significance that interested parties should be given additional time to determine and present their views.

Montie R. Deer,

Chairman, National Indian Gaming Commission.

[FR Doc. 00–30851 Filed 12–4–00; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–087–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.

SUMMARY: OSM is announcing receipt of a proposed amendment to the West Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The program amendment adds new West Virginia regulations at 199 CSR 1 concerning Surface Mine Blasting Rule. The amendments are intended to improve the operational effectiveness of the West Virginia program.

DATES: If you submit written comments, they must be received on or before 4:00 p.m. (local time), on January 4, 2001. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. (local time), on January 2, 2001. Requests to speak at the hearing must be received by 4:00 p.m. (local time), on December 20, 2000.

ADDRESSES: Mail or hand-deliver your written comments and requests to speak at the hearing to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

You may review copies of the West Virginia program, the proposed amendment, a listing of any scheduled hearings, and all written comments received in response to this document at the addresses below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Charleston Field Office.

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 Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0515. The proposed amendment will be posted at the Division's Internet page: *http://www.dep.state.wv.us*

In addition, you may review copies of the proposed amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 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.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 21, 1981, **Federal Register** (46 FR 5915–5956). You can find later actions concerning the conditions of approval and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Discussion of the Proposed Amendment

By letter dated October 30, 2000 (Administrative Record Number WV–1187), the WVDEP submitted an amendment to its program. The amendment concerns the addition to the West Virginia regulations of new Title 199, Series 1, entitled Surface Mine Blasting Rule. These regulations consist of new blasting provisions and blasting provisions that have been relocated or derived from previously approved West Virginia blasting provisions. We have identified in brackets in the proposed amendment below, those instances where the State has indicated that specific provisions have been relocated or derived from previously approved blasting provisions. On November 12, 1999 (Administrative Record Number WV–1143), we approved, with certain exceptions, revisions to the West Virginia Code (W. Va. Code) concerning blasting (64 FR 61507–61518). The current amendment is intended to revise the States blasting rules to implement the approved blasting statutes.

The new blasting regulations are presented below.

199 CSR 1

Title 199

Legislative Rule

Division of Environmental Protection

Series 1

Surface Mining Blasting Rule

Section 199–1–1. General

1.1. Scope.—This rule establishes general and specific rules for overseeing and regulating blasting on all surface mining operations; implementing and overseeing the pre-blast survey process; inspection and monitoring of blasting operations; seismograph use; warning methods; site specific limitations for type, size, timing and frequency of blasts; public notice requirements; maintaining and operating a system to receive and address questions, concerns and complaints relating to mining operations; setting the qualifications for individuals and firms performing pre-blast surveys; establishing the education, training, examination and certification of blasters; disciplinary procedures for blasters; and administering a claims process, including arbitration, for property damage caused by blasting.

1.2. Applicability.—This rule applies to all surface mining operations and surface disturbances associated with underground mining operations in the State of West Virginia.

1.3. Authority.—W. Va. Code Sections 22–1–3, 22–3A–4, 22–1–5. *et seq.*

1.4. Filing Date.

1.5. Effective Date.

1.6. Incorporation by Reference.—Federal Counterpart Regulations—30 CFR 850.

1.7. Repeal of Former Rule.—This rule repeals and replaces 38CSR2C—Standards for Certification of Blasters—Surface Coal Mines, effective May 1, 1995, filed April 26, 1995.

Section 199–1–2

Definitions.—As used in this rule unless used in a context that clearly requires a different meaning the term:

2.1. Active Blasting Experience means experience gained by a person who has worked on a blasting crew, supervised a blasting crew, or worked on a drilling crew which performed blasting operations. Two hundred forty working days constitutes one year of experience. Experience may only be gained by ''first-hand'' participation in activities associated with the storing, handling, transportation and use of explosives or the immediate supervision of those activities within surface coal mines, and the surface areas of underground coal mines. Experience should be related to surface mine blasting; Provided, that other related blasting experience (quarrying

operations, etc.) may be accepted by the director on a case-by-case basis as qualifying experience. [This provision was relocated from CSR 38–2C–2.1]

2.2. Air Blast means an airborne shock wave resulting from the detonation of explosives.

2.3. Adjuster means an outside party that is assigned to investigate, document, evaluate and make recommendations on a reported loss.

2.4. Arbitrator means an impartial individual appointed by the Office of Environmental Protection with the authority to settle the disputes between property owners and mine operators as they relate to allegations of blasting damage.

2.5. Arbitration means the referral of a dispute to a neutral or impartial person for total or partial determination. It is intended to be inexpensive, prompt and fair to the parties.

2.6. Blast means any planned or unplanned detonation(s) of an explosive(s) being initiated simultaneously by a single energy source. [This provision was relocated from CSR 38–2C–2.2.]

2.7. Blast Site means the area where explosive materials is handled during loading including the perimeter formed by the loaded blast holes and 50 feet in all directions from loaded holes.

2.8. Blaster means a qualified person in charge of and responsible for the design, loading and firing of a blast. This must be an individual who is certified by the Office of Explosives and Blasting.

2.9. Blasting Complaint means a communication to the Office of Explosives and Blasting from a member of the public expressing concern, aggravation, fear or indications of blasting damage. A blasting complaint may or may not initially indicate damage.

2.10. Blasting Claim means an allegation by the property owner of blasting related damage to property.

2.11. Blasting Log means a written record containing all pertinent information about a specific blast as may be required by law or rule.

2.12. Blasting Vibration means the temporary ground movement produced by a blast that can vary in both intensity and duration.

2.13. Caused By Blasting means that there is direct, consistent and conclusive evidence or information that the alleged damage was definitely caused by blasting from the mine site in question.

2.14. Certified Blaster means a person who has taken and passed the examination described in this rule, and has been issued a certification card by the Office of Explosives and Blasting. [This provision was relocated from CSR 38–2C–2.3.]

2.15. Certified Examiner/Inspector means a person employed by the Office of Explosives and Blasting who administers training or examinations to applicants for certification as certified blasters, or who inspects surface mining operations and who has taken and passed the examination described in of this rule. [This provision was relocated from CSR 38–2C–2.4.]

2.16. Claimant means the property owner who makes a blasting damage claim.

2.17. Claims Administrator means the individual, firm or organization that manages the blasting damage claims program for the Office of Explosives and Blasting.

2.18. Construction Blasting means blasting to develop haulroads, mine access roads, coal preparation plants, drainage structures, or underground coal mine sites and shall not include production blasting.

2.19. Detonation means a chemical reaction resulting in a rapid release of energy. [This provision was relocated from CSR 38–2C–2.5]

2.20. Director means the director of the Division of Environmental Protection or the director's authorized agent.

2.21. Division means the Division of Environmental Protection.

2.22. Explosives means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion; including, but not limited to, water gel, slurries, emulsion, dynamites, permissibles, pellet powder, blasting caps, cast primers and boosters, detonating cord, detonating cord delay connectors, and blasting agents. [This provision was relocated from CSR 38–2C–2.6]

2.23. Fly Rock means rock and/or earth propelled from the blast area through the air or along the ground by the force of the detonated explosives.

2.24. Loss Reserve means the total amount of money indicated in a given loss to include the estimated value (repairs or replacement costs), and the costs to administer and adjust that loss.

2.25. Loss Value means the amount of money indicated in a given loss to include costs of repairs or replacement costs.

2.26. Not Caused By Blasting means that there is direct, consistent, and conclusive evidence or information that blasting from the mine site in question was definitely not at fault for the alleged property damage.

2.27. Office means the Office of Explosives and Blasting.

2.28. Operator means any person who is granted or who should obtain a permit to engage in any activity covered by W. Va. Code Section 22.

2.29. Possible Caused By Blasting means the physical damage in question is not entirely consistent with blasting induced property damage, but that blasting cannot be ruled out as a casual factor.

2.30. Pre-Blast Survey means the written documentation of the existing condition of a given structure near an area where blasting is to be conducted. The purpose of the survey is to note the pre-blasting condition of the structure and note any observable defects or damage.

2.31. Probably Caused By Blasting means that there is physical damage present at the site in question that is entirely consistent with blasting induced property damage, and said damage can be attributed to a specific mine site and/or blast event(s).

2.32. Probably Not Caused By Blasting means that there is substantial, but not conclusive information that the alleged damage was caused by something other than blasting.

2.33. Production Blasting means blasting that removes the overburden to expose underlying coal seams and shall not include construction blasting.

2.34. Protected Structure means any of the following structures that are situated outside the permit area: an occupied dwelling, a temporarily unoccupied dwelling which has been occupied within the past ninety (90) days, a public building, a habitable building for commercial purposes, a school, a church, a community or institutional building, a public park or a water well. [This provision was relocated and modified from CSR 38–2–2.98.]

2.35. Supervised a Blasting Crew means that a person assumed responsibility for the conduct of a blasting crew(s) and that the crew(s) reported directly to that person. [This provision was relocated from CSR 38–2C–2.7.]

2.36. Surface Mine and Surface Area of Underground Mines means all areas except underground workings surface mined or being surface mined, including adjacent areas ancillary to the operations, i.e., preparation and processing plants, storage areas, shops, haulageways, roads, and trails, which are covered by the provisions of W. Va. Code Section 22–3–1 *et seq.*, and rules promulgated under that article. [This provision was relocated from CSR 38–2C–2.8.]

2.37. Worked on a Drilling Crew means that a person has directly participated in the loading, connecting, and preparation of blast holes and has detonated blasts. [This provision was relocated from CSR 38–2C–2.9.]

2.38. Worked on a Blasting Crew means that a person has first-hand experience in storing, handling, transporting, and using explosives. [This provision was relocated from CSR 38–2C.2.10.]

Section 199–1–3. Blasting

3.1. General Requirements. Each operator shall comply with all applicable state and federal laws in the use of explosives. A blaster certified by the office shall be responsible for all blasting operations including the transportation, storage and use of explosives within the permit area in accordance with the blasting plan. [This provision was relocated from CSR 38–2–6.1.]

3.2. Blasting Plans.

3.2.a. As required by statute, all surface mining operations that propose blasting shall include a blasting plan. The blasting plan shall explain how the applicant will comply with the blasting requirements of W. Va. Code Section 22–3–1 *et seq.*, and this rule. This plan shall include, at a minimum, information setting forth the limitations the operator will meet with regard to ground vibration and airblast, the basis for those limitations, and the methods to be applied in preventing the adverse effects of blasting operations. [This provision was relocated and modified from CSR 38–2–6.2.]

3.2.b. The blasting plans referred to in paragraph 3.2.a. of this rule will be reviewed for administrative and technical completeness by the office. The person conducting the review shall be experienced in common blasting practices utilized on surface mining operations. The reviewer will take into consideration past operational history of the applicant, the geological

formation the blasting operations will take place in, and the proximity of individual dwellings or communities to the blasting operations.

3.2.c. The blasting plan shall also contain an inspection and monitoring procedure to insure that all blasting operations are conducted to eliminate, to the maximum extent technically feasible, adverse impacts to the surrounding environment and surrounding occupied dwellings.

3.2.d. For operations where a notice of violation (NOV) or cessation order (CO) has been issued; the office shall review the blasting plan within thirty (30) days of final disposition of the NOV or CO. This review will focus on the specific circumstances that led to the enforcement action. If necessary the blasting plan will be modified to insure all precautions are being taken to safely conduct blasting operations.

3.3. Public Notice of Blasting Operations. [Subsection CSR 199–1–3.3 was relocated and modified from CSR 38–2.6.3.a.]

3.3.a. At least ten (10) days but not more than thirty (30) days prior to any blasting operations which detonate five (5) pounds or more of explosives at any given time, the operator shall publish a blasting schedule in a newspaper of general circulation in all the counties of the proposed area. Copies of the schedule described in subdivision 3.6.a. of this rule shall be distributed by Certified Mail to local governments, public utilities and each resident within seven tenths (0.7 mi.) of a mile of the blasting site in accordance with W. Va. Code Section 22–3–13a(a)(1 and 2). The operator shall republish and redistribute the schedule at least every twelve (12) months and revise, republish and redistribute the schedule at least ten (10) days but not more than thirty (30) days prior to blasting whenever the area covered by the schedule changes or actual time periods for blasting significantly differ from that set forth in the prior schedule. The blasting schedule described in subdivision 3.6.a. shall contain at a minimum the following:

3.3.a.1. Name, address and phone number of the operator;

3.3.a.2. Identification of the specific areas in which blasting will take place;

3.3.a.3. Dates and times when explosives will be detonated;

3.3.a.4. Methods to be used to control access to the blasting area; and

3.3.a.5. Types and patterns of audible warning and all clear signals to be used before and after blasting.

3.4. Surface blasting activities incident to underground coal mining are not subject to the requirements of subdivision 3.3.a of this rule so long as all local governments and residents or owners of dwellings or structures located within one-half (½) mile of the blast site are notified in writing by the operator of proposed times and locations of the blasting operation. Such notice of times that blasting is to be conducted may be announced weekly, but in no case less than twenty-four (24) hours before the blasting will occur. [This provision was relocated from CSR 38–2–6.3.b.]

3.5. Blast Record. [Subsection CSR 199–1–3.5 was relocated from CSR 38–2–6.4.]

3.5.a. A blasting log book formatted in a manner prescribed by the director shall be kept current daily and made available for inspection at the site by the director and upon written request by the public.

3.5.b. The blasting log shall be retained by the operator for three (3) years.

3.5.c. The blasting log shall, at a minimum, contain the following information:

3.5.c.1. Name of permittee, operator or other person conducting the blast;

3.5.c.2. Location, date and time of blast;

3.5.c.3. Name, signature and certification number of blaster-in-charge;

3.5.c.4. Identification of nearest structure not owned or leased by the operator and direction and distance, in feet, to such structure;

3.5.c.5. Weather conditions;

3.5.c.6. Type of material blasted;

3.5.c.7. Number of holes, burden, and spacing;

3.5.c.8. Diameter and depth of holes;

3.5.c.9. Types of explosives used;

3.5.c.10. Weight of explosives used per hole;

3.5.c.11. Total weight of explosives used;

3.5.c.12. Maximum weight of explosives detonated within any eight (8) millisecond period;

3.5.c.13. Method of firing and type of circuit;

3.5.c.14. Type and length of stemming;

3.5.c.15. If mats or other protections were used;

3.5.c.16. Type of delay detonator used and delay periods used;

3.5.c.17. Seismograph records and air blast records shall include but not be limited to:

3.5.c.17.A. Seismograph and air blast reading, including exact location, date, and time of reading and its distance from the blast;

3.5.c.17.B. Name of person and firm taking the readings;

3.5.c.17.C. Name of person and firm analyzing the record, where analysis is necessary; and

3.5.c.17.D. Type of instrument, sensitivity and calibration signal or certification of annual calibration.

3.5.c.18. Shot location;

3.5.c.19. Sketch of delay pattern to include the entire blast pattern and all decks; and

3.5.c.20. Reasons and conditions for unscheduled blasts.

3.6. Blasting Procedures. [Subsection 199–1–3.6. was relocated and modified from CSR 38–2–6.5.]

3.6.a. All blasting shall be conducted during daytime hours, between sunrise and sunset; provided, that the director may specify more restrictive time periods based on public requests or other consideration, including the proximity to residential areas. No blasting shall be conducted on Sunday. Provided, however, the director may grant approval of a request for Sunday blasting if the operator demonstrates to the satisfaction of the director that the blasting is necessary and there has been an opportunity for a public hearing. Blasting shall not be conducted at times different from those announced in the blasting schedule except in emergency situations where rain, lightning, or other atmospheric conditions, or operator or public safety requires unscheduled detonations. Blasting shall be conducted in such a way so as to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or groundwater outside the permit area.

3.6.b. Safety Precautions:

3.6.b.1. Three (3) minutes prior to blasting, a warning signal audible to a range of one-half (1/2) mile from the blast site will be given. This preblast warning shall consist of three (3) short warning signals of five (5) seconds duration with five (5) seconds between each signal. One (1) long warning signal of twenty (20) seconds duration shall be the ''all clear'' signal. Each person in the permit area, and each person who resides or regularly works within one-half (1/2) mile of the permit area shall be notified of the meaning of these signals;

3.6.b.2. All approaches to the blast area shall be guarded against unauthorized entry prior to and immediately after blasting;

3.6.b.3. All charged holes shall be guarded and posted against unauthorized entry; and

3.6.b.4. The certified blaster shall be accompanied by at least one other person at the time of firing of the blast.

3.6.c. Airblast Limits.

3.6.c.1. Airblast shall not exceed the maximum limits listed below at the location of any dwelling, public buildings, school, church, or community or institutional building outside the permit area.

Lower Frequency Limit of Measuring System in Hz (+ 3 dB)—Maximum Level, in db

0.1 Hz or lower—flat response (Only when approved by the Director)—134 peak.
2 Hz or lower—flat response133 peak.
6 Hz or lower—flat response 129 peak.
C-weighted—slow response (Only when approved by the Director)—105 peak dBC.

3.6.c.2. If necessary to prevent damage, the director may specify lower maximum allowable airblast levels for use in the vicinity of a specific blasting operation.

3.6.c.3. Monitoring. The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The director may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken. The air blast measuring systems used shall have an upper-end flat-frequency response of at least 200 Hz.

3.6.d. Flyrock, including blasted material, shall not be cast from the blasting site more than half way to the nearest dwelling or other occupied structure, beyond the area of control specified in subdivision 3.6.e of this rule, or in no case beyond the bounds of the permit area.

3.6.e. Access to the blast area shall be controlled against the entrance of livestock or unauthorized personnel during blasting and for a period thereafter until an authorized person has reasonably determined:

3.6.e.1. That no unusual circumstances exist such as imminent slides or undetonated charges, etc.; and

3.6.e.2. That access to and travel in or through the area can be safely resumed. from 38–2–6.5

3.6.f. At the request of the director, the operator shall monitor air blast levels using

an instrument with an upper-end flat-frequency response of at least 200 Hz.

3.6.g. Blast Design.

3.6.g.1. An anticipated blast design shall be submitted if blasting operations will be conducted within:

3.6.g.1.A. 1,000 feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or

3.6.g.1.B. 500 feet of an active or abandoned underground mine.

3.6.g.2. The blast design may be presented as part of a permit application or at a time, before the blast as approved by the director.

3.6.g.3. The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures, including protected structures, to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground-vibration standards.

3.6.g.4. The blast design shall be prepared and signed by a certified blaster.

3.6.g.5. The director may require changes to the design submitted. [This provision was relocated from CSR 38–2–6.5.g.]

3.6.h. No blasting within five hundred (500) feet of an underground mine not totally abandoned shall be permitted except with the concurrence of the office, the operator of the underground mine and the Mine Safety and Health Administration. The director may prohibit blasting on specific areas where it is deemed necessary for the protection of public or private property, or the general welfare and safety of the public. [This provision was relocated from CSR 38–2–6.5.h.]

3.6.i. The operator may use the following scaled distance formulas to determine the allowable maximum weight of explosives (lbs.) to be detonated in any eight millisecond period without seismic monitoring:

Formula and Distance in Feet From the Blasting Site to the Nearest Protected Structure

W = (D/50)2—0—300 feet
W = (D/55)2—301—5,000 feet
W = (D/65)2—5,001 feet or greater

W = Weight of explosives in pounds
D = Distance to the nearest structure

[This provision was relocated from CSR 38–2–6.5.i.]

3.6.j. The scaled distance formulas need not be used if a seismograph measurement at the nearest protected structure is recorded and maintained for every blast. The peak particle velocity in inches per second in any one of the three mutually perpendicular directions shall not exceed the following values at any protected structure:

Seismograph Measurement and Distance to the Nearest Protected Structure

1.25—0—300 feet
1.0—301—5,000 feet
0.75—5,001 feet or greater

[This provision was relocated from CSR 38–2–6.5.j.]

3.6.k. The director may require a seismograph recording of any or all blasts based on the physical conditions of the site in order to prevent injury to persons or damage to property. [This provision was relocated from CSR 38–2–6.5.k.]

3.6.l. The maximum allowable ground vibration as provided in subdivisions 3.6.i and 3.6.j of this subsection shall be reduced by the director, if determined necessary to provide damage protection. [This provision was relocated from CSR 38–2–6.5.l.]

3.6.m. The maximum airblast and ground-vibration standards of subdivisions 3.6.c and 3.6.j of this subsection shall not apply at the following locations:

3.6.m.1. Structures owned by the permittee and not leased to another person; and

3.6.m.2. Structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the director before blasting. [This provision was relocated from CSR 38–2–6.5.m.]

3.7. Blasting Control for Other Structures. [Subsection CSR 199–1–3.7. was relocated from CSR 38–2–6.6.]

3.7.a. All other structures in the vicinity of the blasting area which are not defined as protected structures in subsection 2.24 of this rule shall be protected from damage by establishment of a maximum allowable limit on ground vibration, specified by the operator in the blasting plan and approved by the director.

3.7.b. The plan submitted under this subsection shall not reduce the level of protection for other structures otherwise provided for in this rule.

3.8. Certified Blasting Personnel.—Each person responsible for blasting operations shall be certified. Each certified blaster shall have proof of certification either on his person or on file at the permit area during blasting operations. Certified blasters shall be familiar with the blasting plan and blasting related performance standards for the operation at which they are working. [This provision was relocated from CSR 38–2–6.7.]

3.9. Pre-blast Surveys. [This provision is new. Many of the previously approved pre-blast survey requirements and specifications are now included in statute at W. Va. Code 22–3–13a.]

3.9.a. Qualifications for Individuals and Firms Performing Pre-blast Surveys.—Individuals must comply with the following:

3.9.a.1. Individuals must be approved by the office to administer pre-blast surveys.

3.9.a.2. The office shall develop a list of individuals who have exhibited ability by past experience to perform pre-blast surveys. Provided, however, attending a training course administered by the office on pre-blast surveys shall meet the previous experience requirements.

3.9.a.3. Every three (3) years after meeting initial qualifications for performing pre-blast surveys, individuals must meet the requirements of subparagraphs 3.9.a.1. (or submit written qualifications of previous experience performing pre-blast surveys) of this rule.

3.9.b. Pre-blast Survey Review.

3.9.b.1. Pre-blast surveys shall be submitted to the office on forms prescribed by the director in accordance with W. Va. Code Section 22–3–13a.

3.9.b.2. The office shall review each pre-blast survey as to form and completeness only, and notify the operator of any deficiencies within 15 days.

3.9.b.3. At the time the pre-blast survey is accepted by the DEP, the DEP shall forward a copy to the homeowner or resident.

3.9.b.4. The Office of Explosives and Blasting shall develop a procedure for assuring surveys shall remain confidential.

3.9.b.5. The DEP shall make available informational materials educating citizens about pre-blast surveys and blasting.

Section 199–1–4. Certification of Blasters.

4.1. Requirements for Certification.—In every surface mine and surface area of an underground mine when blasting operations are being conducted, a certified blaster shall be responsible for the storage, handling, transportation, and use of explosives for each and every blast, and for conducting the blasting operations in accordance with the blasting plans approved in a permit issued pursuant to W. Va. Code Section 22–3–1 et seq., and the rules promulgated under that article. [This provision is relocated and modified from CSR 38–2–6–1 and 38–2C–3.1.]

4.2. Qualifications for Certification.—Each applicant for certification shall have had at least one (1) year active blasting experience within the past five (5) years, and have demonstrated a working knowledge of and skills of the storage, handling, transportation, and use of explosives, and a knowledge of all state and federal laws pertaining thereto, by successfully taking and passing the examination for certification required by subsection 6.2 of this rule. [This provision is derived from W. Va. Code 22–3C–3.2.]

4.3. Application for Certification.—Prior to taking the examination for certification, a person must submit an application along with a fifty dollar ($50.00) application fee to the office to take the examination on forms prescribed by the director. Upon receipt of an application for examination, the director shall, after determining that the applicant meets the experience requirements of subsection 4.2 of this rule, notify the applicant of the date, time, and location of the scheduled examination. [This provision was derived from W. Va. Code 22–3C–3.3.]

Section 199–1–5. Training.—

The office will administer a training program to assist applicants for blaster certification or re-certification in acquiring the knowledge and skills required for certification. The training requirements shall include, at a minimum, those subject areas set forth in subdivisions 6.1.a through 6.1.k of subsection 6.1 of this rule, and paragraphs 6.2.a.1 through 6.2.a.11 of subsection 6.2 of this rule.

In lieu of completing the training program, the applicant for certification or re-certification may complete a self-study course using the study guide and other materials available from the office. [CSR 199–1–5 was relocated and modified from CSR 38–2C–4.]

Section 199–1–6.

Examination for Certification of Examiner/Inspector and Certified Blaster. [This entire

section was relocated and modified from CSR 38–2C–5.1.]

6.1. Examinations for Certified Blaster Examiners/Inspectors.—All persons employed by the office, whose duties include training, examining, and certification of blasters and/or inspecting blasting operations shall be a certified examiner/inspector. Certification under the provisions of this subsection does not constitute certification under the provisions of subsection 6.2 of this rule; however, certification under subsection 6.2 of this rule is sufficient for certification under this subsection. The examination for certified examiner/inspector shall at a minimum tests the applicant's knowledge of the information presented in the Study guide for West Virginia Surface Mine Blasters, and shall consist of three parts;

6.1.a. Part 1.—A written multiple choice examination covering:

6.1.a.1. Types of explosives and their properties, to include selection of appropriate explosives;

6.1.a.2. Blasting equipment and accessories, to include blasting machines;

6.1.a.3. Blast dimensions and calculations, to include geologic and topographic considerations, blast hole design, flyrock control, secondary blasting, and blast plans;

6.1.a.4. Delay systems, to include pattern design, field layout, and initiation systems;

6.1.a.5. Timing;

6.1.a.6. Blast vibration and vibration control, to include airblast, monitoring techniques, and use of preblast surveys;

6.1.a.7. Loading and detonating, to include priming, scheduling, site control warning signals, and unpredictable hazards;

6.1.a.8. Storage and transportation of explosives;

6.1.a.9. Record keeping and reporting;

6.1.a.10. Current state and federal laws and regulations relating to the storage, handling, transportation, and use of explosives; the training and certification of blasting personnel, and blasting signs; and

6.1.a.11. Responsibilities of a certified blaster.

6.1.b. Part 2.—A written simulation whereby the applicant must correctly and properly complete a blasting log.

6.1.c. Part 3.—A hands-on simulation whereby the applicant must demonstrate the ability to properly connect a blast, simulate a selected initiation system, and simulate detonating a blast.

6.1.d. A score of 70 percent (70%) for part 1, and satisfactorily completion of parts 2 and 3 are required for successful passage of the examination. An individual who fails to achieve a passing score may retake the examination subject to the discretion of the director.

6.2. Examination for Certified Blaster. [This provision was relocated from CSR 38–2C–5.2.]—The examination for certified blaster shall include information presented in the study Guide for West Virginia Surface Mine Blasters, and shall consist of three (3) parts:

6.2.a. Part 1.—A written multiple choice examination covering:

6.2.a.1. Types of explosives and their properties, to include selection of appropriate explosive(s);

6.2.a.2. Blasting equipment and accessories, to include blasting machines;

6.2.a3. Blast dimensions and calculations, to include geologic and topographic considerations, blast hole design, flyrock control, secondary blasting, and blast plans;

6.2.a.4. Delay systems, to include pattern design, field layout, and initiation systems;

6.2.a.5. Timing;

6.2.a.6. Blast vibration and vibration control, to include airblast, monitoring techniques, and use of preblast surveys;

6.2.a.7. Loading and detonating, to include priming, scheduling, site control, warning signals, and unpredictable hazards;

6.2.a.8. Storage and transportation of explosives;

6.2.a.9. Record keeping and reporting;

6.2.a.10. Current state and federal laws and regulations relating to the handling, storage, transportation, and use of explosives; the training and certification of blasting personnel, and blasting signs; and

6.2.a.11. Responsibilities of a certified blaster.

6.2.a.b. Part 2.—A simulation examination whereby the applicant must correctly and properly complete a blasting log.

6.2.c. Part 3—A hands-on simulation whereby the applicant must demonstrate the ability to properly connect a blast, simulate a selected initiation system, and simulate detonating a blast.

6.2.d. A score of 80 percent (80%) for a part 1, and a ''passing grade'' on parts 2 and 3, which are graded on a pass/fail basis, are required for successful passage of the examination.

6.3. Notification of Score.—The office will notify all persons of their scores within thirty (30) days of completing the examination. A person who fails to achieve a passing score of any of the three (3) parts of the examination, may apply, after thirty (30) days of receipt of his or her examination results, to retake the entire examination or any portions that the individual failed to pass.

Any person who fails to pass the exam on the second attempt must certify that he/she has taken or retaken the training course described in section 4 of this rule prior to applying for another examination. [This provision is relocated from CSR 38–2C–5.3]

Section 199–1–7

Approval of Certification.

Upon determination that an applicant for certification has satisfactorily passed the examination, the director shall, within thirty (30) days of the examination date, issue a certification card to the applicant. [This provision was relocated from CSR 38–2C–6.]

Section 199–1–8

Conditions or Practice Prohibiting Certification.

[This provision was relocated from CSR 38–2C–7.]—The Director shall not issue a blaster certification to persons who:

8.1. Are currently addicted to alcohol, narcotics or other dangerous drugs;

8.2. Have exhibited a pattern of conduct inconsistent with the acceptance of responsibility for blasting operations; or

8.3. Are convicted felons. [This provision was relocated from CSR 38–2C–7.]

Section 199–1–9

Re-certification Requirements for Certified Blaster.

9.1. Re-certification of Blasters.—A certified blaster must be re-certified every three (3) years. Each applicant for re-certification must be currently and must document that he or she satisfactorily meets the experience requirements of subsection 4.2 of this rule and has retaken the training course described in section 4 of this rule within the past twelve (12) months prior to application. The application for re-certification must be submitted on forms prescribed by the director along with a thirty dollar (30.00) reapplication fee. [This provision was relocated and modified from CSR 38–2C–8.1.]

9.2. Refresher Training Course/Self-Study Course.—An applicant who does not meet the experience requirements of subsection 3.8 of this rule must take the refresher training course, or complete the self-study course described in section 5 of this rule, and must take and pass the examination required in subsection 6.2 of this rule. [This provision was relocated form CSR 38–2C–8.2.]

Section 199–1–10

Presentation of Certificate; Transfer; and Delegation of Authority

10.1. Upon request by the director, a certified blaster shall exhibit his or her blaster certification card. [This provision was derived from W. Va. Code 22–3C–9.1.]

10.2. The certified blaster shall take all reasonable care to protect his or her certification card from loss or unauthorized duplication, and shall immediately report any such loss or duplication to the office. [This provision was derived from W. Va. Code 22–3C–9.2.]

10.3. Blaster's certifications may not be transferred or assigned. [This provision was derived from W. Va. Code 22–3C–9.3.]

10.4. Certified blasters shall not delegate their authority or responsibility to any individual who is not a certified blaster. [This provision was derived form W. Va. Code 22–3C–9.4.].

Section 199–1–11

Violations by a Certified Blaster.

The director may issue a notice of violation against a certified blaster who is in violation of any of the following:

11.1. Failure to comply with any order issued by the director;

11.2. Illegal use of drugs or narcotics, or any use of alcohol in the work place;

11.3. Violations of federal laws or regulations governing the purchase, use, handling, transportation, storage, or detonation of explosives;

11.4. False swearing in order to obtain a blaster's certification card; or

11.5. Any illegal or improper action taken by a certified blaster which may or has led to injury or death at a blast site. [Relocated from CSR 38–2C–10.1.]

Section 199–1–12

Penalties.

[Section 199–1–12 was relocated from CSR 38–2C–11.]

12.1. Suspension.—Upon service of a written notice of violation by the director to a certified blaster, the director may also, based on clear and convincing evidence of a violation, issue an order suspending his or

her certification. Prior to the issuance of such an order, the certified blaster shall be granted a hearing before the director to show cause why his or her certification should not be suspended.

The period of suspension will be conditioned upon the time period for completion of remedial measures to abate the violation as specified in the notice of violation. The director may also require retraining or reexamination as a condition for reinstatement of certification.

12.2. Revocation.—If the remedial action required to abate a notice of violation issued by the director to a certified blaster is not taken within the specified time period for abatement, the director may revoke the blaster's certification and require the blaster to relinquish his or her certification card. Revocation will occur if the certified blaster fails to retrain or fails to take and pass reexamination as a requirement for remedial action as described in subsection 12.1 of this rule.

12.3. Civil and Criminal Penalties—Any certified blaster is subject to the individual civil and criminal penalties provided for in W. Va. Code Section 22–3–17.

Section 199–1–13

Hearings and Appeals.—Any certified blaster who is served a notice of violation, suspension order, revocation order, or civil and criminal sanctions is entitled to the rights of hearings and appeals as provided for in W. Va. Code section 22–3–16 and 17. [This section was relocated from CSR 38–2C–12.]

Section 199–1–14. Blasting Crew

Persons who are not certified and who are assigned to a blasting crew, or assist in the use of explosives, shall receive directions and on-the-job training from a certified blaster. [This section was relocated from CSR 38–2C–13.]

Section 199–1–15

Reciprocity With Other States.

The director may enter into a reciprocal agreement with other states wherein persons holding a valid certification in that state may apply for certification in West Virginia, and upon approval by the director, be certified without undergoing the training or examination requirements set forth in this rule. [This section was relocated from CSR 38–2C–14.]

Section 199–1–16

Blasting Damage Claim [This section is new.]

16.1. Damage to Surface Structures.—A claim of damage to surface structures from blasting will be the result of one or more of the following:

16.1.a. Fly Rock.—Fly rock damage is based on the presence of debris from the blast site and the presence of impact damage;

16.1.b. Air Blast.—Air blast damage is characterized by broken or cracked window glass; and

16.1.c. Blasting Vibration Damage.—Blasting vibration damage is investigated by experienced and specially trained personnel to accurately determine the presence of such damage. Examples are explained in, but not limited to, the American Insurance Association publication, Blasting Damage, A Guide for Adjusters and Engineers.

16.2. Filing a Claim.

16.2.a. It is the responsibility of the property owner to notify the office of the alleged blasting damage. An inspector will be assigned to conduct a field investigation to determine the initial merit of the damage. An investigation will include the following:

16.2.a.1. Inspector will contact property owner within one (1) business day of receiving the complaint to schedule a visit to the property where the alleged blasting damage occurred and interview the property owner;

16.2.a.2. Inspector will visit the blasting site to determine if the operator and blaster are in compliance with state blasting requirements; and

16.2.a.3. Inspector will make written documentation on the investigation that describes the nature and extent of alleged damage, taking into consideration the damage that is accurately indicated on a pre-blast survey, damage where there has been no blasting conducted by the operator or other reliable indicators that the alleged damage actually pre-dated the blasting. Inspector will make one of the following determinations:

16.2.a.3.A. A definite determination that the merit of the alleged blasting damage can be made. Inspector will notify the claims administrator and supply such information that the claims administrator needs to sufficiently document the claim;

16.2.a.3.B. A definite determination that the merit of the alleged blasting damage cannot be made. Inspector will notify the claims administrator and supply such information that the claims administrator needs to sufficiently document the claim;

16.2.a.3.C. Inspector will inform the property owner of the following four resolution options available for the alleged blasting damage:

16.2.a.3.C.1. Withdraw the claim, with no further action required by the office;

16.2.a.3.C.2. File a claim with the operator or the operator's general liability insurance carrier;

16.2.a.3.C.3. File a claim with the homeowner's insurance carrier; or 16.2.a.3.C.4. Submit to the office's claims process.

16.2.a.3.D. If the property owner declines Part 16.2.a.3.C.4. of this rule, the office's involvement will be concluded.

16.2.a.4. Once a determination is made as to the merit of a claim, the office shall offer a chance to meet between the claimant and the permittee to attempt to resolve the issue.

16.3. The claims administrator will be responsible for the following:

16.3.a. Sending notice to the respective operator of the damage claim;

16.3.b. Making an initial assignment of the damage claim to a qualified claims adjuster within one business day;

16.3.c. Making an initial monetary determination of loss reserve of the respective claim; and

16.3.d. Providing the relevant claims information to the arbitrator assigned to that claim.

16.4. The adjuster will be responsible for the following:

16.4.a. Contacting the property owner and physically visiting the blasting damage site within three (3) business days of the initial assignment;

16.4.b. Documenting the alleged blasting damage through accepted methods such as photographs, video tapes, written descriptions, and diagrams;

16.4.c. Reviewing such available supporting information such as blasting logs, seismograph records and pre-blasting surveys;

16.4.d. Making a determination for the need for additional assistance from structural engineers, building contractors, and blasting consultants. The claims administrator will be the approving authority for the assignment of such specialists;

16.4.e. Making a determination as to the merit of the alleged blasting damage claim.

16.4.f. Making an initial monetary determination of the loss value of the respective claim.

16.4.f.1. The adjuster will use the following ratings in the determination of the merit of the alleged blasting damage claim:

16.4.f.1.A. Caused by blasting;

16.4.f.1.B. Probably caused by blasting;

16.4.f.1.C. Possibly caused by blasting;

16.4.f.1.D. Probably not caused by blasting; or

16.4.f.1.E. Not caused by blasting.

16.4.f.2. The merit-rating factors include, but are not limited to the following:

16.4.f.2.A. The claimant is the property owner;

16.4.f.2.B. Correlation of alleged damage event to a specific blast and mine;

16.4.f.2.C. Correlation of alleged damage event to a large, unusual, or problem shot;

16.4.f.2.D. Proximity to the blast site;

16.4.f.2.E. Timeliness of first notice of loss;

16.4.f.2.F. Damage that is not indicated on the pre-blast survey;

16.4.f.2.G. Lack of any other issues or grievances besides blasting;

16.4.f.2.H. Age and physical condition of the structure in question;

16.4.f.2.I. Presence of seismographic records close to the structure in question;

16.4.f.2.J. History of previous blasting in the immediate area;

16.4.f.2.K. Property that has been undermined; and

16.4.f.2.L. An area with a history of geological abnormalities.

16.4.g. Recommendations as to the equitable resolution of the claim; and

16.4.h. Completing report and sending to the claims administrator.

Section 199–1–17

Arbitration for Blasting Damage Claims. [This section is new.]

17.1. Listing of Arbitrators.—The office shall maintain and make available to the claimant and the operator a listing of persons willing and qualified to serve as arbitrators. The listing shall identify those persons who are qualified and willing to serve, included but not limited to, those willing to serve on a volunteer (i.e., without compensation) basis. The office shall establish a pool of arbitrators sufficient to handle the claims process. Once a year the Environmental Advocate, and industry representatives (selected by the West Virginia Mining and

Reclamation Association and the West Virginia Coal Association) may move to strike up to twenty-five percent (25%) of the list. The Environmental Advocate is required to seek citizen input. It is anticipated that the office will recommend the roster be maintained by the American Arbitration Association from which the parties will choose the arbitrator.

17.2. Selection of Arbitrator.—The parties may choose their own arbitrator by agreement, who may or may not be a person on the listing of arbitrators as defined in subsection 17.1 of this rule. In the absence of such agreement, the director will provide the parties with a listing of arbitrators and permit each of the parties to eliminate, in rotation, names from the list until one name remains. That person shall serve as the arbitrator.

17.3. Provision for Preliminary Information to the Arbitrator.—The arbitrator may require the parties to provide pertinent information to the arbitrator and to the other parties prior to the arbitration session. Such information may include, but is not limited to:

17.3.a. The pre-blast survey, shot logs, and other documents deemed necessary by the arbitrator to determine the merits and value, if any, of the blasting damage claim; and

17.3.b. A confidential statement summarizing a party's position on the issues and what relief, if any, should be awarded.

17.4. Demand for Arbitration and Timeframes for Arbitration.—On forms to be provided by the office when notifying the parties of its initial claim determination and the right to demand arbitration, a party seeking arbitration shall serve the other party by certified mail a written demand for arbitration within fifteen (15) days of receipt of the initial claim determination. An arbitrator shall be chosen within fifteen (15) days of receipt. Unless otherwise agreed by the parties and the arbitrator, the arbitration shall be conducted within thirty (30) days after the appointment of the arbitrator. Arbitration shall be completed within thirty (30) days after the first arbitration session, unless changed by agreement of the parties and the arbitrator. The arbitrator is empowered to set the date and time of all arbitration sessions.

17.5. Place of Arbitration.—The parties may by agreement select the place of arbitration and arrange for paying any associated costs. If the place of arbitration is determined by agreement, the place must be identified to the arbitrator upon the arbitrator's appointment. The office shall upon reasonable request by the parties make available its state office for the arbitration. In the event the parties cannot agree on the place of arbitration, the arbitrator is empowered to do so.

17.6. Confidentiality of the Arbitration Process.—Arbitration shall be regarded as confidential. The arbitrator shall maintain and preserve the confidentiality of all arbitration proceedings and records. An arbitrator may not be subpoenaed or called to testify, or otherwise be subject to process requiring disclosure of confidential information in any proceeding relating to or arising out of the dispute arbitrated.

17.7. Presentations to the Arbitrator.—Unless otherwise directed by the arbitrator:

17.7.a. Witnesses for the claimant will be the claimant, any one other person designated by the claimant, and the claimant's representative; and witnesses for the operator will be a company officer, its engineer or blaster, and its representative. If the claimant does not have a representative and requests representation, the Office of Explosives and Blasting, through the Office of the Environmental Advocate, shall provide a representative throughout the arbitration process, which representative shall not necessarily be an attorney-at-law.

17.8. Arbitration Award, Fees, Costs and Expenses.—If parties agree on settlement after entering into arbitration, parties may request their settlement be declared the official award by the arbitrator. Within thirty (30) days after the arbitration process is closed or terminated, the arbitrator shall issue a decision upholding, upholding in part, or overruling the initial claim determination made by the representatives of the Office of Explosives and Blasting. If the initial claim determination was in favor of the claimant, the operator requests arbitration and the claim determination is upheld or upheld in part, the operator shall pay the costs of the proceeding, as well as reasonable representation fees and costs of the claimant not to exceed one thousand dollars ($1,000.00). Otherwise, the parties are equally responsible for the cost of the proceeding and are responsible for their own fees and costs.

17.9. Binding Nature of the Award.—By requesting arbitration, the results of such arbitration are intended to be final and binding. As such they are not appealable to the West Virginia Supreme Court of Appeals, the circuit courts, or any other tribunal. The office shall provide written notice to the claimant of the binding nature of the arbitration award and shall secure from the claimant a written acknowledgement that the claimant understands the final nature of the award and agrees to be bound by it.

17.10. Payment of the Award.—Should an award be made against the operator on an arbitrated claim, the operator shall pay the full amount of the award within thirty (30) days of the final determination and award. If the operator fails to pay the award within thirty (30) days, the director may issue a cessation order pursuant to W. Va. Code Section 22–3–16 for all sites operated by the operator.

Section 199–1–18

Explosive Material Fee [This section is new.]

18.1. Assessment Fee on Blasting Material.—Pursuant to W. Va. Code Section 22–3A–7 and Section 22–5B–2a–2, there is hereby assessed a fee of one-quarter cent ($.0025) per pound on explosive material used for any purpose on surface mining operations. Provided, That the operators exempted from the application of Chapter 5B, Article 2A shall pay one-eighth ($.00125) cent per pound on explosive material.

18.2. Remittance of Fee.—Within thirty (30) days of the end of each previous quarter after the effective date of this rule, the operator shall remit to the office the amount of the fee calculated by multiplying one-quarter cent ($.0025) or one-eighth cent ($.00125) for operators exempt from the application of Chapter 5B, Article 2A, times the number of pounds of explosive material used during the preceding quarter for any purpose on the surface mining operations: Provided, That, the materials are measured by the pound. Copies of the delivery records and inventories shall be submitted with the fee to verify the accuracy of the fee calculation.

18.3. Dedication of the Fee.—The office shall deposit all moneys received from the explosive material fees into a special revenue fund to be known as the ''mountaintop removal fund'' within the state treasury. These moneys shall be expended by the Office of Explosives and Blasting and the Office of Coalfield Community Development, created by W. Va. Code Section 5B–2A–1, in the performance of their respective duties: Provided, However, that no explosive material fees collected from underground or surface mining operations specifically exempted from application of Chapter 5B, Article 2A, may be expended to fund the Office of Coalfield Community Development. All such fees shall be reserved and expended exclusively to fund the Office of Explosives and Blasting.

18.4. Expenditures.—Direct expenditures from the fees collected are not authorized, but shall be appropriated by the legislature.

18.5. Sufficiency of Fees.—After one year of collection of the explosive material fees and expenditure of the appropriations therefrom, the office shall report to the legislature whether the fees have provided sufficient revenue to fund the operation of both the Office of Explosives and Blasting and the Office of Coalfield Community Development.

18.6 The director is authorized, through the Treasurer's Office to invest the mountaintop removal fund with all interest earnings accrued to be returned to and be made part of the fund.

Section 199–1–19

Noncompliance. [This section is new.]

Failure to timely comply with the fee requirements of W. Va. Code Section 22–3A and this rule may result in permit suspension or revocation in accordance with W. Va. Code Section 22–3–17.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments, on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the West Virginia program.

Written Comments

If you submit written or electronic comments on the proposed amendment during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments

delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments

Please submit Internet comments as an ASCII, Word Perfect, or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS NO. WV–087–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

Our practice is to make comments, including names and home addresses of respondents, available for public review during our regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous 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, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. (local time), on December 20, 2000. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been 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 all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with OSM representatives to discuss the proposed amendment, you may 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, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

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

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 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 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, to the extent allowed by law, 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 since each such 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 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.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior has determined 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the state. 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 regulation.

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.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 24, 2000.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 00–30870 Filed 12–4–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

[OSD Administrative Instruction 81]

Privacy Act; Implementation

AGENCY: Office of the Secretary.

ACTION: Proposed rule.

SUMMARY: The Office of the Secretary is proposing to add an exemption rule for a Privacy Act system of records. The exemption is intended to increase the value of the system of records and to protect the privacy of individuals identified in the system of records.

DATES: Comments must be received on or before February 5, 2001 to be considered by this agency.

ADDRESSES: Send comments to the OSD Privacy Act Officer, Washington Headquarter Services, Correspondence and Directives Division, Records Management Division, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 601–4725.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act

It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 311

Privacy.

1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 311.8 is amended by adding paragraph (c)(7) to read as follows:

§ 311.8 Procedures for exemptions.

* * * * *

(c) * * *

(7) System identifier and name: DGC 20, DoD Presidential Appointee Vetting File.

(i) Exemption: Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Portions of this system of records that may be exempt pursuant to 5 U.S.C. 552a(k)(5) are subsections (d)(1) through (d)(5).

(ii) **Authority:** 5 U.S.C. 552a(k)(5).

(iii) Reason: From (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it.

* * * * *

Dated: November 22, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense .

[FR Doc. 00–30472 Filed 12–4–00; 8:45 am]

BILLING CODE 5001–10–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6904–3]

Hazardous Waste Management System; Proposed Exclusion for Identification and Listing Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also, ''the Agency'' or ''we'' in this preamble) is proposing to grant a petition submitted by Heritage Environmental Services, LLC (Heritage) to exclude (or ''delist'') treated Electric Arc Furnace Dust (EAFD) produced at Nucor Steel, Division of Nucor Corporation (Nucor) located in Crawfordsville, Indiana from the lists of hazardous wastes contained in Subpart D of Part 261.

The Agency has tentatively decided to grant the exclusion based on an evaluation of waste-specific information provided by Heritage. This proposed decision, if finalized, conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

We conclude that Heritage's petitioned waste is nonhazardous with respect to the original listing criteria.

DATES: *Comments.* We will accept public comments on this proposed decision until January 19, 2000. We will