.14:12” to “2.2–4020.”

New Subsection (d) is added to provide as follows:

All requests for hearing or appeals for review and reconsideration made under this section shall be filed with the Director, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

24. 4 VAC 25–130–846.14 Amount of the individual civil penalty.

Subsection (b) is amended by adding new language to the end of the first sentence. As amended, Subsection (b) provides as follows:

(b) The penalty shall not exceed \$5,000 for each violation, except that if the violation resulted in a personal injury or fatality to any person, then the civil penalty determined under 4 VAC 25–130–845.13(d) shall be multiplied by a factor of twenty (20), not to exceed \$70,000. Each day of a continuing violation may be deemed a separate violation and the division may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the Director, until abatement or compliance is achieved.

### III. Public Comment Procedures

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

### Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your 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**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Big Stone Gap Field Office may not be logged in.

### Electronic Comments

Please submit Internet comments as an ASCII Word file avoiding the use of special characters and any form of encryption. Please also include Attn: SATS NO. VA–122–FOR and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Big Stone Gap Field office at (540) 523–4303.

### Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

### Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on July 5, 2005. If you are disabled and need special 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: May 23, 2005.

**James M. Taitt,**

*Acting Regional Director, Appalachian  
Regional Coordinating Center.*

[FR Doc. 05-11979 Filed 6-16-05; 8:45 am]

BILLING CODE 4310-05-U

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-7924-4]

### National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List

**AGENCY:** Environmental Protection  
Agency.

**ACTION:** Notice of intent to delete the  
Metropolitan Mirror and Glass (MM&G)  
Superfund Site from the National  
Priorities List.

**SUMMARY:** The Environmental Protection  
Agency (EPA) Region 3 is issuing a  
notice of intent to delete MM&G  
Superfund Site (Site) located in  
Frackville, Schuylkill County,  
Commonwealth of Pennsylvania, from  
the National Priorities List (NPL) and  
requests public comments on this notice  
of intent. The NPL, promulgated  
pursuant to section 105 of the  
Comprehensive Environmental  
Response, Compensation, and Liability  
Act (CERCLA) of 1980, as amended, is  
found at appendix B of 40 CFR part 300  
which is the National Oil and  
Hazardous Substances Pollution  
Contingency Plan (NCP). The EPA and  
the State of Pennsylvania, through the  
Pennsylvania Department of  
Environmental Protection (PADEP),  
have determined that all appropriate  
response actions under CERCLA have  
been completed. However, this deletion  
does not preclude future actions under  
Superfund.

In the "Rules and Regulations" section of today's **Federal Register**, EPA is publishing a direct final notice of deletion of MM&G Superfund Site without prior notice of intent to delete because EPA views this as a noncontroversial revision and anticipate no adverse comment. EPA has explained its reasons for this deletion in the preamble to the direct final notice of deletion. If no adverse comment(s) are received on this notice of intent to delete or the direct final notice of deletion, EPA will not take further action on this notice of intent to delete. If adverse comment(s) are received, EPA will withdraw the direct final notice of deletion and it will not take effect. EPA will, as appropriate, address all public

comments in a subsequent final deletion notice based on this notice of intent to delete. EPA will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

**DATES:** Comments concerning this Site must be received by July 18, 2005.

**ADDRESSES:** Written comments should be addressed to: David Polish, Community Involvement Coordinator, U.S. EPA (3HS43), 1650 Arch Street, Philadelphia, PA 19103-2029, [polish.david@epa.gov](mailto:polish.david@epa.gov), (215) 814-3327 or (800) 553-2509.

**FOR FURTHER INFORMATION CONTACT:** Eugene Dennis, Remedial Project Manager, U.S. EPA (3HS21), 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-3202 or (800) 553-2509.

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

*Information Repositories:* Repositories have been established to provide detailed information concerning this decision at the following address: U.S. EPA Region 3 Regional Center for Environmental Information, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, (215) 814-5254 or (800) 553-2509, Monday through Friday 8 a.m. to 4:30 p.m.; West Mahanoy Township Building, 190 Pennsylvania Avenue, Shenandoah, Pennsylvania 17976, (570) 462-2958.

### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p.193.

Dated: May 31, 2005.

**Richard J. Kampf,**

*Acting Regional Administrator, Region 3.*

[FR Doc. 05-11828 Filed 6-16-05; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

### 42 CFR Parts 400 and 421

[CMS-6030-P2]

RIN 0938-AN72

### Medicare Program; Medicare Integrity Program, Fiscal Intermediary and Carrier Functions, and Conflict of Interest Requirements

**AGENCY:** Centers for Medicare &  
Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish the Medicare Integrity Program (MIP) and implement program integrity activities that are funded from the Federal Hospital Insurance Trust Fund. This proposed rule would set forth the definition of eligible entities; services to be procured; competitive requirements based on Federal acquisition regulations and exceptions (guidelines for automatic renewal); procedures for identification, evaluation, and resolution of conflicts of interest; and limitations on contractor liability.

This proposed rule would bring certain sections of the Medicare regulations concerning fiscal intermediaries and carriers into conformity with the Social Security Act (the Act). The rule would distinguish between those functions that the statute requires to be included in agreements with fiscal intermediaries and those that may be included in the agreements. It would also provide that some or all of the functions may be included in carrier contracts. Currently all these functions are mandatory for carrier contracts.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. e.d.t on August 16, 2005.

**ADDRESSES:** In commenting, please refer to file code CMS-6030-P2. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments to <http://www.cms.hhs.gov/regulations/ecomments>, (attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word).
2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services,