

be filed for each election made pursuant to § 1.1502-32(b)(4) that is being amended pursuant to this paragraph (b)(4)(vii). For purposes of making this statement, the group may rely on the statements set forth in a written notification provided by the prior group. The statement filed under this paragraph must include the following—

(1) The name and employer identification number (E.I.N.) of S;

(2) In the case of an amendment made pursuant to paragraph (b)(4)(vii)(A), a statement that the group has received a written notification from the prior group confirming that the group's prior election or elections pursuant to § 1.1502-32(b)(4) had the effect of either increasing the prior group's allowable loss on the disposition of subsidiary stock or reducing the prior group's amount of basis reduction required;

(3) The amount of each loss carryover of S deemed to expire (or the amount of loss carryover deemed not to expire) as set forth in the election made pursuant to § 1.1502-32(b)(4);

(4) The amended amount of each loss carryover of S deemed to expire (or the amended amount of loss carryover deemed not to expire); and

(5) In the case of an amendment made pursuant to paragraph (b)(4)(vii)(A) of this section, a statement that the aggregate amount of loss carryovers of S and any higher- and lower-tier corporation of S that will be treated as not expiring as a result of amendments made pursuant to paragraph (b)(4)(vii)(A) of this section will not exceed the amount described in § 1.1502-20(c)(1)(iii) with respect to the acquired stock (computed without regard to the effect of the group's election or elections pursuant to § 1.1502-32(b)(4), but with regard to the effect of the prior group's election pursuant to § 1.1502-20(g), if any, prior to the application of § 1.1502-20T(i)(3)).

(D) *Items taken into account in open years.* An amendment to an election made pursuant to § 1.1502-32(b)(4) affects the group's items of income, gain, deduction or loss only to the extent that the amendment gives rise, directly or indirectly, to items or amounts that would properly be taken into account in a year for which an assessment of deficiency or a refund for overpayment, as the case may be, is not prevented by any law or rule of law. Under this paragraph, if the year to which a loss previously deemed to expire as a result of an election made pursuant to § 1.1502-32(b)(4) is deemed not to expire as a result of an election made pursuant to this paragraph would have been carried back or carried forward is a year for which a refund of

overpayment is prevented by law, then to the extent that the absorption of such loss in such year would have affected the tax treatment of another item (e.g., another loss that was absorbed in such year) that has an effect in a year for which a refund of overpayment is not prevented by any law or rule of law, the amendment to the election made pursuant to § 1.1502-32(b)(4) will affect the treatment of such other item. Therefore, if the absorption of such loss (the first loss) in a year for which a refund of overpayment is prevented by law would have prevented the absorption of another loss (the second loss) in such year and such second loss would have been carried to and used in a year for which a refund of overpayment is not prevented by any law or rule of law (the other year), the amendment of the election makes the second loss available for use in the other year.

(E) *Higher- and lower-tier corporations of S.* A higher-tier corporation of S is a corporation that was a member of the prior group and, as a result of such higher-tier corporation becoming a member of the group, S became a member of the group. A lower-tier corporation of S is a corporation that was a member of the prior group and became a member of the group as a result of S becoming a member of the group.

(F) *Effective date.* This paragraph (b)(4)(vii) is applicable on and after May 7, 2003.

\* \* \* \* \*

**David A. Mader,**  
*Assistant Deputy Commissioner of Internal Revenue.*

Approved: April 25, 2003.

**Pamela F. Olson,**  
*Assistant Secretary of the Treasury.*  
[FR Doc. 03-11209 Filed 5-6-03; 8:45 am]  
**BILLING CODE 4830-01-P**

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 948

[WV-092-FOR]

#### West Virginia Regulatory Program

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving a proposed amendment to the West Virginia surface

coal mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment consists of changes to the Code of West Virginia (W. Va. Code) as contained in Senate Bill 603. The amendment concerns reclamation plan requirements and authorizes the submittal and inclusion of master land use plans for postmining land use in permit application reclamation plans. The amendments are intended to improve the effectiveness of the West Virginia program.

**EFFECTIVE DATE:** May 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347-7158; Internet address: [chfo@osmre.gov](mailto:chfo@osmre.gov).

#### SUPPLEMENTARY INFORMATION

- I. Background on the West Virginia Program
- II. Submission of the Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- 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. Submission of the Amendment

By letter dated May 21, 2001 (Administrative Record Number WV-1217), the West Virginia Department of Environmental Protection (WVDEP) sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201

*et seq.*). The program amendment consists of changes to the W. Va. Code as amended by Senate Bill 603. The amendment concerns reclamation plan requirements at W. Va. Code 22-3-10, and authorizes the submittal and inclusion of master land use plans for postmining land use in reclamation plans. The submittal also contains revisions to provisions concerning the Office of Coalfield Community Development at W. Va. Code 5B-2A. The amendment is intended to improve the effectiveness of the West Virginia program.

We announced receipt of the proposed amendment in the June 20, 2001, **Federal Register** (66 FR 33032). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment (Administrative Record Number WV-1219). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 20, 2001. We received comments from two Federal agencies.

By letter dated August 12, 2002 (Administrative Record Number WV-1326), the WVDEP sent us additional proposed changes as amended by Senate Bill 698. The submittal consists of changes to the W. Va. Code at section 5B-2A concerning the Office of Coalfield Community Development. The submittal also included an Emergency Rule outlining revisions to State regulations at Code of State Regulations (CSR) 145-8 concerning Community Development Assessment and Real Property Valuation Procedures for Office of Coalfield Community Development.

We announced receipt of the proposed amendment in the November 6, 2002, **Federal Register** (67 FR 67576). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment (Administrative Record Number WV-1343). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 6, 2002. We did not receive any comments.

### III. OSM's Findings

Following are the findings we made pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 concerning the proposed amendments to the West Virginia program. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

#### 1. W. Va. Code 22-3-10. Reclamation Plan Requirements

New subsection 22-3-10(b) is added, and existing subsection (b) is relettered as (c). New subsection (b) is added to read as follows:

(b) Any surface mining permit application filed after the effective date of this subsection may contain, in addition to the requirements of subsection (a) of this section, a master land use plan, prepared in accordance with article two-a, chapter five-b of this code, as to the post-mining land use. A reclamation plan approved but not implemented or pending approval as of the effective date of this section may be amended to provide for a revised reclamation plan consistent with the provisions of this subsection.

We note that the State inadvertently omitted language from a version of the proposed amendment submitted to us on May 21, 2001. Specifically, the phrase "or pending approval as of the effective date of this section" was not identified in the State's draft statutory language. Consequently, we did not include the quoted phrase in our proposed rule announcement published in the **Federal Register** on June 20, 2001. The language was, however, identified in Engrossed Committee Substitute for Senate Bill 603 and included in all materials available for public review at OSM's Charleston Field office. The language was also included in all materials we provided Federal agencies for review and comment. We believe that the omission does not change the basic intention of the proposed amendment at W. Va. Code 22-3-10(b) and, therefore would not affect the basis of our decision on the proposed amendment.

In addition, and related to the above amendment, the State amended the CSR at 145-8 by adding, among other changes, section six concerning master land use plans. Subsection CSR 145-8-6.6 provides that an operator may include, in a surface mining permit application, a master land use plan which addresses postmining land uses in the reclamation plan developed pursuant to W. Va. Code 22-3-10. The provision also provides that an operator may amend a reclamation plan approved but not implemented or a reclamation plan pending approval by including a master land use plan.

Subsection CSR 145-8-6.6.a. further provides that any modification in the postmining land use during mining must be made in accordance with CSR 38-2-7.3.a. and 3.28. These sections contain the criteria for approving alternative postmining land uses and the permit revision requirements of the State's approved program. The proposed rule clarifies that any modification in

the postmining land use must be done in accordance with the approved State program, even if change is due to the master land use plan.

Subsection CSR 145-8-6.7 provides that master land use plans must be approved by WVDEP as part of the operator's reclamation plan before the master land use plan may be implemented. This provision clarifies the intended relationship of the reclamation plan required by W. Va. Code 22-3-10 and master land use plans, which are authorized by W. Va. Code 22-3-10(b) to be included in the reclamation plans of permit applications. Specifically, CSR 145-8-6.7 provides that a master land use plan must first be approved by WVDEP as part of the operator's proposed reclamation plan. We understand this to mean that in order to be approved as part of the reclamation plan, the master land use plans must be consistent with the reclamation plan requirements at W. Va. Code 22-3-10(a). In addition, CSR 145-8-6.6 clarifies that any modifications in the postmining land use that may occur during mining must be approved in accordance with CSR 38-2-7.3a and 3.28.

We find that the proposed amendment to W. Va. Code 22-3-10(b) does not render the West Virginia program less stringent than SMCRA section 508 concerning reclamation plan requirements. Our finding is based on our understanding that to receive approval by the Secretary of WVDEP as part of a permit application's reclamation plan, master land use plans must be consistent with the reclamation plan requirements at W. Va. Code 22-3-10(a). If, in future reviews, we should determine that the State is applying this provision inconsistent with this finding, a further amendment may be required.

#### 2. W. Va. Code 5B-2A. Office of Coalfield Community Development

W. Va. Code 5B-2A has never been approved by OSM and is not currently part of the West Virginia program. W. Va. Code 5B-2A-1(g) clarifies that the purpose of W. Va. Code 5B-2A is to authorize the West Virginia development office to take a more active role in the long-term economic development of communities in which surface coal mining operations are prevalent. W. Va. Code 5B-2A-4 establishes the Office of Coalfield Community Development within the West Virginia development office. W. Va. Code 5B-2A-1(g) also authorizes the West Virginia development office to establish a formal process to assist property owners in the determination of the fair market value where the property

owner and the coal company voluntarily enter into an agreement relating to the purchase and sale of the property. W. Va. Code 5B-2A-2 specifies that the provisions of W. Va. Code 5B-2A are not applicable to either underground coal mining operations (surface operations or the surface impacts of underground mining) or operations that qualify for assistance under the small operator assistance program (SOAP).

We understand that the proposed revisions to W. Va. Code 5B-2A do not supersede any provisions of the approved program and, therefore, we find that the proposed amendments do not need to be approved under the Federal regulations at 30 CFR 732.17(b) as a part of the State program. If, in future reviews, we should determine that the State is applying these provisions inconsistent with this finding, a further amendment may be required.

We note that there are several instances in which cross-references to provisions within the approved West Virginia program appear in W. Va. Code 5B-2A. Although most of these cross-references appear to not affect the implementation or effectiveness of the approved program, it appears that others may. For example, W. Va. Code 5B-2A-6(a)(1) incorporates by reference the notice of violation (NOV) provisions at W. Va. Code 22-3-17. It is not clear whether this cross-reference merely incorporates the provisions at W. Va. Code 22-3-17 for the purposes of W. Va. Code 5B-2A and does not otherwise affect the approved program. However, since this provision was not part of this proposed amendment, but rather is part of existing West Virginia law, we cannot decide its effect on the West Virginia program as a part of this rulemaking. Therefore, at a future date, we will discuss the implications of these cross-references with the WVDEP and the Office of Coalfield Community Development to determine their effect on the approved West Virginia program.

### 3. CSR 145-8. Community Development Assessment and Real Property Valuation Procedures for Office of Coalfield Community Development

The CSR 145-8 has never been approved by OSM and is not currently part of the West Virginia program. We will first decide whether CSR 145-8 affects the implementation or effectiveness of the West Virginia program and, therefore, must be reviewed and approved as a part of the West Virginia program.

The CSR 145-8-1 clarifies the scope of the rules, and provides that CSR 145-8 establishes the procedures for the

creation of community impact statements by operators, and the process to develop coalfield community development procedures which include asset development goals and infrastructure needs. The CSR 145-8 also establishes the criteria for the development of a master land use plan by local and county regional development or redevelopment authorities, and the procedure for establishing the value of property to assist property owners who desire to voluntarily sell their property to an operator.

Section CSR 145-8-6 concerns master land use plans. Subsection CSR 145-8-6.6 provides that an operator may include, in a surface mining permit application, a master land use plan that addresses postmining land uses in the reclamation plan developed pursuant to W. Va. Code 22-3-10. The provision also provides that an operator may amend a reclamation plan approved but not implemented or a reclamation plan pending approval by including a master land use plan. Subsection CSR 145-8-6.7 provides that the master land use plan must be approved by the department (WVDEP) as part of the operator's reclamation plan before the master land use plan may be implemented. This provision helps to clarify the intended relationship of master land use plans with the reclamation plan required by W. Va. Code 22-3-10. That is, a master land use plan must first be approved by WVDEP as part of the operator's proposed reclamation plan, before the master land use plan can be implemented. As we discussed above at Finding 1, master land use plans must also be consistent with the reclamation plan requirements at W. Va. Code 22-3-10(a), otherwise the WVDEP could not approve the master land use plan as part of the reclamation plan.

There are several instances in which citations to provisions within the approved West Virginia program appear in these rules. And there are several references to aspects of the approved program, such as to postmining land use, the intended blasting plan, and surface mining operations. However, such citations and references do not affect the implementation or effectiveness of the approved program. For example, CSR 145-8-2.15 provides for a definition of "surface mining operations" that applies only to CSR 145-8. Subsection CSR 145-8-2.15 provides that the definition of surface mining operations does not include (at subdivision 2.15.b) coal extraction authorized as an incidental part of development of land for commercial,

residential, industrial or civic use. This provision has no effect on the approved program, because it only means that coal extraction authorized as an incidental part of development of land for commercial, residential, industrial or civic use would not be subject to the requirements of CSR 145-8. However, these activities would still be subject to the requirements of the State's Surface Coal Mining and Reclamation Act at W. Va. Code 22-3-1 *et seq.* and its implementing regulations. To help avoid any possible confusion, we note that State rules at CSR 38-2-23 concerning special authorization for coal extraction as an incidental part of development of land for commercial, residential, industrial or civic use have not been approved by OSM and are not, therefore, part of the approved West Virginia program. See the May 5, 2000, **Federal Register** (65 FR 26130), for information concerning our decision not to approve the provisions at CSR 38-2-23.

Nevertheless, we find that none of the proposed provisions of CSR 145-8 supersede or affect the implementation or effectiveness of the West Virginia program and, therefore, do not need to be approved as a part of that program.

## IV. Summary and Disposition of Comments

### Public Comments

No public comments were received in response to our requests for comments from the public on the proposed amendments.

### Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on July 3, 2001, and October 4, 2002, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record Numbers WV-1221 and WV-1337). On May 21, 2001, and October 30, 2002, the U.S. Department of Labor, Mine Safety and Health Administration (MSHA), responded and stated that the amendments have no impact on MSHA's enforcement activities or do not conflict with MSHA's regulations and policies (Administrative Record Numbers WV-1229 and WV-1342).

### Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33

U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that West Virginia proposed to make in this amendment pertains to air or water quality standards. Therefore, we did not ask EPA to concur on the proposed amendment.

Under 30 CFR 732.17(h)(11)(i), on July 3, 2001, and October 4, 2002, we requested comments on the amendments from EPA (Administrative Record Numbers WV-1221 and WV-1337). The EPA responded by letters dated August 20, 2001, and November 1, 2002 (Administrative Record Numbers WV-1242 and WV-1341, respectively). The EPA stated that it has some concerns about the proposed statutory amendment (Senate Bill 603) and provided the following comments. On August 20, 2001, EPA stated that W. Va. Code 5B-2A-9(f)(1) allows the coalfield development authorities to determine post-mining land use needs. These land use needs, EPA stated, are specified as industrial, commercial, agriculture, public facility, and recreational uses. EPA stated that it is apparent that certain land uses, such as commercial and industrial uses, require level land. This may necessitate disposal of excess spoil in valley fills, impacting headwater streams, rather than placement in the mined areas. EPA stated that a particular concern with the amendment is that there are no requirements for specific plans or commitments to develop the post-mining uses. This could result in leveled mountaintops lying idle indefinitely while waiting for an investment in commercial, industrial, or public development, EPA stated. In some instances, EPA stated, excess spoil which could have been placed on the leveled mined areas, may needlessly be placed in valley fills.

In response, and as we noted above in Finding 2, W. Va. Code 5B-2A does not supersede any part of the approved West Virginia program. While W. Va. Code 5B-2A-9(f)(1) does authorize the development of master land use plans that may identify postmining land use needs that include industrial, commercial, agricultural, and public facility uses or recreational facility uses, the approved program provisions continue to apply. For example, W. Va. Code 22-3-13(c) provides an exception for certain mountaintop removal mining operations from the requirements to restore approximate original contour (AOC). These provisions would continue to apply. W. Va. Code 22-3-13(c)(3) identifies the specific postmining land uses that may be approved for mountaintop removal mining operations under W. Va. Code

22-3-13(c). The provisions at W. Va. Code 22-3-13(c)(3), which specify the demonstrations that must be made to qualify for a mountaintop removal mining operations AOC exception, also continue to apply. We believe, however, that the proposed master land use plans and the data they may contain should be very useful to the regulatory authority as it assesses a permit application for compliance with the requirements of W. Va. Code 22-3-13(c).

Upon reviewing subsequent statutory and regulatory revisions pertaining to West Virginia's Office of Coalfield Community Development, EPA stated on November 1, 2002, that there were no apparent inconsistencies with the Clean Water Act or other statutes and regulations under EPA's jurisdiction.

#### V. OSM's Decision

Based on the above findings we approve the amendment to W. Va. Code 22-3-10(b) sent to us by West Virginia. We are not rendering a decision on the submitted, amended portions of W. Va. Code 5B-2A and the Emergency Rules at CSR 145-8 because they are outside the scope of SMCRA and do not, therefore, need our approval.

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 final 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 regulation 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 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 (OMB) 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 SMCR (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: March 20, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

■ 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 in the table by adding a new entry 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 dates	Date of publication of final rule	Citation/description
* * * * *	* * * * *	* * * * *
May 21, 2001, August 12, 2002 .....	May 7, 2003 .....	W. Va. Code 22-3-10(b).

[FR Doc. 03-11220 Filed 5-6-03; 8:45 am]  
BILLING CODE 4310-05-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[CGD05-03-043]

RIN 1625-AA00

**Safety Zone; Amtrak Railroad Bridge, Susquehanna River, Havre de Grace, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing an emergency safety zone to protect the Amtrak Railroad Bridge on the Susquehanna River. This safety zone is necessary to provide for the safety of

life on navigable waters due to damage to the bridge fendering system. This action is intended to restrict vessel traffic in a portion of the Susquehanna River in the vicinity of the Amtrak Railroad Bridge.

**DATES:** This rule is effective from 5 p.m. on April 23, 2003, through 5 p.m. on May 23, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD05-03-043 and are available for inspection or copying at Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226-1791, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Dulani Woods, Waterways Management, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road,

Baltimore, Maryland 21226-1791, telephone number (410) 576-2513.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the unexpected nature of the weather impacting the railroad bridge and the damage to the bridge fendering system, it is in the public interest to have the safety zone in effect immediately.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the unexpected nature of the weather impacting the railroad bridge and the damage to the bridge fendering system, it is in the public interest to have the safety zone in effect immediately.