

and the amount to be included as gross income derived from any foreign country that is attributable to a period during which section 901(j) applies to such country or gross income from sources within other foreign countries or possessions of the United States shall not exceed the amount so designated by the regulated investment company in such written notice. If, however, the amount designated by the regulated investment company in the notice exceeds the shareholder's proper proportionate share of foreign taxes or gross income from sources within foreign countries or possessions of the United States, the shareholder is limited to the amount correctly ascertained.

(b) *Shareholder of record custodian of certain unit investment trusts.* \* \* \* The notice shall designate the holder's proportionate share of the amounts of creditable foreign taxes paid to foreign countries or possessions of the United States and the holder's proportionate share of the dividend that represents income derived from sources within each country that is attributable to a period during which section 901(j) applies to such country, if any, and the holder's proportionate share of the dividend that represents income derived from other foreign countries or possessions of the United States shown on the notice received by the nominee identified as such. \* \* \*

\* \* \* \* \*

**Par. 5.** Section 1.853-4 is amended by:

1. Revising paragraphs (a) and (b).
2. Adding paragraphs (c) and (d).

The revisions and additions read as follows:

**§ 1.853-4 Manner of making election.**

(a) *General rule.* To make an election under section 853 for a taxable year, a regulated investment company must file a statement of election as part of its Federal income tax return for the taxable year. The statement of election must state that the regulated investment company elects the application of section 853 for the taxable year and agrees to provide the information required by paragraph (c) of this section.

(b) *Irrevocability of the election.* The election shall be made with respect to all foreign taxes described in paragraph (c)(2) of this section, and must be made not later than the time prescribed for filing the return (including extensions). This election, if made, shall be irrevocable with respect to the dividend (or portion) and the foreign taxes paid with respect thereto, to which the election applies.

(c) *Required information.* A regulated investment company making an election

under section 853 must provide the following information:

(1) The total amount of taxable income received in the taxable year from sources within foreign countries and possessions of the United States and the amount of taxable income received in the taxable year from sources within each such foreign country or possession.

(2) The total amount of income, war profits, or excess profits taxes (described in section 901(b)(1)) to which the election applies that were paid in the taxable year to such foreign countries or possessions and the amount of such taxes paid to each such foreign country or possession.

(3) The amount of income, war profits, or excess profits taxes paid during the taxable year to which the election does not apply by reason of any provision of the Internal Revenue Code other than section 853(b), including, but not limited to, section 901(j), section 901(k), or section 901(l).

(4) The date, form, and contents of the notice to its shareholders.

(5) The proportionate share of creditable foreign taxes paid to each such foreign country or possession during the taxable year and foreign income received from sources within each such foreign country or possession during the taxable year attributable to one share of stock of the regulated investment company.

(d) *Time and manner of providing information.* The information specified in paragraph (c) of this section must be provided at the time and in the manner prescribed by the Commissioner and, unless otherwise prescribed, must be provided on or with a modified Form 1118 filed as part of the RIC's timely filed Federal income tax return for the taxable year.

\* \* \* \* \*

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 06-7731 Filed 9-15-06; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 948

[WV-111-FOR]

#### West Virginia Abandoned Mine Land Reclamation Plan

**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, OSM, are announcing the receipt of a proposed amendment to the West Virginia Abandoned Mine Land Reclamation (AMLR) Plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The proposed amendment makes numerous revisions throughout the State's AMLR Plan. The amendment is intended to update and improve the effectiveness of the West Virginia AMLR Plan.

This document gives the times and locations that the West Virginia AMLR Plan and proposed amendment is available for your inspection, the comment period during which you may submit written comments, and the procedures that will be followed for the public hearing, if one is requested.

**DATES:** We will accept written comments on the proposed State AMLR Plan until 4 p.m. on October 18, 2006. If requested, we will hold a public hearing on the proposed State AMLR Plan amendment at 1 p.m. on October 13, 2006. We will accept requests to speak at a hearing until 4 p.m. on October 3, 2006.

**ADDRESSES:** You may submit comments, identified by Docket No. WV-111-FOR, by any of the following methods:

- *E-mail:* [chfo@osmre.gov](mailto:chfo@osmre.gov). Include WV-111-FOR in the subject line of the message;

- *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; or

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name and 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 West Virginia AMLR Plan, 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 to the AMLR Plan 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) 926-0485.

In addition, you may review a copy of the AMLR Plan 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 Abandoned Mine Land Reclamation Program
- II. Description of the Proposed AMLR Plan Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

#### **I. Background on the Abandoned Mine Land Reclamation Program**

The West Virginia AMLR Program was established by Title IV of SMCRA (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the

reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mined lands. The West Virginia AMLR Plan was approved by OSM effective February 23, 1981. You can find additional information about the West Virginia AMLR Plan at 30 CFR 948.20, 948.25, and 948.26.

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

By letter dated June 27, 2006 (Administrative Record Number WV-1469), the West Virginia Department of Environmental Protection (WVDEP), Office of Abandoned Mine Lands and Reclamation submitted an amendment to its AMLR Plan under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment consists of numerous changes throughout the AMLR Plan, some of which concern the AML Enhancement Rule. In its submittal of the amendment, the WVDEP stated that the revision incorporates the AML Enhancement Rule at 30 CFR Parts 707 and 874, as published by OSM in the **Federal Register** on Friday, February 12, 1999 (64 FR 7470-7483).

In its submittal letter, the State noted that the amendment also contains minor organizational and operational changes. Minor changes, such as organizational changes, re-numbering of sections, updating the name of departments or agencies, deletion of historical narrative, and the correction of typographical and grammatical errors, are non-substantive changes that do not affect the basis of the original approval of the West Virginia AMLR Plan. Therefore, these minor changes are hereby approved, and we will not identify such non-substantive changes in this notice.

West Virginia proposes the following amendments to the State’s AMLR Plan:

##### *Introduction*

##### *Part B, State Reclamation Plan*

This part contains additions and deletions of historical information about the West Virginia AMLR Plan. This section also states that the amendment will update the organization of the Office of Abandoned Mine Lands and Reclamation and establish the Abandoned Mine Lands and Reclamation Enhancement Rule.

#### **Section II. Purposes of the State Reclamation Program**

Language is deleted and added to clarify that projects are selected on the basis of the priorities identified at W. Va. Code 22-2-4.

#### **Section III. Criteria for Ranking and Identifying Projects To Be Funded**

A. Identification of problems. The State has deleted language concerning examples of data provided by contributors to the Abandoned Mine Land Inventory System (AMLIS).

B. Prioritization of problems. Language is added to clarify that projects are selected on the basis of the priorities identified at W. Va. Code 22-2-4.

B.4: This paragraph is deleted and formerly identified as priority 4 projects, research and demonstration projects.

#### *Factors Considered for Reclamation Project Evaluation*

Item 1. The State has deleted related language concerning research projects.

Item 6.(e). The existing language is deleted concerning waiving any requirement that a reclamation contractor obtain a reclamation permit to extract or remove coal if the waiver will facilitate removal of coal and the mining is incidental to the project. In its place, the following language has been added:

(e) Abandoned Mine Lands and Reclamation Enhancement Rule, as used in this part, the following definitions have the specific meaning:

*Definitions:* Extraction of coal as an incidental part means the extraction of coal which is necessary to enable the construction to be accomplished. For this purpose of this part, only that coal extraction from within the right-of-way. In the case of a road, railroad, utility line or other such road construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction and shall be subject to the requirements of Chapter 22, Article 3, Section 26, Paragraph b, of the Code of West Virginia, legislative rules and this plan. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of Chapter 22, Article 3 of the Code of West Virginia, and the rules promulgated thereunder.

Government financing agency means a Federal, State, county, municipal, or local unit of government, or a department, bureau, agency or office of the unit which, directly or through another unit of government, finances construction.

Government-financed construction means construction funded at 50 percent or more by funds appropriated from a government financing agency’s budget or obtained from

general revenue bonds. Government financing at less than 50 percent may qualify if the construction is undertaken as an approved AML reclamation project under Chapter 22, Article 2 of the Code of West Virginia. Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments does not qualify as government-financed construction.

(i) The Abandoned Mine Land Program (AML) shall work in consultation with the Title V regulatory authority to administer these provisions.

(l) To qualify as a Federal, State, county, Municipal, or other local government-financed highway or other construction project, the construction must be funded at fifty percent (50%) or more by the relevant government agency. Funding at less than fifty percent (50%) may qualify if the construction is undertaken as an approved AML Reclamation contract.

(II) For reclamation projects receiving less than fifty percent (50%) government funding because of planned coal extraction, AML may qualify if the construction is undertaken as an approved Reclamation project under Title IV of SMCRA. AML shall consult with [the] Title V regulatory authority to make the following determinations.

WVDEP must determine the following:

(A) The likelihood of the coal being mined under a surface mining permit. This determination must take into account available information such as:

- (a) Coal reserves from existing mine maps or other sources;
- (b) Existing environmental conditions;
- (c) All prior mining activity on or adjacent to the site;
- (d) Current and historic coal production in the area; and
- (e) Any known or anticipated interest in mining the site.

(B) The likelihood that nearby or adjacent mining activities might create new environmental problems or adversely affect existing environmental problems at the site.

(C) The likelihood that reclamation activities at the site might adversely affect nearby or adjacent mining activities.

III. If OAML&R [Office of Abandoned Mine Lands and Reclamation] and DMR [Division of Mining and Reclamation] decide to proceed with the reclamation project, then they must concur in the following determinations:

(A) The determination of the limits on any coal refuse, coal waste, or other coal deposits which can be extracted under the exemption contained in CSR 38–2–3.31.

(B) The delineation of the boundaries of the Abandoned Mine Lands Project.

IV. Documentation.

(A) The following documentation must be included in the AML&R case file:

- (a) The determinations made under sections e.i.II. and e.i.III.
- (b) The information taken into account in making the determinations; and
- (c) The names of the parties making determinations.

V. Special requirements.

(A) For each project, OAML&R must do the following:

(a) Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrologic balance;

(b) Ensure that the reclamation project is conducted in accordance with the provision of 30 CFR Subchapter R and CSR 59–1 *et seq.*

(c) Develop specific site reclamation requirements, including performance bond in accordance with West Virginia Code 22–3–26(b); and

(d) Require the contractor conducting the reclamation to provide prior to the time reclamation begins applicable documents that clearly authorize the extraction of coal and payment of royalties.

VI. Limitation.

If the reclamation contractor extracts coal beyond the limits of the incidental coal specified in paragraph e.i.III.A. of this section, the contractor must obtain a permit under CSR 38–2 *et seq.* for mining such coal.

Item 6.(g). The existing language concerning the recovery of coal from refuse piles, impoundments, or abandoned mine workings containing coal is deleted.

Item 8. This item concerns the probability of post-reclamation management, maintenance and control of the area consistent with the reclamation completed. Language is deleted concerning requesting information from field offices “well in advance of submitting a Construction Grant to OSMRE.” A sentence concerning public meetings is deleted. Finally, a sentence is deleted concerning submittal of site selections and information to OSM after the intensive investigation process.

Section IV. Coordination of Reclamation Work Among Abandoned Mine Land Programs

Under the paragraph concerning the Rural Abandoned Mine Land Program (RAMP), new paragraph three is added to read as follows:

3. The Office of Surface Mining has the responsibility for funding the Appalachian Clean Streams Initiative (ACSI), Watershed Cooperative Agreement (WCA) program, and the Federal Reclamation Program.

The ACSI began as a broad based program to eliminate acid mine drainage from abandoned coal mines. The mission of the ACSI is to facilitate and coordinate citizen groups, university researchers, the coal industry, corporations, the environmental community, and local, state, and Federal government agencies that are involved in cleaning up streams polluted by acid mine drainage.

The WCA program, as part of the ACSI, funds are available to award cooperative agreements to not-for-profit organizations, especially small watershed groups, that undertake local acid mine drainage reclamation projects. The maximum award amount for each cooperative agreement will normally be \$100,000.

Section VI. Reclamation on Private Land

Subsection H. Under contractor responsibilities, four items are deleted at the end of this subsection concerning waste sites that are used in conjunction with an abandoned mine land project.

Section VIII. Public Participation and Agency Review

(1) State Plan Revision.

Paragraph (a), concerning public participation, has been revised with several additions and deletions in the statement of public notice that was published in West Virginia regarding the current amendment. The language being revised related to an amendment to the AMLR Plan dating to 1987.

The State also amended a paragraph concerning conducting a public meeting prior to submitting a grant application. References to grant applications are deleted and other language added relating to non-emergency construction projects. As amended, the paragraph provides as follows:

Prior to submission(s) of a non-emergency construction project to the OSM for the issuance of an Authorization to Proceed (ATP), the WVDEP will conduct at least one public meeting in Charleston, West Virginia to describe the project submittal's contents. Additional public meetings may be conducted in other appropriate locations for specific sites in the non-emergency construction project in the following cases:

In other areas, references to grants have been deleted, a reference to a grant has been changed to “non-emergency construction project,” and the words “environmental assessment” have been deleted in two places. Finally, at item (1) under the sentence “the Environmental Assessments may be reviewed by the following agencies,” a reference to the “Office of Culture and History” is deleted and replaced by “State Historic Preservation Office.”

IX. Administrative Framework

A. Organizational (State Level)

In the second sentence, the description of the Office of Abandoned Mine Lands and Reclamation (OAML&R) has been changed from “eight” to “six” groups. Additionally, the following changes to the descriptions of the OAML&R have been made: “Grants/Administration” is now “Administration;” “Design” is now “Project Design;” “In-House Design” is deleted; “Construction” is changed to “Project Construction;” and “Special Reclamation Program and Stream Restoration” has been deleted. The word “Morgantown” has been deleted as a regional AML&R staff office. The following sentence is deleted:

Staff from each group is located in each regional office, as stated above and is accountable to the Engineer on day-by-day operations, with general guidance from the Nitro Headquarters.

Item 1. Under the sentence “the program is served by the following groups,” at Item 1., the heading “Grant/Administration” is changed to “Administration.” Language is added to the end of the last sentence, and an additional sentence is added to read as follows:

They track expenditures as they relate to administrative and construction functions responsible for management of grants, budgets and financial administration of OAML&R. The Stream Restoration [Group] performing all program water monitoring functions.

Item 3. The heading of this item is changed from “Planning Emergency Section” to “Planning Group.” In the first sentence, the word “selecting” is deleted and is replaced by the word “identifying.” The sentence that states “[a]nd preparing the construction grant application for submission to OSMRE” is deleted. Reference to “Construction Grant” is deleted. The words “in compliance with the National Environmental Policy Act (NEPA)” are added following the words “Environmental Assessment.” Finally, the following existing last two sentences of Item 3 are deleted:

This group is also responsible for administering and conducting the Emergency Program. Please see the Emergency Program Amendment, which is attached to this document for a more detailed explanation of this component’s function.

Item 4. Under Emergency Group, the second sentence, relating to an earlier Plan amendment, is deleted.

Item 5. Under Project Construction Group, the third sentence is deleted. The deleted sentence stated as follows: “This group also may recommend Change Orders to the Director.”

Item 6. Under Project Design Group, this item is amended by deleting the words “projects” and “reclamation of” in the first sentence. The second sentence is amended by deleting language concerning “open end” contracts and adding language concerning design consultants. As amended, Item 6 provides as follows:

6. Project Design Group—This group approves all consultant plans and specifications involving abandoned mine land projects and oversees the Office In-House design whose function of this component is to survey and design smaller abandoned mine land and bond forfeiture reclamation projects. They also evaluate and select design consultants [to] perform all necessary preparation of plans and

specifications for projects. This group also administers exploratory drilling, aerial mapping and surveying contracts. The plans and specifications are used by contractors to bid on jobs.

Items 7 and 8. These items have been deleted and provided as follows:

7. Special Reclamation—The function of this component is to oversee reclamation of bond forfeiture projects. This includes bidding and inspections of reclamation projects which are paid for with bonds from forfeited permits.

8. Stream Restoration—This group is involved with the treatment of acid mine drainage.

## B. Personnel Policies

In the fourth paragraph, the address has been updated that identifies where copies of laws and regulations are available for public inspection as follows:

Copies of these laws and regulations are available for public inspection in the offices of the WVDEP, 601 57th Street SE., Charleston, West Virginia 25304.

The paragraph concerning performing a function or duty under Title IV of SMCRA has been amended as follows:

All OAML&R personnel who perform a function or duty under Title IV of SMCRA, will complete and sign the standard “conflict of interest” form provided by OSM in accordance with West Virginia Code § 22–3–31(a).

## C. Purchasing and Procurement

The existing language concerning the procedures concerning design consultant services is deleted and replaced with the following language:

a. Projects greater than \$250,000

(1) Requesting program office develops the Expression of Interest (EOI) purpose, project, and scope of work, evaluation criteria, and questionnaire for evaluation.

(2) The OAML&R must select a committee of three to five members to review the EOIs. All members must have training on the process prior to participating on the committee. They must select a chairperson for the committee.

(3) This list of committee members is forwarded to Administrative services [Services] for review and approval.

(4) Administrative Services forwards the package to the Purchasing Division for processing.

(5) [The] Purchasing Division reviews the package to determine accuracy and compliance of rules and law.

(6) If information is in compliance with WV Code 5G–1, the Purchasing Division places a Class II ad in the newspaper and publishes the EOI in the Purchasing Bulletin.

(7) The agency receives a copy of the EOI with the opening time and date established.

(8) On the EOI opening date, the Purchasing Division opens the EOIs and forwards the agency copies for review, along with a list of the firms submitting.

(9) A meeting should be set for committee members to develop a short list (minimum of three firms). This short list will be developed by a consensus decision of the committee. Both information provided in the EOI and personal knowledge of a firm by a committee member or members can be used in developing the short list. Scores are not used to develop the short list.

(10) After developing the short list, the committee shall score each short listed firm based on the evaluation criteria described in the EOI. Each firm begins with a score of 100 points and points are deducted based on the Consultant Qualification Evaluation. When points are deducted, the reason for the deductions must be provided. Reasons for deductions must be consistent from one firm to another for each EOI. Partial point deductions are not allowed. Points may be deducted for not having enough staff to perform the job[,] but the description of that deduction can not specify any particular project (*i.e.*, DEP 11200). Points may not be deducted for using sub-consultants.

(11) The points for qualifications and work experience should total 80 points. The remaining 20 points shall be used for oral interviews. The 20 points for oral interview will give the agency some flexibility (*i.e.*, firms approach to the job, their creativeness). However, the point deductions must remain consistent. If five points are deducted for not meeting a prior project plan from one firm, then each firm that did not meet a prior project plan must have five points deducted.

(12) A letter is prepared for the signature of all committee members to the Purchasing Division with the top three firms ranked in order by score.

(13) The consensus evaluation, signed letter, and the Certification of Non-Conflict of Interest form is forwarded to Administrative Services for review. After the review and approval by the agency procurement officer, this package is submitted to the Purchasing Division for review and approval.

(14) Once the evaluation is approved by the assigned Buyer, the Purchasing Divisions [Division’s] Best Value Evaluation Committee convenes to review the request to ensure scores are fair and equitable.

(15) After the Purchasing Divisions [Division’s] approval, the agency is notified to start negotiations with the top firm.

(16) A purchase order is prepared by the assigned Purchasing Division buyer. The bid file is prepared for the approval and signature process within the Purchasing Division.

(17) The bid file is forwarded to the Attorney Generals [General’s] Office (AG) for review and approval as to form. Once approved by the AG, the bid file is returned to the Purchasing Division. The purchase order is issued and placed in the U.S. Mail.

(18) After receipt of the purchase order, the vendor can proceed with the project.

b. Projects less than \$250,000,

(1) The program office in charge of the project for which design services are needed selects a minimum of three firms which they know have design knowledge of the particular types of work associated with the particular project.

(2) After receipt of the questionnaire of qualifications, the program office rates those

firms on their qualifications. The same qualification as shown for the EOI is used to score each firm. The highest qualified firm is then contacted in the form of a work directive which sets up an on-site meeting to show the project and request a cost proposal.

(3) Costs are negotiated with that firm and if they reach an agreement, the appropriate paperwork is forwarded to administrative [Administrative] Services for review. If the cost negotiations are not successful with the first firm, you proceed with the next firm and follow that order until a cost is successfully negotiated.

(4) A purchase order is prepared by the assigned Purchasing Division Buyer. The bid file is prepared for the approval and signature process within the Purchasing Division.

(5) The bid file is forwarded to the Attorney Generals [General's] (AG) Office for review and approval as to form. Once approved by the AG, the bid file is returned to the Purchasing Division. The purchase order is encumbered and placed in the U.S. Mail.

#### c. Definitions.

Agency—DEP—Department of Environmental Protection.

Agreement—A document used to acquire services from a firm for a preset fee covering a specific period of time. Terms & conditions are outlined in this form. The WV-48 Agreement form is used for delegated purchases and, on certain occasions, for services over \$10,000 in the absence of any other formal written contract. The WV-48 must be completed, signed, and forwarded with other appropriate paperwork to the DEP Purchasing Office.

Best Value Purchasing—Purchasing methods used in awarding a contract based on evaluating and comparing all established quality criteria where cost is not the sole determining factor in the award.

Expression of Interest (EOI)—A best value purchasing tool used only in the selection of architects and engineers, which permits the state to award a contract to the most qualified firm at fair market value determined to be in the state's best interest.

FIMS—Financial Information Management System used by State agencies for recording financial information and encumbrances.

No-Debt Affidavit—A form required to be completed by all firms prior to the award of a contract. In accordance with 5A-3-10A of the West Virginia Code, no contract or renewal of any contract may be awarded to any vendor who is a debtor to the State of West Virginia in an aggregate amount of \$5,000 or more. This form must be submitted with the purchase order recommendation.

Program Office—Any of the offices within DEP (Division of Mining and Reclamation, Division of Land Restoration, Division of Water and Waste Management, Division of Air Quality, Office of Explosives & Blasting, Office of Abandoned Mine Lands, Office of Oil & Gas, Office of Legal Services, Office of Information Technology, Environmental Enforcement, Office of Environmental Remediation, and Administration/Executive Office).

Purchase Order—A document issued by the Purchasing Division (WV-16) used to

execute a purchase transaction with a vendor. It serves as notice to a vendor that an award has been made.

Specifications—A detailed description of a commodity or service to be included in a solicitation or bid or an awarded contract.

Team—Team Effort for Acquisition Management

Existing paragraph (d) concerning "Construction Contracts" has been deleted in its entirety.

#### D. Accounting System

Item 2. The words "permanent posting charge number" and "posting charge" have been deleted and replaced by the words "project number."

Item 3. The words "as close as possible" have been deleted and replaced with the words "within specified limits."

Item 4. In the first sentence, the word "when" is inserted between the word "and" and the phrase "this office receives." Also, the words "posting charge" are deleted and replaced by the word "project," and the words "line item number" are deleted and replaced by the words "object code."

#### Emergency Reclamation Program

##### A. Designated Agency by Governor To Receive Grants To Administer Emergency Programs

The second sentence is amended by adding a phrase to clarify that WVDEP was "formerly the West Virginia Department of Energy."

##### B. Legal Opinion From State Attorney General Regarding Emergency Program Administration

In the second sentence, the citation "WV Code Section 22-3" is deleted, and in the third sentence, the citation "Chapter 22-3-4(b)(1)(A)" is changed to "Chapter 22-2-4(b)(1)(A)." In the language that follows the corrected citation to Chapter 22-2-4(b)(1)(A), at (b)(A), the reference to Title "38" is deleted and "59" is added in its place.

##### C. Policies and Procedures Regarding the Emergency Reclamation Program

Item 6. Existing Item 6 concerns a public meeting for a previous amendment to the AMLR Plan and is being deleted.

##### D. Administrative and Managerial Structure

Item 2. The following language is being deleted at the beginning of Item 2:

Six of the positions assigned to the Emergency Group of the Abandoned Mine Lands and Reclamation Section consist of technical personnel. These positions include 5 inspectors and 2 engineers.

The last sentence at the end of the existing second paragraph is being deleted. That sentence stated that "[t]hese are all newly created positions."

The last two sentences in the existing third paragraph (the second sentence contains a reference to page 75) are being deleted. In their place, a new sentence is added which states that "[t]his procedures (*sic*) is in compliance to [with] the Department of Administration, Division of Purchasing."

Item 3. Under (c) Immediate Follow-up, at (ii), language is being deleted concerning an engineer, realty specialist, and is replaced by the phrase "appropriate personnel." Also, the last sentence is being deleted which provides that "[t]his visit will be coordinated with the Federal Office of Surface Mining Reclamation and Enforcement." As amended, subparagraph (ii) reads as follows:

(ii) Appropriate personnel will be dispatched to the site as soon as possible if a valid emergency situation exists.

At paragraph (iv), "color slides" is being revised to "photos."

At paragraph (vi), the word "appropriate" is being added between the words "conduct" and "appraisals." The words "if indicated" are deleted at the end of the sentence.

At paragraph (ix), the last sentence is deleted that reads: "[t]he details of these procedures are in the Emergency Purchases Section."

##### (d) Inspections

At paragraph (ii), the words "their immediate supervisors, who will turn them into the Nitro" are being deleted. In their place, the words "Charleston-Kanawha City Headquarters" are added.

#### F. Emergency Purchases

Item 6. This item is being deleted. The deleted language reads as follows:

6. In addition to the above stated procedure, at the time of this writing an open end or bilateral contract for construction services is being assembled which may be utilized for emergency services.

The following page shows the technical evaluation sheet used to assist in selecting consultants. The factors may be revised in the future to reflect different needs.

#### G. Emergency Reclamation Activities

Language is being deleted that relates to the number of emergency projects completed as of 1987.

#### Water Supply

In the first sentence, the word "construction" is deleted between the phrase "to the State in its" and the word "grant." Also, the words "any year" are deleted from

between the word "grant" and the phrase "for the purpose of replacing."

#### Target Areas For AML assistance

Item (3). In the second paragraph, the words "and submitted to the Federal Office of Surface Mining for funding approval" are deleted from the end of the first sentence. As revised, the sentence reads as follows: "After a pool of eligible projects is determined, potential projects are selected."

#### Revision to State Reclamation Plan Reflecting Amendments to Title IV of the SMCRA

A. Expanded Eligibility Criteria. Item (2). In the second paragraph, the citation "45 FR 14810–14819 March 6, 1980" is being deleted and replaced by the following citation: "66 FR 31250–31258, June 11, 2001."

B. Acid Mine Drainage Treatment and Abatement Program. Language is being amended concerning coordination between the State and the Natural Resources Conservation Service (NRCS). The State has deleted references to the Rural Abandoned Mine Program and to the U.S. Bureau of Mines. As amended, the language is as follows:

After consultation with the NRCS, the State may reclaim certain areas that are severely impacted by acid mine drainage. (This coordination will continue the already present cooperative effort between the State and the NRCS).

### III. Public Comment Procedures

Under the provisions of 30 CFR 884.15(a), we are requesting your comments on whether West Virginia's AMLR Plan amendment satisfies the applicable State reclamation plan approval criteria of 30 CFR 884.14.

The proposed amendments to the West Virginia AMLR Plan can be approved if:

1. The public has been given adequate notice and opportunity to comment and the administrative record does not reflect major unresolved controversies;
2. Views of other Federal agencies have been solicited and considered;
3. The State has the legal authority, policies, and administrative structure to carry out the State AMLR Plan;
4. The State AMLR Plan meets all the requirements of the Federal AMLR program provisions;
5. The State has an approved regulatory program; and
6. The State AMLR Plan is in compliance with all applicable State and Federal laws and regulations.

If we approve the proposed amendments, they will immediately become part of the West Virginia AMLR Plan.

#### 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 Charleston Field Office may not be logged in.

#### Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. WV-111-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 Charleston Field Office at (304) 347-7158.

#### 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 October 3, 2006. 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 proposed AMLR plan 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 or Tribal abandoned mine land reclamation plans and plan amendments because each program is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and plan amendments submitted by a State or Tribe are based solely on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR part 884 of the Federal regulations.

#### 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 abandoned mine land reclamation programs. 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 405(d) of SMCRA requires State abandoned mine land reclamation programs to be in compliance with the procedures, guidelines, and requirements established under 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 abandoned mine land reclamation plan 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 agency decisions on proposed State and Tribal abandoned mine land reclamation plans are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the [\*33277] Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).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 fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose 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 fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 18, 2006.

**Michael K. Robinson,**

*Acting Regional Director, Appalachian Region.*

[FR Doc. E6-15444 Filed 9-15-06; 8:45 am]

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