

### The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

### Executive Order 12866

The Department of State has reviewed this regulation to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has determined that the benefits of the regulation justify its costs. The Department does not consider the regulation to be an economically significant action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of \$100 million or more or to adversely affect in a material way the economy, a sector of the economy, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities.

### Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

### Executive Order 12988: Civil Justice Reform

The Department has reviewed the legislation in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

### Paperwork Reduction Act

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

### List of Subjects in 22 CFR Part 41

Aliens, Foreign officials, Immigration, Nonimmigrants, Passports and visas.

■ For the reasons set forth in the preamble, the Department of State amends 22 CFR part 41 as follows:

### PART 41—[AMENDED]

■ 1. Revise paragraph (a)(3) of § 41.21 is to read as follows:

#### § 41.21 Foreign Officials—General.

(a) \* \* \*

(3) *Immediate family*, as used in INA 101(a)(15)(A), 101(a)(15)(G), and 212(d)(8), and in classification under the NATO–1 through NATO–5 visa symbols, means the spouse and unmarried sons and daughters, whether by blood or adoption, who are not members of some other household, and who will reside regularly in the household of the principal alien. Under the INA 101(a)(15)(A) and 101(a)(15)(G) visa classifications, “immediate family” also includes individuals who:

- (i) Are not members of some other household;
- (ii) Will reside regularly in the household of the principal alien;
- (iii) Are recognized as immediate family members of the principal alien by the sending Government as demonstrated by eligibility for rights and benefits, such as the issuance of a diplomatic or official passport, or travel or other allowances; and
- (iv) Are individually authorized by the Department.

\* \* \* \* \*

Dated: July 14, 2009.

**Michael D. Kirby,**

*Acting Assistant Secretary for Consular Affairs, Department of State.*

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### DEPARTMENT OF THE INTERIOR

#### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 948

[WV–115–FOR; OSM–2009–0006]

#### West Virginia Regulatory Program

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** We are approving, on an interim basis, an amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia revised its Surface

Coal Mining and Reclamation Act to effect changes concerning its alternative bonding system. The tax provisions of the amendment are intended to increase and extend the special reclamation tax, subject to biennial review by the legislature, and remove the additional tax. We are approving the increase and extension of the special reclamation tax, at the rate of fourteen and four-tenths cents per ton of clean coal mined, for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund, on an interim basis, with our approval becoming effective upon publication of this interim rule.

**DATES:** *Effective Date:* This rule is effective July 22, 2009. *Comment Date:* We will accept written comments until 4 p.m., local time August 21, 2009. If requested, we will hold a public hearing on August 17, 2009. We will accept requests to speak until 4 p.m., local time on August 6, 2009.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. The proposed rule has been assigned Docket ID: OSM–2009–0006. If you would like to submit comments through the Federal eRulemaking Portal, go to <http://www.regulations.gov> and do the following. Click on the “Advanced Docket Search” button on the right side of the screen. Type in the Docket ID OSM–2009–0006 and click the “Submit” button at the bottom of the page. The next screen will display the Docket Search Results for the rulemaking. If you click on OSM–2009–0006, you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.

- *Mail/Hand Delivery:* Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301. Please include the rule identifier (WV–115–FOR) with your written comments.

*Instructions:* All submissions received must include the agency Docket ID (OSM–2009–0006) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see “IV. Public Comment Procedures” in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

*Docket:* The interim rule and any comments that are submitted may be viewed over the internet at <http://www.regulations.gov>. Look for Docket ID OSM-2009-0006. 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 and Submission of the Amendment
- III. OSM's Findings
- IV. Public Comment Procedures
- V. OSM's Decision
- VI. Procedural Determinations

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

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, " \* \* \* a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary

pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

**II. Description and Submission of the Amendment**

By letter dated May 22, 2009, and received on May 28, 2009 (Administrative Record Number WV-1518), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment includes changes to the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA) as contained in Enrolled Committee Substitute for Senate Bill 600 concerning the State's alternative bonding system.

Committee Substitute for Senate Bill 600 amended Section 22-3-11 of the 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".

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:"

Specifically, the amended language relating to the special reclamation tax now reads as follows:

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

(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.

**III. OSM's Findings**

Effective upon publication of this interim rule, we are approving, on an interim basis, the revisions to Subsection 22-3-11(h)(1) of the WVSCMRA, which increase and extend the special reclamation tax and remove the additional tax. Since these revisions continue revenues into the State's alternative bonding system at the same rate as previously approved, we find that they do not render the West Virginia program less effective than the Federal regulations at 30 CFR 800.11(e). Because our approval of these revisions

is interim, and in order to satisfy the public participation requirements for approval or disapproval of State program amendments, we will accept comments on the increase and extension of the special reclamation tax in accordance with Section IV of this **Federal Register** notice. Following our review of the comments received, we will issue a final rule announcing the Director's final decision on the revisions to Subsection 22-3-11(h)(1) of the WVSCMRA that are the subject of this interim rule.

Pursuant to the Administrative Procedure Act at 5 U.S.C. 553(b)(3)(B), we find that good cause exists to approve the revisions to Subsection 22-3-11(h)(1) of the WVSCMRA on an interim basis without notice and opportunity for comment, because to require notice and opportunity for comment now would be contrary to the public interest in that the special reclamation tax is due to expire on June 30, 2009, and it would delay the start of the collection of the increased special reclamation tax. Enrolled Committee Substitute for Senate Bill 600 becomes effective under State law on July 1, 2009, and the public interest in the accomplishment of prompt and thorough reclamation of bond forfeiture sites, including water treatment of discharges therefrom, will be adversely affected if the 14.4 cents per ton special reclamation tax cannot be collected on and after that effective date. In any event, as explained above, the public will have an opportunity to comment on the reinstatement and extension of the special reclamation tax, before we make a final decision on the proposed changes.

#### IV. Public Comment Procedures

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

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

**Availability of Comments:** Before including your address, phone number,

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

**Public Hearing:** If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (Eastern time), on August 6, 2009. If you are disabled and need reasonable accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

**Public Meeting:** If there is only limited interest in participating in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Docket for this rulemaking.

#### V. OSM's Decision

Based on the above findings, we are approving on an interim basis, the specific revisions outlined above to the West Virginia program as provided to us on May 28, 2009. To implement this decision, we are amending the Federal regulations at 30 CFR Part 948, which codify decisions concerning the West Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this interim rule effective immediately. Section 503(a) of SMCRA

requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

#### VI. Procedural Determinations

##### *Executive Order 12630—Takings*

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

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

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

##### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

##### *Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and Section 503(a)(7) requires that State programs contain rules and regulations "consistent with"

regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

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

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

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

National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

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

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State has a special reclamation tax of \$0.074 per ton of clean coal mined which is due to expire on June 30, 2009. The tax is used to reclaim bond forfeiture sites in the State. On May 4, 2009, the Governor signed into law a bill that will reinstate and increase the special reclamation tax to \$0.144 per ton of clean coal mined. The additional \$0.07 tax is being removed, and the previous one-year expiration period for the special reclamation tax is being deleted. Under the amended language, the Legislature will review the special reclamation tax every two years to determine whether the tax should be continued. The tax is payable by all operators mining coal in West Virginia, regardless of size. The tax, which is an important source of revenue for the State's alternative bonding system, is used to supplement reclamation bond amounts in the event of forfeiture.

*Small Business Regulatory Enforcement Fairness Act*

Based upon the above analysis and discussion, we have determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual

effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 15, 2009.

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

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

**PART 948—WEST VIRGINIA**

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

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

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

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

\* \* \* \* \*

Original amendment submission date	Date of publication of final rule	Citation/description of approved provisions
* * May 28, 2009	* * July 22, 2009	* * * * * W. Va. Code 22–3–11(h)(1) (interim approval).

[FR Doc. E9–16796 Filed 7–21–09; 8:45 am]  
BILLING CODE 4310–05–P

**POSTAL SERVICE**

**39 CFR Part 111**

**Express Mail Refunds for Shipments of Live Animals**

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is revising its standards for postage refunds for Express Mail® shipments of live animals in an effort to maintain the economic viability of shipping animals via Express Mail service.

**DATES:** *Effective Date:* September 8, 2009.

**FOR FURTHER INFORMATION CONTACT:** Joel Rosen, 202–268–4329 or Monica Grein, 202–268–8411.

**SUPPLEMENTARY INFORMATION:** On April 14, 2009, the Postal Service published a proposed rule in the **Federal Register** (74 FR 17128–17129) inviting comments on a revision to change the postage refund standards for Express Mail shipments of live animals delivered or attempted to be delivered within 3 days