

CFC3 attributable to its CFC2 stock to \$16. Similarly, DC1 would be required to reduce the earnings and profits of CFC3 attributable to its CFC1 stock by \$16. Paragraph (b)(5) of this section also requires DC2 to reduce the CFC3 earnings and profits attributable to its CFC2 stock by \$9. These reductions occur without regard to whether CFC2 recognizes gain on its sale of CFC3 stock.

Example 8. Acquisition of the assets of a lower-tier controlled foreign corporation by an upper-tier controlled foreign corporation in a restructuring transaction described in section 368(a)(1)(C). (i) *Facts.* DC, a domestic corporation, has owned all the stock of CFC1, a controlled foreign corporation, since its formation on January 1, year 1. CFC1 is a holding company that has owned 79% of the stock of CFC2, a controlled foreign corporation, since its formation on January 1, year 1. The other 21% of CFC2 stock is owned by X, an unrelated party. On December 31, year 1, CFC2 has \$200 of earnings and profits. On December 31, year 1, CFC1 has no accumulated earnings and profits. On December 31, year 1, pursuant to a restructuring transaction described in section 368(a)(1)(C), CFC2 transfers all its properties to CFC1. In exchange, CFC1 assumes the liabilities of CFC2 and transfers to CFC2 voting stock representing 21% of the stock of CFC1. CFC2 distributes the voting stock to X and liquidates. The liabilities assumed do not exceed 20% of the value of the properties of CFC2. From January 1, year 2, to December 31, year 3, CFC1 accumulates \$100 of earnings and profits. On December 31, year 3, DC sells its CFC1 stock.

(ii) *Analysis.* Pursuant to paragraphs (b)(4)(ii) of this section, there is \$237 of earnings and profits attributable to DC's CFC1 stock. This amount consists of 79% of CFC2's \$200 of earnings and profits accumulated before the restructuring transaction (see section 1248(c)(2)), and 79% of CFC1's \$100 of earnings and profits accumulated after the restructuring transaction. Pursuant to paragraph (b)(6) of this section, none of CFC2's \$200 of earnings and profits to which CFC1 succeeded under section 381 would be attributable to DC's CFC1 stock.

(c) *Earnings and profits attributable to stock of a foreign distributee corporation that is a foreign corporate shareholder with respect to a foreign liquidating corporation—(1) General rule.* If a foreign corporation (liquidating corporation) makes a distribution of property in complete liquidation under section 332 to a foreign corporation (distributee), and immediately before the liquidation the distributee was a foreign corporate shareholder with respect to the liquidating foreign corporation, the amount of earnings and profits attributable to the distributee stock, upon its subsequent sale or exchange will be determined under this paragraph (c)(1). The earnings and profits attributable will be the sum of the earnings and profits attributable to the stock of the distributee immediately

before the liquidation (including amounts attributed under section 1248(c)(2)) and the earnings and profits attributable to the stock of the distributee accumulated after the liquidation (including amounts attributed under section 1248(c)(2)).

(2) *Special rule regarding section 381.* Solely for purposes of determining the earnings and profits (or deficit in earnings and profits) attributable to stock under this paragraph (c), the attributed earnings and profits of a corporation shall not include earnings and profits that are treated as received or incurred pursuant to section 381(c)(2)(A) and § 1.381(c)(2)–1(a).

(3) *Example.* (i) *Facts.* DC, a domestic corporation, has owned all of the stock of CFC1, a foreign corporation, since its formation on January 1, year 1. CFC1 is an operating company that has owned all of the stock of CFC2, a foreign corporation, since its formation on January 1, year 1. On December 31, year 2, CFC1 has \$200 of accumulated earnings and profits and CFC2 has a (\$200) deficit in earnings and profits. On December 31, year 2, CFC2 distributes all of its assets and liabilities to CFC1 in a liquidation to which section 332 applies. From January 1, year 3, until December 31, year 4, CFC1 accumulates no additional earnings and profits. On December 31, year 4, DC sells its stock in CFC1.

(ii) *Analysis.* Pursuant to paragraph (c)(1) of this section, there are no earnings and profits attributable to DC's CFC1 stock. This amount consists of the sum of the earnings and profits attributable to the CFC1 stock immediately before the liquidation (100% of the \$200 accumulated earnings and profits of CFC1 and 100% of CFC2's (\$200) deficit in earnings and profits) and the amount of earnings and profits accumulated after the section 332 liquidation (see also section 1248(c)(2)).

(d) *Effective date.* This section applies to income inclusions that occur on or after the date these regulations are published as final regulations in the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E6–8551 Filed 6–1–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–109–FOR]

West Virginia Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia proposes to revise the Code of West Virginia (W. Va. Code) as amended by Senate Bill 461 concerning water rights and replacement, and to revise the Code of State Regulations (CSR) as amended by Committee Substitute for House Bill 4135 by adding a postmining land use of Bio-oil Cropland, and the criteria for approving bio-oil cropland postmining land use.

DATES: We will accept written comments on this amendment until 4 p.m. (local time), on July 3, 2006. If requested, we will hold a public hearing on the amendment on June 27, 2006. We will accept requests to speak at a hearing until 4 p.m. (local time), on June 19, 2006.

ADDRESSES: You may submit comments, identified by WV–109–FOR, by any of the following methods:

- E-mail: chfo@osmre.gov. Include WV–109–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 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 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.

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.

SUPPLEMENTARY INFORMATION:

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

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, “* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary’s findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia’s program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description of the Proposed Amendment

By letter dated April 17, 2006 (Administrative Record Number WV-

1462), 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 consists of State Committee Substitute for House Bill 4135, which amends CSR 38-2 by adding a postmining land use of Bio-oil Cropland and criteria for approving bio-oil cropland as an alternative postmining land use for mountaintop removal mining operations with variances from approximate original contour. Also submitted is State Senate Bill 461, which amends W. Va. Code section 22-3-24 relating to water rights and replacement. In its submittal of the amendment, the WVDEP stated that the codified time table for water replacement is identical to the one contained in the agency’s policy dated August 1995 regarding water rights and replacement that is referenced in the Thursday, March 2, 2006, **Federal Register** (71 FR 10764, 10784-85).

The West Virginia Governor also signed Senate Bill 774, on April 4, 2006, which amends language concerning definitions, offices, and officers within the Department of Environmental Protection. The amendments to Senate Bill 774 are non-substantive and do not require OSM approval. Therefore, the amendments to Senate Bill 774 can take effect as provided therein on June 9, 2006.

West Virginia proposes the following amendments:

Senate Bill 461

Senate Bill 461, which was passed by the Legislature on March 11, 2006, and signed into law by the Governor on April 4, 2006, amends Article 3 of the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA). Specifically, section 22-3-24 concerning water rights and replacement, waiver of replacement is amended at subsection (c) by deleting the last sentence and by adding new subsections (d) and (h). As amended, section 22-3-24 provides as follows:

22-3-24. Water rights and replacement; waiver of replacement.

(a) Nothing in this article affects in any way the rights of any person to enforce or protect, under applicable law, the person’s interest in water resources affected by a surface mining operation.

(b) Any operator shall replace the water supply of an owner of interest in real property who obtains all or part of the owner’s supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution or interruption proximately caused by the surface mining operation, unless waived by the owner.

(c) There is a rebuttable presumption that a mining operation caused damage to an owner’s underground water supply if the inspector determines the following: (1) Contamination, diminution or damage to an owner’s underground water supply exists; and (2) a preblast survey was performed, consistent with the provisions of section thirteen-a of this article, on the owner’s property, including the underground water supply, that indicated that contamination, diminution or damage to the underground water supply did not exist prior to the mining conducted at the mining operation.

(d) The operator conducting the mining operation shall: (1) Provide an emergency drinking water supply within twenty-four hours; (2) provide temporary water supply within seventy-two hours; (3) within thirty days begin activities to establish a permanent water supply or submit a proposal to the secretary outlining the measures and timetables to be utilized in establishing a permanent supply. The total time for providing a permanent water supply may not exceed two years. If the operator demonstrates that providing a permanent replacement water supply can not be completed within two years, the secretary may extend the time frame on [a] case-by-case basis; and (4) pay all reasonable costs incurred by the owner in securing a water supply.

(e) An owner aggrieved under the provisions of subsections (b), (c) or (d) of this section may seek relief in court or pursuant to the provisions of section five, article three-a of this chapter.

(f) The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the requirements of this section.

(g) The provisions of subsection (c) of this section shall not apply to the following: (1) Underground coal mining operations; (2) the surface operations and surface impacts incident to an underground coal mine; and (3) the extraction of minerals by underground mining methods or the surface impacts of the underground mining methods.

(h) Notwithstanding the denial of the operator of responsibility for the damage of the owners [owner’s] water supply or the status of any appeal on determination of liability for the damage to the owners [owner’s] water supply, the operator may not discontinue providing the required water service until authorized by the division. Notwithstanding the provisions of subsection (g) of this section, on and after the effective date of the amendment and reenactment of this section during the regular legislative session of two thousand six, the provisions of this section shall apply to all mining operations for water replacement claims resulting from mining operations regardless of when the claim arose.

House Bill 4135

Committee Substitute for House Bill 4135, which was passed by the Legislature on March 11, 2006, and signed into law by the Governor on April 4, 2006, amends CSR 38-2 by authorizing the WVDEP to promulgate

legislative rules. Subsection 38–2–7.2.e is amended by adding new paragraph 38–2–7.2.e.1. As amended, subsection 38–2–7.2.e provides as follows:

7.2.e. Cropland. Land used primarily for the production of cultivated and close-growing crops for harvest alone or in association with sod crops. Land used for facilities in support of farming operations are included;

7.2.e.1. Bio-oil Cropland. Agricultural production of renewable energy crops through long-term intensive cultivation of close-growing commercial biological oil species (such as soybeans, rapeseed or canola) for harvest and ultimate production of bio-fuels as an alternative to petroleum based fuels and other valuable products;

New paragraph 38–2–7.3.d is added to provide as follows:

7.3.d. A change in postmining land use to bio-oil cropland constitutes an equal or better use of the affected land, as compared with pre-mining use for purposes of W. Va. Code 22–3–13(c) in the determination of variances of approximate original contour for mountaintop removal operations subject to section 38–2–7.8 of this rule;

New subsection 38–2–7.8, concerning Bio-oil Crop Land, is added to provide as follows:

7.8. Bio-oil Crop Land.

7.8.1. Criteria for Approving Bio-oil Cropland Postmining Land Use.

7.8.1.a. An alternative postmining land use for bio-oil cropland may be approved by the secretary after consultation with the landowner and or land management agency having jurisdiction over state or Federal lands: Provided, That the following conditions have been met.

7.8.1.a.1. There is a reasonable likelihood for the achievement of bio-oil crop production (such as soybeans, rapeseed or canola) as witnessed by a contract between the landowner and a commercially viable individual or entity, binding the parties to the production of bio-oil crops for a measurement period of at least two years after the competition [completion] of all restoration activity within the permitted boundaries;

7.8.1.a.2. The bio-oil crop reclamation plan is reviewed and approved by an agronomist employed by the West Virginia Department of Agriculture. The applicants shall pay for any review under this section;

7.8.1.a.3. The use does not present any actual or probable hazard to the public health or safety or threat of water diminution or pollution;

7.8.1.a.4. Bio-oil crop production is not:

7.8.1.a.4.A. Impractical or unreasonable;

7.8.1.a.4.B. Inconsistent with applicable land use policies or plans;

7.8.1.a.4.C. Going to involve unreasonable delays in implementation; or

7.8.1.a.4.D. In violation of any applicable law.

7.8.2. Soil reconstruction specifications for bio-oil crop postmining land use shall be established by the W. Va. Department of Agriculture in consultation with the U. S.

Natural Resources Conservation Service and based upon the standards of the National Cooperative Soil Survey and shall include, at a minimum, physical and chemical characteristics of reconstructed soils and soil descriptions containing soil-horizon depths, soil densities, soil pH, and other specifications such that constructed soils will have the capability of achieving levels of yield equal to, or higher than [than], those required for the production of commercial seed oils species (such as soybeans, rapeseed or canola) and meets [meet] the requirement of 14.3 of this rule.

7.8.3. Bond Release.

7.8.3.a. Phase I bond release shall not be approved until W. Va. Department of Agriculture certifies and the secretary finds that the soil meets the criteria established in this rule and has been placed in accordance with this rule. The applicants shall pay for any review under this section.

7.8.3.b. The secretary may authorize in consultation with the W. Va. Department of Agriculture, the Phase III bond release only after the applicant affirmatively demonstrates, and the secretary finds, that the reclaimed land can support bio-oil production; and there is a binding contract for production which meets the requirements of subdivision 7.8.1.a of this rule; and the requirements of paragraph 9.3.f.2 of this rule are met. The applicant shall pay for any review under this section.

7.8.3.c. Once final bond release is authorized, the permittee's responsibility for implementing the bio-oil cropland reclamation plan shall cease.

III. Public Comment Procedures

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

Written Comments

Send your written 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, Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS NO. WV–109–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 June 19, 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 amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we

will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

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

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

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

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, Or Use Of Energy

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

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a

substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 11, 2006.

H. Vann Weaver,

Acting Regional Director, Appalachian Region.

[FR Doc. E6-8620 Filed 6-1-06; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09-06-032]

RIN 1625-AA00

Safety and Security Zones; Tall Ships Celebration 2006, Great Lakes, Cleveland, OH, Bay City, MI, Green Bay, WI, Sturgeon Bay, WI, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.