

29 CFR citation	OMB control number.
1917.152(d)(2)(v) .....	1218-0196
1917.152(d)(2)(vi) .....	1218-0196

### Subpart C—Cargo Handling Gear and Equipment

#### § 1917.50 [Amended]

4. In § 1917.50, the OMB parenthetical at the end of the section is removed.

### PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

1. The authority citation for part 1918 is revised to read as follows:

**Authority:** Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), or 6-96 (62 FR 111), as applicable; and 29 CFR part 1911.

Section 1918.90 also issued under 5 U.S.C. 553.

Section 1918.100 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. 1801-1819 and 5 U.S.C. 553).

2. The heading for subpart A is revised to read as follows:

### Subpart A—General Provisions

3. New § 1918.4 is added to subpart A to read as follows:

#### § 1918.4 OMB control numbers under the Paperwork Reduction Act.

The following list identifies the 29 CFR citations for sections or paragraphs in this part that contain a collection of information requirement approved by the Office of Management and Budget (OMB). The list also provides the control number assigned by OMB to each approved requirement; control number 1218-0196 expires on May 31, 2002 and control number 1218-0003 expires on July 31, 2001. The list follows:

29 CFR citation	OMB control No.
1918.22(g) .....	1218-0196
1918.24(i)(1) .....	1218-0196
1918.61(b)(2) .....	1218-0196
1918.61(c) .....	1218-0196
1918.61(f)(1) .....	1218-0003
1918.61(f)(2) .....	1218-0003
1918.61(g) .....	1218-0003
1918.61(h) .....	1218-0003
1918.61(i) .....	1218-0003
1918.62(b)(1) .....	1218-0196
1918.62(b)(5) .....	1218-0196
1918.62(c)(1) .....	1218-0196
1918.62(d)(1) .....	1218-0196
1918.62(g)(3) .....	1218-0196
1918.62(g)(4) .....	1218-0196

29 CFR citation	OMB control No.
1918.62(h)(1) .....	1218-0196
1918.62(h)(3)(ii) .....	1218-0196
1918.62(h)(4) .....	1218-0196
1918.64(k)(1) .....	1218-0196
1918.64(k)(2) .....	1218-0196
1918.65(b)(1) .....	1218-0196
1918.66(a)(2) .....	1218-0196
1918.66(a)(8) .....	1218-0196
1918.66(a)(9) .....	1218-0196
1918.66(a)(11) .....	1218-0196
1918.66(a)(15) .....	1218-0196
1918.66(d)(2) .....	1218-0196
1918.66(d)(4) .....	1218-0196
1918.66(f)(1)(v) .....	1218-0196
1918.85(a) .....	1218-0196
1918.85(b)(4)(ii) .....	1218-0196
1918.85(k)(13) .....	1218-0196
1918.86(b) .....	1218-0196
1918.86(e) .....	1218-0196
1918.86(g) .....	1218-0196
1918.86(h) .....	1218-0196
1918.93(b) .....	1218-0196
1918.93(d)(4) .....	1218-0196
1918.94(c) .....	1218-0196
1918.96(e)(2) .....	1218-0196
1918.97(d)(7) .....	1218-0196
1918.100(a) .....	1218-0196
1918.100(e)(3) .....	1218-0196

[FR Doc. 99-28335 Filed 11-10-99; 8:45 am]

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### DEPARTMENT OF THE INTERIOR

#### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 948

[WV-074-FOR]

#### West Virginia Regulatory Program

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

**ACTION:** Final rule; correction.

**SUMMARY:** This notice corrects OSM's decision on an amendment submitted by the State of West Virginia as a modification to its permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM published its decision on the provision in the October 4, 1995, **Federal Register** (60 FR 51900). The decision being corrected concerns bond forfeiture, and specifically concerns the liability for reclamation costs that are in excess of the amount of bond forfeited. This correction is intended to comply with the decision of the United States District Court for the Southern District of West Virginia in *Cat Run Coal Co. v. Babbitt*, No. 2: 95-1063 (S.D. W.Va. Aug. 8, 1996).

**EFFECTIVE DATE:** November 12, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347-7158.

#### SUPPLEMENTARY INFORMATION:

#### Background

In a series of three letters dated June 28, 1993, and July 30, 1993 (Administrative Record Numbers WV-888, WV-889, and WV-893), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program. The amendment included numerous revisions to the West Virginia Surface Coal Mining and Reclamation Act, and the West Virginia Surface Mining Reclamation Regulations (CSR 38-2-1 *et seq.*). OSM grouped the proposed revisions that concern reclamation bonding into one amendment that was approved, with exceptions, in the October 4, 1995, **Federal Register** (60 FR 51900). In that notice, OSM approved an amendment to CSR 38-2-12.4.e. concerning the forfeiture of reclamation bonds. Specifically, subsection 12.4.e. concerns the liability for reclamation costs that are in excess of the amount of bond forfeited. The provision that OSM approved provided, in part, that "[t]he operator, permittee, or other responsible party shall be liable for all costs in excess of the amount forfeited."

#### Need for Correction

On August 8, 1996, the Court in *Cat Run Coal Co. v. Babbitt* vacated OSM's decision to approve CSR 38-2-12.4.e. Specifically, the Court vacated OSM's approval of the phrase "other responsible party," because it determined that the approval violated the notice and comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 500 *et seq.*, as well as the APA requirement to "adopt a concise general statement of \* \* \* [the rule's] basis and purpose." *Cat Run*, Slip op. at 9 through 15. The Court also found that OSM failed to ascertain the precise meaning and scope of the term "other responsible parties," and that, as a result, could not reach a reasoned and informed conclusion as to whether the proposal was consistent with SMCRA. Slip op. at 12 through 14. Finally, the Court found that CSR 38-2.12.4.e. was inconsistent with SMCRA's objective of internalizing the liability for reclamation of surface coal mining operations, because it purported to hold parties other than surface coal mining permittees and operators liable for reclamation costs in excess of site specific reclamation performance bond

amounts. Slip op. at 15 through 20. Consequently, we are amending our approval of CSR 38-2-12.4.e. to show that the phrase "other responsible party" is not approved. In addition, we are requiring that CSR 38-2-12.4.e. be amended to delete the phrase "other responsible party."

The Federal regulations at 30 CFR 948.15 codifying decisions concerning the West Virginia program are being amended to implement this revised decision. After the October 4, 1995, publication of the final rule notice containing our approval of CSR 38-2-12.4.e., the format of the codification section at 30 CFR 948.15 was changed from individual paragraphs to a summary table. Therefore, the correction will have the following effect in the summary table at 30 CFR 948.15. In the table at 30 CFR 948.15, for the "Original amendment submission date" of June 28, 1993, and "date of final publication" of October 4, 1995 and February 21, 1996, the "Citation/

description" section of the approved provisions will be revised to exclude from the approval of CSR 38-2-12.4.e. the phrase "other responsible party."

#### Administrative Procedure Act

The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because this rule merely removes regulations already declared void by the Court. Therefore, opportunity for prior comment is unnecessary and we are issuing this regulation as a final rule.

In addition, under 5 U.S.C. 553(d)(3), we find good cause for dispensing with the 30-day delay in the effective date of

this final rule because we are merely removing a provision already declared void by the court.

Dated: October 22, 1999.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

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

#### PART 948—WEST VIRGINIA

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

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

2. Section 948.15 is amended in the table by revising the entry with the "Date of Final Publication" of October 4, 1995, February 21, 1996, to read as follows:

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

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* * *	* * *	* * *
June 28, 1993 .....	October 4, 1995, February 21, 1996.	WV Code 22-1-4 through -8; 22-2; 22-3-3, -5, -7, -8, -9, a, -11(a), (g), -12, -13, -15, -17, -18, -19, -22, -26, -28, -40; 22B-1-4 through -12; 22B-3-4; 22B-4; CSR 38-2-1.2, -2, -3.1(o), .4, .6, .7, .8, .12, .14, .15, .16, .25, .26, .27(a), .28, .29, .30, .31(a), .32, .33, .34, -4, .1(a), .2 through .12, -5.2, .4, .5, -6, .3(b), .6, .8, -8.1, -9, -11.1 through .7, -12.2, .3, .4(a), (2)(B), (c) through (e) except the words "other responsible party" at (e) are not approved, .5, -13, -14.5, .8, .11, .12, .14, .15, .17, .18, .19, -15.2, -16.2, -17, -18.3, -20.1, .2, .4 through .7, -22; 38-2C-4, -5, -8.2, -10.1, -11.1; 38-2D-4.4(b), -6.3(a), -8.7(a).
* * *	* * *	* * *

3. Section 948.16 is amended by adding new paragraph (jjjj), to read as follows:

#### § 948.16 Required regulatory program amendments.

\* \* \* \* \*

(jjjj) By January 11, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove the words "other responsible party" at CSR 38-2-12.4.e.

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#### DEPARTMENT OF THE INTERIOR

##### Office of Surface Mining Reclamation and Enforcement

##### 30 CFR Part 948

[WV-081-FOR]

##### West Virginia Regulatory Program

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

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

**SUMMARY:** OSM is announcing its approval, with certain exceptions, of an amendment to the West Virginia permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises the West Virginia Code to create the Office of Explosives and Blasting, and adds and amends

sections of the West Virginia Code concerning blasting. The amendment is intended to improve the operational efficiency of the State program.

**EFFECTIVE DATE:** November 12, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347-7158.

#### SUPPLEMENTARY INFORMATION

- I. Background on the West Virginia Program
- II. Submission of the Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

#### 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