

(i) Perforation, bleeding, and mucosal injury;

(ii) Ease of insertion and removal of the device;

(iii) Visualization during the procedure; and

(iv) Ease of procedure as reported by the intended user.

(2) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use. Testing must include:

(i) Device deployment and detachment;

(ii) Ability to retract tissue;

(iii) Tensile strength;

(iv) Potential for laceration caused by the device or procedure using the device;

(v) Dimensional verification; and

(vi) For devices that contain a magnet, magnet strength verification and safety assessment.

(3) Usability assessment must demonstrate that the intended user(s) can safely and correctly use the device.

(4) Performance data must demonstrate the sterility of the patient-contacting components of the device.

(5) The patient-contacting components of the device must be demonstrated to be biocompatible.

(6) Performance data must support the shelf life of the device by demonstrating continued sterility, package integrity, and device functionality over the intended shelf life.

(7) Labeling must include:

(i) The recommended training for safe use of the device;

(ii) Anatomical locations and lesion sizes that have been demonstrated to be safe to use with the device; and

(iii) A shelf life.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026-12445 Filed 6-18-26; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[SATS No. WV-118-FOR; OSM-2011-0009; and WV-117-FOR; OSM-2011-0006; S1D1S SS08011000 SX064A000 267S180110; S2D2S SS08011000 SX064A000 26XS501520]

West Virginia Regulatory Program

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

ACTION: Final rule; approval of amendment with two provisions receiving qualified approval.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving two amendments 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 proposed revisions to the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA), codified at Title 22, Article 3, of the West Virginia Code (W. Va. Code), along with revisions to its administrative regulations promulgated in the West Virginia Code of State Rules (CSR) that relate to electronic permit filing, pre-subsidence surveys, and issuance of show cause orders, certain fees for surface mining permits and related authorizations, and other miscellaneous topics. We tentatively approved the provisions relating to permitting fees through an interim rule we promulgated on June 29, 2011, which became effective on July 14, 2011. With this rule, our approval of those provisions is now final.

DATES: This rule is effective July 22, 2026.

FOR FURTHER INFORMATION CONTACT: Mr. Justin Adams, Director, Charleston Field Office, Telephone: (304)-977-7450. Email: osm-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. Statutory and Executive Order Reviews

I. Background on the West Virginia Program

Subject to OSM's oversight, section 503(a) of SMCRA 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, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. 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 additional 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

In 2011, the West Virginia Legislature passed revisions to WVSCMRA and the state regulations through Senate Bill 121 (SB 121) (March 11, 2011) and House Bill 2955 (HB 2955) (approved March 18, 2011). *See* 2011 W. Va. Acts Chs. 109 and 166. SB 121 codified several revisions to the CSR, establishing an incremental bonding rate that we approved on an interim basis in 2011, *see* 76 FR 37996 (June 29, 2011), revising provisions to accommodate electronic permit filing, establishing trust funds and annuities as an alternative to traditional performance bond for long-term water treatment, and making other miscellaneous revisions discussed below. HB 2955 established or revised several permit-related fees that we approved in our 2011 interim rule.

A. WV-117-FOR

By letter dated April 21, 2011 (Administrative Record Number WV-1557), the West Virginia Department of Environmental Protection (WVDEP) submitted to us a program amendment, which we docketed at SATS No. WV-117-FOR, that included the permit fee revisions from HB 2955, along with the revisions to the CSR from SB 121 that established the incremental bonding rate. HB 2955 increased the filing fee for the State's surface mining permit to \$3,500, increased the permit renewal fee to \$3,000, and established various fees for other permit-related actions like significant permit revisions and notices of intent to prospect. We approved the increase in permit fees on an interim basis. In our interim approval on June 29, 2011, we requested public comments and provided an opportunity for a public hearing on the permit fees and incremental bonding rate revisions (Administrative Record No. 1560).¹ West Virginia subsequently submitted, and we approved, significant revisions to its incremental bonding provisions in a program amendment, which we docketed at SATS No. WV-126-FOR. WV-129-FOR rendered the incremental bonding revision from WV-117-FOR moot. *See* 89 FR 19262, 19266 (Mar. 18, 2024). Therefore, we will not further

¹ In our June 29, 2011, notice (76 FR 37996), we erroneously omitted the rule's effective date. We published a correction on July 14, 2011 (76 FR 41411), stating that the effective date was July 14, 2011.

address our interim approval of that revision here.

B. WV-118-FOR

By letter dated April 25, 2011, (Administrative Record Number WV-1561), WVDEP submitted to us a program amendment, which we docketed at SATS No. WV-118-FOR, that included the remaining regulatory revisions to West Virginia's CSR authorized by SB 121. We announced receipt of the proposed amendment on November 2, 2011. 76 FR 67637. In the same notice, we opened a public comment period and provided an opportunity for a public hearing on these provisions (Administrative Record Number WV-1573). The public comment period closed on December 2, 2011. We received comments from three Federal agencies, which we address in detail below. We also approved West Virginia's new rule at CSR 38-2-11.3.f (regarding trust funds and annuities for long-term postmining pollutional discharges) in our 2024 decision on WV-126-FOR, referenced above. See 89 FR 19265-66. Therefore, we will not further address that rule here.

III. OSM's Findings

We are making the following findings concerning these amendments, as required by SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below. Any revisions not specifically discussed, such as replacing the term "Director" with the term "Secretary" to reflect an earlier agency reorganization, are non-substantive editorial changes that do not render the West Virginia program any less effective at meeting the requirements of SMCRA and the Federal regulations. We also subsequently clarified with WVDEP that several of the revisions use the word "proscribed" when they should have used "prescribed," and that WVDEP implements them accordingly. We found that the intended terms are clear enough from their context that we consider them typographical errors that do not compromise WVDEP's implementation of the regulations as intended. As described in more detail below, we approve the provisions we initially approved in our 2011 interim rule (76 FR 37996), as well as other miscellaneous revisions. The amendment can be viewed in its entirety at www.regulations.gov.

A. WV-117-FOR

1. W. Va. Code § 22-3-7. Notice of Intent To Prospect

West Virginia revised subsection (b)(2) by adding new language establishing a fee of \$2000 for filing of a notice of intent to prospect and renumbering the existing provision as subsection (b)(3). Under West Virginia law, any person who intends to prospect for coal must first file a notice of intent to prospect with WVDEP. Before this amendment, the statute required the submission of a notice of intent to prospect but did not require a filing fee for that notice.

OSM's Finding: Section 512 of SMCRA, 30 U.S.C. 1262, governs coal exploration activities and requires States with approved regulatory programs to establish certain minimum requirements for coal exploration operations that substantially disturb the natural land surface. The Federal regulations at 30 CFR part 772 implement section 512, elaborating on section 512's minimum requirements and providing necessary procedural controls. Neither section 512 of SMCRA nor the Federal regulations address fees related to coal exploration activities. However, they do not prohibit States from establishing reasonable filing fees associated with the notice of intent to explore. Section 512(a) of SMCRA specifically requires that each regulatory authority include certain enumerated minimum requirements for their coal exploration programs, indicating that each State retains the discretion to include additional requirements above the minimum. West Virginia's proposed fee to cover the cost of administering and enforcing coal exploration activities related to a particular notice of intent is an additional requirement within its discretion to impose.

West Virginia's revision to W. Va. Code § 22-3-7(b) does not alter the substantive requirements governing coal exploration activities and does not reduce the State's authority to regulate coal exploration activities. Accordingly, we approve the revision because we find that it is in accordance with SMCRA and does not render W. Va. Code § 22-3-7 less effective than the Federal regulations at meeting SMCRA's requirements.

2. W. Va. Code § 22-3-8. New Permits

West Virginia revised subsection (a)(4) to increase the fee for a new surface mining permit application from \$1,000 to \$3,500.

OSM's Finding: Section 507(a) of SMCRA, 30 U.S.C. 1257(a), and 30 CFR 777.17, require that an application for a

surface coal mining and reclamation permit must be accompanied by a fee determined by the regulatory authority that must not exceed the cost of reviewing, administering, and enforcing the permit. The Federal regulations set fees for permit applications under the Federal program, see 30 CFR 736.25, but do not prescribe fees in primacy States.

West Virginia increased its permit application fee from \$1,000 to \$3,500, which we find to be an amount that does not exceed West Virginia's cost of reviewing, administering, and enforcing the permits. The amendment neither alters the substantive requirements for obtaining a permit nor limits the State's authority to adjust the fees later to ensure they are sufficient to cover the cost of reviewing, administering, and enforcing the permits without exceeding that amount.

We find that West Virginia's revision to subsection (a)(4) is in accordance with SMCRA and as effective as the Federal regulations at meeting the requirements of SMCRA, and we therefore approve it.

3. W. Va. Code § 22-3-19. Permit Actions

West Virginia revised subsection (a)(4) to increase the filing fee for a permit renewal application from \$2,000 to \$3,000; revised subsection (b)(2) to establish a \$500 filing fee for applications for significant permit revisions; revised subsection (b)(3) to establish a \$500 filing fee for applications to extend an area covered by an existing permit; revised subsection (d) to establish a \$1,500 filing fee for applications for the transfer, assignment or sale of the rights granted under an existing permit; and added a new subsection (e) to establish a \$2,000 filing fee for each request for inactive status.

OSM's Finding: As discussed above, section 507(a) of SMCRA, 30 U.S.C. 1257(a), and the implementing regulations at 30 CFR 777.17, require that permit applications must be accompanied by a fee determined by the regulatory authority that does not exceed the cost of reviewing, administering, and enforcing the permit. The Federal regulation at 30 CFR 777.17 specifies that the costs used by the regulatory authority to set the fee may be actual or anticipated costs, and that the regulatory authority may develop procedures to allow the fee to be paid over the term of the permit.

We find that the permit-related fees that West Virginia revised or established in W. Va. Code § 22-3-19 are derivative of, and supported by, the requirement under section 507(a) of SMCRA. The

new or revised fees account for costs from additional review, administration, and enforcement made necessary by subsequent requests by the permittee and constitute a procedure for paying over the term of the permit potential fees that the regulatory authority could otherwise estimate and account for in the initial permit application fee.

We therefore find that the revisions are in accordance with SMCRA and do not render W. Va. Code § 22–3–19 less effective than the Federal regulations at meeting the requirements of SMCRA, and therefore we approve them.

B. WV–118–FOR

We are making the following findings about West Virginia's amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving WV–118–FOR with certain understandings as described below. The full text of the program amendment is available for review at <https://www.regulations.gov>.

1. CSR 38–2–3.1 Permit Application Requirements and Contents—Applicant Information

West Virginia revised CSR 38–2–3.1.c.4., which requires applicants to provide the Federal or State permit number and an identification number issued by the Federal Mine Safety and Health Administration (MSHA), with the date of its issuance, under which each owner or controller of the applicant owned or controlled any other surface coal mining operation in the United States within five years preceding the date of application. West Virginia added language to specify that the MSHA identification number with date of issuance is required if it is available. West Virginia revised CSR 38–2–3.1.d to allow applicants to submit ownership or control information either in the permit application or in an electronic database accessible to the agency that has been updated within three months of submittal. Similarly, West Virginia revised CSR 38–2–3.1.k to allow applicants to submit violation information either in the permit application or in an electronic database accessible to the agency that has been updated within three months of submittal.

OSM's Finding: The Federal regulations at 30 CFR 778.12(a) require that permit applicants include all names under which the applicant, the operator, and any partners or principal shareholders of either, operate or previously operated a surface coal mining operation five years preceding the application. This provision does not

require anything more than the names. Subsection (c)(4) of that rule requires the Federal or State permit number and corresponding MSHA number for those operations. Subsection (c)(4) formerly required the date of issuance of the MSHA number, but we deleted that part of the Federal requirement in 2000 after finding that it had no practical value in implementing SMCRA. *See* 65 FR 79582, 79644 (Dec. 19, 2000).

West Virginia's rule, as revised, does not distinguish between the availability of the MSHA number and the date of its issuance. We understand that the date of issuance may not always be available to the applicant but that is not the case for the MSHA number. Nonetheless, we approve West Virginia's revision because it does not render the requirement to provide the MSHA number optional, it only acknowledges that the "MSHA number with date of issuance" may not be available, and in those cases where the date of issuance is not available, the applicant must submit the MSHA number. Accordingly, we approve the revision to CSR 38–2–3.1.c.4.

West Virginia's revisions to paragraphs d and k, section 507(b) of SMCRA (30 U.S.C. 1257(b)), and the Federal implementing regulations at 30 CFR 778.12 require that permit applications include information about ownership or control of the applicant, and section 510 of SMCRA (30 U.S.C. 1260) and the Federal implementing regulations at 30 CFR 778.14 require that an applicant include relevant violation history. These provisions ensure that the regulatory authority has sufficient information to evaluate the applicant's compliance history and eligibility for a permit. Relatedly, the Federal regulations at 30 CFR 773.6(d) require that, with some limited exceptions, all applications for permits, revisions, renewals, and transfers, assignments, or sales of permit rights on file with the regulatory authority must be available at reasonable times for public inspection and copying.

West Virginia's proposed amendment allows ownership or control information to be submitted in an electronic database accessible to the agency, rather than solely within the permit application itself. OSM sought clarification from WVDEP about how ownership or control information and violation history submitted in an electronic database would be made available for public review, and WVDEP confirmed that such information is considered part of the permit application and is made available during the public comment period. It is our understanding that by "electronic

database accessible to the agency," West Virginia's regulation refers to an electronic version of the centralized ownership and control files that are maintained by related permittees, which we approved in 1996. *See* 61 FR 6511 (Feb. 21, 1996). We also understand that WVDEP can run reports of the information upon request. Therefore, we approve these revisions based on the understanding that WVDEP considers the information submitted in an electronic database part of the permit application and will make that information available to the public both during the public comment period and afterward in compliance with 30 CFR 773.6. With this condition, West Virginia's proposal to have an applicant separately submit the required information through an electronic database accessible to WVDEP does not make the State program less effective than the Federal regulations and meets the requirements of SMCRA. Therefore, we approve the revisions to CSR 38–2–3.1.d and 3.1.k with the understanding described above.

2. CSR 38–2–3.2 Permit Application Requirements and Contents—Advertisement

West Virginia revised CSR 38–2–3.2.a to replace the phrase "administratively complete" with "technically complete" in describing a complete permit application that then require advertisement and public comment.

OSM's Finding: West Virginia submitted this proposed change to us as part of its original program amendment package that we docketed as WV–118–FOR, but West Virginia later withdrew it. Based on comments received during the State's public comment period, WVDEP determined that this revision should not be included in the final rule, as indicated in a letter dated September 7, 2011, to the West Virginia Secretary of State (Administrative Record Number WV–1569). Accordingly, we do not consider this revision as part of the amendment under consideration, and we do not make any determination on it. However, WVDEP also noted that the version it had filed as final nonetheless contained the revision, but that WVDEP intends to correct it. The most recent version of West Virginia's regulations publicly available on its website contains this revision, referencing that the applicant "shall submit a technically complete surface mining permit application." This creates a minor incongruity with the separate provision about technical completeness at CSR 38–2–3.2.g, which should be corrected, but we have not, through the course of our regular oversight,

identified any issues with WVDEP implementing these distinct provisions as intended.

3. CSR 38–2–3.4 Permit Application Requirements and Contents—Maps

West Virginia revised CSR 38–2–3.4.b to allow maps to be submitted in either paper or electronic format and to specify that such maps must be in a format prescribed by the Secretary.

OSM's Finding: Sections 507 and 508 of SMCRA, 30 U.S.C. 1257 and 1258, and the Federal implementing regulations at 30 CFR 777.14, 779.24, and 783.24, require that permit applications include maps and plans sufficient to describe the proposed mining operations and related manmade and environmental features. These provisions do not prescribe the format of the maps beyond their scale and specific contents, leaving discretion with the regulatory authority to establish requirements for the format of such materials. Because West Virginia's revisions simply authorize WVDEP to prescribe the format of the maps and allow applicants to submit electronic versions so long as they are capable of being printed on appropriately sized paper, which are both well within the State's discretion, we find that the revisions do not render CSR 38–2–3.4 less effective than the Federal regulations at meeting the requirements of the Act, and we approve them.

4. CSR 38–2–3.12 Permit Application Requirements and Contents—Subsidence Control Plan

West Virginia revised CSR 38–2–3.12.a.2.B to provide that pre-subsidence surveys of non-commercial buildings or residential dwellings and associated structures will be confidential and used only to evaluate damage related to subsidence. The revision also requires that WVDEP develop a procedure for assuring that surveys remain confidential.

OSM's Finding: Sections 507, 508, and 515 of SMCRA, 30 U.S.C. 1257, 1258, and 1265, and the Federal implementing regulations at 30 CFR 784.20 (Subsidence control plan), require that permit applications include certain information to evaluate the potential impacts of subsidence, including to structures and water supplies. In 1995, we added a requirement at 30 CFR 784.20(c) that permit applicants submit a survey of the condition of all non-commercial buildings or occupied residential dwellings within the area encompassed by the “applicable angle of draw” that may be materially damaged or for which the reasonably foreseeable use may be

diminished by subsidence. This provision was later vacated in *National Mining Association v. Babbitt*, 172 F.3d 906 (D.C. Cir. 1999). As a result, we suspended 30 CFR 784.20(a)(3) relating to such surveys, while the rule remained in effect for water supplies and technical assessments or engineering evaluations necessarily related thereto. *See* 64 FR 71652, 71653 (Dec. 22, 1999) (OSM's final rule suspending regulations in part).

West Virginia, however, maintains the requirement for a survey of the condition of non-commercial buildings and residential dwellings and related structures under CSR 3.12.a.2., subject to the exemptions in subparagraphs A and B and the conditions specified therein. Due to the suspension of the Federal rule, West Virginia's inclusion of the rule and the conditions West Virginia subjects it to are at West Virginia's discretion as a more stringent State rule, which section 505 of SMCRA, 30 U.S.C. 1255, expressly allows. Therefore, West Virginia's revision to limit the availability and use of this State-required pre-subsidence survey of the condition of non-commercial buildings and residential dwellings is likewise within its discretion and does not make the State program less stringent than SMCRA nor less effective than the Federal regulations at meeting SMCRA's requirements. Accordingly, we approve the revision to CSR 38–2–3.12.a.2.B.

5. CSR 38–2–3.15. Approved Persons (Electronic Submission of Technical Data)

West Virginia revised CSR 38–2–3.15.b.3 to require that persons approved by WVDEP as authorized to prepare, sign, or certify permit applications, maps, plans, and design specifications or other similar materials necessary to complete an application, must be capable of submitting maps, plans, and all other technical data electronically in a format prescribed by the WVDEP.

OSM's Finding: West Virginia made earlier revisions to this and other paragraphs of this rule about approved persons, which we docketed at SATS No. WV–116–FOR and recently approved. *See* 90 FR 55658, 55659–60 (Dec. 3, 2025). As we explained in that decision, no direct Federal counterpart law or regulation creates a category of “approved persons” authorized to submit permit application materials. However, the Federal regulations at 30 CFR 777.11 explicitly give the regulatory authority broad discretion to prescribe the format of permit applications and related materials. We

find that, by necessary extension of that rule, West Virginia is acting within its discretion to require that approved persons must be capable of submitting such materials in the required format. Accordingly, we approve the revision to CSR 38–2–3.15.b.3.

6. CSR 38–2–14.11 Procedures To Obtain Inactive Status

West Virginia revised CSR 38–2–14.11.h to allow WVDEP to grant inactive status for coal refuse sites for periods exceeding the 10-year maximum that is set under paragraph g of the rule, provided that that the permittee furnish and maintain a bond equal to the estimated actual reclamation cost, as determined by WVDEP, which remains in effect for the life of the operation. The regulation also required WVDEP to review the estimated actual reclamation cost at least every two and a half years.

OSM's Finding: West Virginia subsequently made additional revisions to this and other paragraphs of this rule about operations in an inactive status, which we docketed at SATS No. WV–124–FOR and recently approved. *See* 90 FR 55649, 55651–52 (Dec. 3, 2025). As we explained in that decision, the Federal regulations at 30 CFR 816.131 and 817.131 require that a permittee who is seeking inactive status must submit to the regulatory authority a notice of its intention to cease or abandon mining and reclamation operations, include a statement of the exact number of acres that will have been affected in the permit area, the extent and kind of reclamation of those areas that will have been accomplished, and identify the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation. The Federal regulations do not impose a particular maximum duration on temporary cessation, but we note that they require each permittee to effectively secure the facilities and they explain that temporary cessation does not relieve a person of their obligation to comply with any provisions of the permit. Like our decision in WV–124–FOR, West Virginia's revision here does not alter the other requirements for inactive status, particularly those in CSR 14.11.a.1 through .a.9, including that the site remain in full compliance with all standards of the approved West Virginia program and permit. Accordingly, we approve the revision to CSR 38–2–14.11.h.

7. CSR 38–2–20.4 Show Cause Orders

West Virginia revised CSR 38–2–20.4.a, relating to orders requiring a permittee to show cause why a permit

should not be suspended or revoked, to require that WVDEP provide email notification of the issuance of show cause orders to members of the public who have subscribed to the WVDEP's email notification service, and to notify persons whose citizen complaints resulted in enforcement actions leading to the issuance of a show cause order.

OSM's Finding: Section 521 of SMCRA, 30 U.S.C. 1271, and the implementing regulations at 30 CFR 843.14, govern how OSM serves notices of violation and related enforcement actions, including show cause orders. Subsection (c) of the Federal rule provides that OSM must furnish copies of the orders to the State regulatory authority promptly after their issuance and may furnish copies to persons having an interest in the operation or permit area. Because West Virginia's revision requires notification to two groups of people who West Virginia believes may have an interest—those who have subscribed to WVDEP email notification service and those who filed complaints that led to the show cause order—West Virginia's provision is more stringent than its Federal counterpart at 30 CFR 843.14(c), which permits OSM to notify interested persons, but does not require it. Section 505 of SMCRA, 30 U.S.C., 1255, expressly allows States to provide more stringent requirements. Further, should a permittee file an answer to the show cause order, West Virginia's regulation at CSR 38–2–20.4.e. still requires public notice of the subsequent public hearing and notification to any interested parties who request intervenor status, in conformance with the Federal requirements at 30 CFR 843.13(b). Accordingly, we approve the revision to CSR 38–2–20.4.a.

8. Certifications by Professional Surveyors CSR 38–2–3.15; 4.2; 4.10; 4.12; 5.4; 7.5

The State amended multiple provisions throughout its regulations to replace the phrase “licensed land surveyor” with “professional surveyor” to clarify that surveyors must be certified and licensed in the State of West Virginia.

OSM's Finding: In 1983, Congress amended section 507 of SMCRA, 30 U.S.C. 1257, to authorize qualified registered professional land surveyors to prepare and certify maps, plans, and cross sections for surface mining and reclamation permits in any State which authorizes land surveyors to prepare and certify such maps or plans. *See* 79 FR 16194 (Apr. 24, 1985).

Neither SMCRA nor the Federal regulations define “qualified registered

professional” or elaborate on the relationship between those adjectives. However, in a 1988 rulemaking related to impoundments, we explained that we “consider it important to apply the minimum safety factor requirement and the requirement that the individuals certifying impoundment design and construction be licensed as professionally qualified.” 53 FR 43584, 43593 (Oct. 27, 1988). We also explained that we “must rely on State licensing authorities to ensure that land surveyors are authorized to perform only those design certifications that they are qualified to perform in consideration of their background, training and experience.” *Id.* at 43600. For its part, West Virginia rewrote its statute about the professional licensing of land surveyors in 2010, and at W. Va. Code 30–13A–3(gg) defined “surveyor”, “professional surveyor”, or “land surveyor” to mean a person licensed to practice surveying under the provisions of that statute. Moreover, WVDEP then ensured that the professional surveyor is qualified to perform the functions authorized under SMCRA through its “approved person” regulations at CSR 38–2–3.15. Therefore, we find that West Virginia's revisions have no effect on its approved program, which remains no less stringent than SMCRA and no less effective as the Federal regulations at meeting the requirements of the Act. Accordingly, we approve the amendments to CSR 38–2–3.15.a; 3.15.b.1; 4.2.a.7; 4.10.a.1; 4.12; 5.4.d.2; 5.4.d.3; 5.4.e.1; 5.4.e.3; 7.5.b.11; 7.5.g.1.A; and 7.5.g.2.A.

IV. Summary and Disposition of Comments

A. WV–117–FOR

Public Comments

We asked for public comments on the amendment but received no comments in response to our request.

Federal Agency Comments

On June 30, 2011, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the West Virginia Program (Administrative Record No. WV–1563). We attached to our letters copies of our 2011 interim rule (76 FR 37996).

OSM received responses from the Natural Resources Conservation Service of the U.S. Department of Agriculture (NRCS), and the U.S. Army Corp of Engineers, Pittsburgh District (USACE), each stating they had no comments. *See* Administrative Record No. WV–1564

(NRCS), and Administrative Record No. WV–1568 (USACE).

On July 7, 2011, the Department of Energy (DOE) responded with two comments (Administrative Record No. 1565). The first comment addressed the proposed fee structure. DOE stated that the increase in the new fee structure for large coal operators is very small on a per-ton expense because of the large volume of coal produced. However, DOE felt that the smaller coal operators would be disadvantaged by the larger increase in cost per ton. DOE also expressed concerns like those voiced by the coal industry about the length of time it takes for the WVDEP to issue permitting actions. DOE feels that regulators should expedite the permit process for review and approval to the extent practicable and that a predictable timeframe for response from WVDEP would alleviate this concern. However, the revisions included in this amendment do not pertain to the permitting process timeline, and therefore we will not address that comment further.

We provided DOE's comments to WVDEP for consideration. However, we note that nothing in SMCRA requires that the permit fee rates reflect the coal production of the applicant, as suggested by DOE. Furthermore, West Virginia's fee revisions are only the second time that the State has increased its permit fees since we conditionally approved its program in 1981, and we find that the proposed permit fees are reasonable based on the amount of time that is required to review and approve such permit applications.

Environmental Protection Agency (EPA) Comments and Concurrence

Under Federal regulations at 30 CFR 732.17(h)(11)(ii), we are required to get 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.*). We determined that none of the proposed State revisions in WV–117 pertain to air or water quality standards. Therefore, we did not ask EPA to concur on this amendment. However, on June 30, 2011, under 30 CFR 732.17(h)(11)(i), we requested comments from EPA on the amendment (Administrative Record No. WV–1563).

On August 2, 2011, EPA responded with comments (Administrative Record No. WV–1567). EPA submitted comments concerning sufficient bonding to cover land reclamation, including protection of the hydrologic balance and water quality. EPA noted

that the State's increased amount for incremental bonding appeared limited to land reclamation and was unable to affirm that the increased bond amount would be sufficient to ensure reclamation of the hydrologic balance and water quality at all sites.

As we explain in Part II.A, above, West Virginia subsequently submitted, and we approved, significant revisions to its incremental bonding provisions in a program amendment we docketed at SATS No. WV-126-FOR that rendered the incremental bonding revision from WV-117-FOR moot. See 89 FR at 19266. Therefore, we will not further address EPA's comment on that revision other than to reiterate that the State's existing alternative bonding requirements are intended to provide sufficient funds to comply with all applicable provisions of SMCRA and the CWA.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under Federal regulations at 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On June 30, 2011, we requested comments on West Virginia's amendment (Administrative Record No. WV1563), but we did not receive any comments from the SHPO or ACHP.

B. WV-118-FOR

Public Comments

We asked for public comments on the amendment but received no comments in response to our request.

Federal Agency Comments

On September 22, 2011, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the West Virginia Program (Administrative Record No. WV-1570).

OSM received responses from the Natural Resources Conservation Service of the U.S. Department of Agriculture (NRCS), the U.S. Army Corp of Engineers, Pittsburgh District (USACE), and the Mine Safety and Health Administration (MSHA), each stating they had no comments. See Administrative Record No. WV-1572 (NRCS), Administrative Record No. WV-1571 (USACE), and Administrative Record No. WV-1575 (MSHA).

Environmental Protection Agency (EPA) Comments and Concurrence

Under Federal regulations at 30 CFR 732.17(h)(11)(ii), we are required to get

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.*). We determined that none of the proposed State revisions in WV-118 pertain to air or water quality standards. Therefore, we did not ask EPA to concur on this amendment, and EPA provided no comments.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under Federal regulations at 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On September 22, 2011, we requested comments on West Virginia's amendment (Administrative Record Number WV-1570), but we did not receive any comments from the SHPO or ACHP.

V. OSM's Decision

Based on the above findings, we are approving the amendments sent to us by WVDEP on April 21 and April 25, 2011 (Administrative Record Numbers WV-1557 and WV-1561). However, as discussed in Finding 1 above, we are approving CSR 38-2-3.1.d and CSR 38-2-3.1.k with the understanding that ownership or control information and violation information submitted electronically will be considered part of the permit application, and such information will be made available to the public for review during the public comment period. If, in future oversight reviews, we should determine that the State is applying these provisions inconsistently with these findings, other amendments may be required.

As we discussed above, we are taking no action on West Virginia's original proposal about administratively complete applications because West Virginia withdrew it. Further, we reiterate that we are approving on a permanent basis, revisions to the State's permitting statutory fees at WVSCMRA §§ 22-3-7(b), 8(a)(4) and 19(a)(4), (b)(2), (b)(3), (d) and (e). To implement these decisions, we are amending the Federal regulations at 30 CFR part 948 which codify decisions concerning the West Virginia program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Government Actions and Interference With Constitutionally Protected Property Rights

This rule would not result in a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Orders 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by section 3 of Executive Order 12988. The Department determined that this **Federal Register** document meets the criteria of section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive order did not extend to the language of West Virginia regulatory program or amendment that West Virginia drafted.

Executive Order 13132—Federalism

This rule has potential federalism implications as defined under section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to "grant the States the maximum administrative discretion possible" with

respect to Federal statutes and regulations administered by the States. West Virginia, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the State level. This rule approves an amendment to the West Virginia program submitted and drafted by the State and thus is consistent with the direction to provide maximum administrative discretion to States.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on the distribution of power and responsibilities between the Federal Government and Tribes.

The basis for this determination is that our decision on the West Virginia program does not include Indian lands as defined by SMCRA or other Tribal lands, and it does not affect the regulation of activities on Indian lands or other Tribal lands. Indian lands under SMCRA are regulated independently under the applicable Federal Indian program. The Department's consultation policy also acknowledges that our rules may have Tribal implications where the State proposing the amendment encompasses ancestral lands in areas with mineable coal. We are currently working to identify and engage appropriate Tribal stakeholders to devise a constructive approach for consulting on these amendments.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a statement of energy effects for a rulemaking 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 a significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), State program amendments are not 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 include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

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 rule approves revisions to the West Virginia regulatory program under SMCRA, including revisions to certain permit-related fees. The Department of Energy commented that smaller operators will be disadvantaged by a larger fee increase on cost per ton basis compared to larger operators. However, the approved revisions primarily concern fixed administrative fees associated with discrete permitting actions under the approved State program, rather than ongoing production-based operational costs. As we note above, West Virginia's amendment is only the second time it had updated its fees since 1981, and we have not seen a significant economic impact on small operators since we approved these fees on an interim basis in 2011. Therefore, the Department has determined that this rule will not have a significant economic impact on a substantial number of small entities. To the extent some disparate economic impact exists between large and small operators, SMCRA itself authorizes the regulatory authorities to charge these fees so long as they do not to exceed the

cost of reviewing, administering, and enforcing the permits.

Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2). 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 on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Ben H. Owens,

Acting Regional Director, North Atlantic—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. Amend § 948.15 by adding an entry for “April 21, 2011 and April 25, 2011” at the end of the table 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
April 21, 2011 and April 25, 2011	6/22/2026	W.Va. Code 22–3–7; 8; 19. CSR 38–2–3.1.c.4; 3.1.d (qualified approval); 3.1.k (qualified approval); 3.4; 3.12; 3.15; 4.2; 4.10; 4.12; 5.4; 7.5; 14.11; 20.4.

[FR Doc. 2026–12482 Filed 6–18–26; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2026–0699]

RIN 1625–AA00

Safety Zone; Toms River, Beachwood, NJ

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for waters of the Toms River, near Mayo Park, in Beachwood, NJ, for a land-based fireworks display. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Delaware Bay (COTP).

DATES: This rule is effective from 9 p.m. on July 4, 2026, to 10 p.m. on July 5, 2026. It will only be enforced, however, from 9 p.m. to 10 p.m. on July 4, 2026, or during those hours on a rain date of July 5, 2026.

ADDRESSES: To view available documents go to <https://www.regulations.gov> and search for USCG–2026–0699.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, contact Petty Officer Dominick Dobridge, Sector Delaware Bay, Waterways Management Division, U.S. Coast Guard; telephone (206) 815–6688, option 3, email SecDelBayWWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port, Sector Delaware Bay
DHS Department of Homeland Security

FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background and Authority

On March 17, 2026, the Coast Guard received notification that fireworks will be launched from land, over the Toms River near Beachwood, NJ. On July 4 or 5, 2026. The Captain of the Port (COTP) Delaware Bay has determined that potential hazards associated with fireworks, such as being hit by falling debris or unexploded live fireworks, are a safety concern for anyone within 250 yards of the fireworks display. Under authority in 46 U.S.C. 70034, the COTP is issuing this rule to create a safety zone to protect personnel, vessels, and the marine environment in the navigable waters within 250 yards of the display.

The Coast Guard is issuing this rule without prior notice and comment. As is authorized by 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The time between when the Coast Guard received notification of the event and the date the fireworks display will occur is insufficient to provide notice of a proposed rule, take comments, finalize the rule, and publish it in the **Federal Register**.

For the same reason, the Coast Guard finds that under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

III. Discussion of the Rule

This rule establishes a safety zone which will be subject to enforcement from 9 p.m. to 10 p.m. on July 4, 2026, or on a rain date of July 5, 2026. The safety zone will cover all navigable waters of the Toms River within 250 yards of the fireworks launch location, in Mayo Park, in Beachwood, NJ in approximate position 39°56'29.25" N, 74°10'57.78" W. Vessels and persons will not be allowed to enter the zone during this time, unless authorized by the COTP.

IV. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders.

A. Impact on Small Entities

The regulatory flexibility analysis provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to rules that are not subject to notice and comment. Because the Coast Guard has, for good cause, waived the notice and comment requirement that would otherwise apply to this rulemaking, the Regulatory Flexibility Act's flexibility analysis provisions do not apply here.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), if this rule will affect your small business, organization, or governmental jurisdiction and you have questions, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards by calling 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

B. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

C. Federalism and Indian Tribal Governments

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in that Order.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial