(b) *Other extended credit.* The rates for other extended credit provided to depository institutions under sustained liquidity pressures or where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	4.5	Nov. 6, 1991.
New York	4.5	Nov. 6, 1991.
Philadelphia	4.5	Nov. 6, 1991.
Cleveland	4.5	Nov. 6, 1991.
Richmond	4.5	Nov. 6, 1991.
Atlanta	4.5	Nov. 6, 1991.
Chicago	4.5	Nov. 6, 1991.
St. Louis	4.5	Nov. 7, 1991.
Minneapolis	4.5	Nov. 6, 1991.
Kansas City	4.5	Nov. 6, 1991.
Dallas	4.5	Nov. 6, 1991.
San Francisco	4.5	Nov. 6, 1991.

These rates apply for the first 30 days of borrowing. For credit outstanding for more than 30 days, a flexible rate will be charged which takes into account rates on market sources of funds, but in no case will the rate charged be less than the basic discount rate plus one-half percentage point. Where extended credit provided to a particular depository institution is anticipated to be outstanding for an unusually prolonged period and in relatively large amounts, the 30-day time period may be shortened.

By order of the Board of Governors of the Federal Reserve System, November 13, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-27740 Filed 11-18-91; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 57-91]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is amending 28 CFR part 16, §§ 16.71, 16.72 and 16.81, to effect miscellaneous changes and to reflect the reassignment of responsibility for three Privacy Act systems of records. The reassignment involves records of the Offices of the Deputy Attorney General and Associate Attorney General, and the Executive Office for United States Attorneys.

Miscellaneous changes to these Sections include (1) format and/or editorial changes to clarify or effect minor corrections; (2) where appropriate, additional reasons for retaining certain exemptions; and (3) the removal of the exemptions from subsections (e)(4)(G) and (H) as they pertain to the General Files Systems (JUSTICE/DAG-013 and JUSTICE/AAG-001) which are maintained, respectively, by the Offices of the Deputy Attorney General and Associate Attorney General. The exemptions are removed because the Offices are complying with the requirements of these subsections for the General Files Systems.

The reassignment of responsibility for three Privacy Act systems of records is the result of organizational changes within the Department. First, management responsibility for the Organized Crime Drug Enforcement Task Force has been reassigned from the Office of the Associate Attorney General to the Office of the Deputy Attorney General. Consistent with this organizational change, a Privacy Act system of records entitled "Drug Enforcement Task Force Evaluation and Reporting System of the Office of the Associate Attorney General (JUSTICE/AAG-002)" is removed from § 16.72; it is redesignated "Drug Enforcement Task Force Evaluation and Reporting System (JUSTICE/DAG-003)" and is added to § 16.71. Second, management responsibility for Assistant United States Attorney applicant and personnel records has been moved from the Office of the Deputy Attorney General to the Executive Office for United States Attorneys. Consistent with this organizational change, two Privacy Act systems of records entitled "Assistant United States Attorneys Applicant Records System (JUSTICE/DAG-003)" and "Appointed Assistant United States Attorneys Personnel System (JUSTICE/DAG-002)" are removed from § 16.71. They are redesignated "Assistant United States Attorneys Applicant Records System (JUSTICE/USA-016)" and "Appointed Assistant United States Attorneys Personnel System (JUSTICE/USA-017)," respectively, and are added to § 16.81.

The effects of the changes described above are internal only; they will have no effect on the public.

EFFECTIVE DATE: November 19, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely (202) 514-6329.

SUPPLEMENTARY INFORMATION: The character of the systems of records that are the subject of this rule may be reviewed by referring to the **Federal Register** cites where they were last published under their previous designations. The systems may be found in the **Federal Register** as indicated below:

The General Files Systems (JUSTICE/DAG-013 and JUSTICE/AAG-001) and the Drug Enforcement Task Force Evaluation and Reporting System of the Office of the Associate Attorney General (JUSTICE/AAG-002) were last published on September 12, 1985 (50 FR 37295, 37297, and 37298, respectively).

Appointed Assistant United States Attorneys Personnel System (JUSTICE/DAG-002) and Assistant United States Attorneys Applicant Records System (JUSTICE/DAG-003) were last published on October 21, 1985 (50 FR 42603 and 42604, respectively).

While the systems will be republished in full text at a future date, notice of the reassignment and renaming of these systems can be found in the Notice Section of today's **Federal Register**.

This Order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

In addition, pursuant to 5 U.S.C. 553(b)(B) and (d)(3), it has been determined that it is impracticable and unnecessary to provide for public comment and that it is not in the public interest to delay the effective date of this rule.

List of Subjects in 28 CFR Part 16

Administrative practice and procedures, Courts, Freedom of Information, Privacy and Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, 28 CFR part 16 is amended as set forth below.

Dated: November 5, 1991.

Harry H. Flickinger,

Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g).

553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Section 16.71 is revised as follows:

§ 16.71 Exemption of the Office of the Deputy Attorney General System—limited access.

(a) The following systems of records and exempt from 5 U.S.C. 552a(d)(1) and (e)(1):

(1) Presidential Appointee Candidate Records System (JUSTICE/DAG–006).

(2) Presidential Appointee Records System (JUSTICE/DAG–007).

(3) Special Candidates for Presidential Appointments Records System (JUSTICE/DAG–008).

(4) Miscellaneous Attorney Personnel Records System (JUSTICE/DAG–011).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d)(1) because many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning a candidate for a Presidential appointee or Department attorney position. Access could reveal the identity of the source of the information and constitute a breach of the promise of confidentiality on the part of the Department of Justice. Such breaches ultimately would restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(2) From subsection (e)(1) because in the collection of information for investigative and evaluative purposes, it is impossible to determine in advance what exact information may be of assistance in determining the qualifications and suitability of a candidate. Information which may appear irrelevant, when combined with other seemingly irrelevant information, can on occasion provide a composite picture of a candidate for a position which assists in determining whether that candidate should be nominated for appointment.

(c) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (2), (3) and (5); and (g):

(1) Drug Enforcement Task Force Evaluation and Reporting System (JUSTICE/DAG–003).

(2) General Files System of the Office of the Deputy Attorney General (JUSTICE/DAG–013).

(d) In addition, the Drug Enforcement Task Force Evaluation and Reporting System is exempt from 5 U.S.C. 552a(e)(4)(G) and (H). The exemptions for the Drug Enforcement Task Force Evaluation and Reporting System apply only to the extent that information is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (K)(2). The exemptions for the General Files System apply only to the extent that information is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) and (k)(5).

(e) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her could reveal investigative interest on the part of the Department of Justice, as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel. Further, making available to a record subject the accounting of disclosures could reveal the identity of a confidential source. In addition, release of an accounting of disclosures from the General Files System may reveal information that is properly classified pursuant to Executive Order 12356, and thereby cause damage to the national security.

(2) From subsection (c)(4) because these systems are exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) because the records contained in these systems relate to official Federal investigations. Individual access to these records could compromise ongoing investigations, reveal confidential informants and/or sensitive investigative techniques used in particular investigations, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. In addition, release of records from the General Files System may reveal information that is properly classified pursuant to Executive Order 12356, and thereby cause damage to the national security. Amendment of the records in either of these systems would interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (e)(5) because in the course of law enforcement investigations information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede any investigative process, whether civil or criminal, if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(5) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and may therefore be able to avoid detection, apprehension, or legal obligations or duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsections (e)(4) (G) and (H) because no access to these records is available under subsection (d) of the Privacy Act. (This exemption applies only to the Drug Enforcement Task Force Evaluation and Reporting System.)

(8) From subsection (g) because these systems of records are exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

3. Section 16.72 is revised as follows:

§ 16.72 Exemption of Office of the Associate Attorney General System—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4); (d); (e)(1), (2), (3) and (5); and (g):

(1) General Files System of the Office of the Associate Attorney General (JUSTICE/AAG–001).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) and (k)(5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her could reveal investigative interest on the part of the Department of Justice, as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidence,

intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel. Further, making available to a record subject the accounting of disclosures could reveal the identity of a confidential source. In addition, release of an accounting of disclosures may reveal information that is properly classified pursuant to Executive Order 12356, and thereby cause damage to the national security.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j)(2), (k)(1), (k)(2) and (k)(5) of the Privacy Act.

(3) From subsection (d) because the records contained in this system relate to official Federal investigations. Individual access to these records could compromise ongoing investigations, reveal confidential informants and/or sensitive investigative techniques used in particular investigations, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. In addition, release of these records may reveal information that is properly classified pursuant to Executive Order 12356, and thereby cause damage to the national security. Amendment of the records in this system would interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (e)(5) because in the course of law enforcement investigations information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede any investigative process, whether civil or criminal, if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(5) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and may therefore be able to avoid detection, apprehension, or legal obligations or duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsection (g) because this system of records is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2), (k)(1), (k)(2) and (k)(5) of the Privacy Act.

4. Section 16.81 is amended by redesignating paragraph (c) as paragraph (g); by redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively; and by adding paragraphs (e) and (f) as follows:

* * * * *

(e) The following systems of records are exempt from 5 U.S.C. 552a(d)(1) and (e)(1):

(1) Assistant U.S. Attorneys Applicant Records System (JUSTICE/USA-016).

(2) Appointed Assistant U.S. Attorneys Personnel System (JUSTICE/USA-017).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d)(1) because many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning a candidate for an Assistant U.S. Attorney position. Access could reveal the identity of the source of the information and constitute a breach of the promise of confidentiality on the part of the Department of Justice. Such breaches ultimately would restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(2) From subsection (e)(1) because in the collection of information for investigative and evaluative purposes, it is impossible to determine in advance what exact information may be of assistance in determining the qualifications and suitability of a candidate. Information which may appear irrelevant, when combined with other seemingly irrelevant information, can on occasion provide a composite picture of a candidate for a position which assists in determining whether that candidate should be nominated for appointment.

* * * * *

[FR Doc. 91-27689 Filed 11-18-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Regulatory Program; Civil Penalty Assessment Procedures

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with certain exceptions, of a proposed amendment to the West Virginia regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment contains revisions to the State's civil penalty assessment procedures as set forth in the West Virginia Code of State Regulations (CSR) at 38-2-20.5, 38-2-20.6 and 38-2-20.7.

EFFECTIVE DATE: November 19, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office; Office of Surface Mining Reclamation and Enforcement; 603 Morris Street; Charleston, West Virginia 25301; 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. Information concerning the general background of the West Virginia program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the initial conditions of the approval of the West Virginia program can be found in the January 21, 1981, Federal Register (46 FR 5915-5956). Subsequent actions concerning the conditions of approval and previous program amendments are codified at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of Amendment

By letter dated July 12, 1991 (Administrative Record No. WV 866), the West Virginia Division of Energy

(WVDOE) submitted a proposed amendment to its surface mining reclamation regulations at CSR 38–2–20.5, 38–2–20.6 and 38–2–20.7, which deal with civil penalty assessment procedures.

OSM announced receipt of the proposed amendment in the July 22, 1991, **Federal Register** (56 FR 33399–33401), and opened the public comment period and provided for a public hearing on the adequacy of the proposed amendments. The public comment period closed on August 21, 1991.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment submitted by the WVDOE on July 12, 1991. Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. CSR 38–2–20.5: Civil Penalty Determination

(a) Cessation Order Assessments

The State proposes to revise CSR 38–2–20.5(b) by adding the requirement that civil penalties for imminent harm cessation orders be initially assessed using the formula set forth in CSR 38–2–20.7, which, at present, is only used in assessing penalties for notices of violation. Imminent harm cessation orders are currently assessed $750 per day per violation as required by section 22A–3–17(a) of the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA), which provides that "any" cessation order issued by the State must be assessed a mandatory civil penalty of $750 per day per violation.

Under the Federal rules in 30 CFR part 845, civil penalties for Federal notices of violation and cessation orders are processed identically, with the exception of the stipulation in 30 CFR 845.12(a) that all cessation orders must be assessed a penalty and the provision in 30 CFR 845.15(b) requiring that, whenever a violation in a notice or order is not abated within the prescribed time, an additional civil penalty of not less than $750 per day be assessed for each day the failure to abate continues.

The additional provisions pertinent to cessation orders are in paragraphs (a) and (h) of section 518 of SMCRA, which contains language virtually identical to 30 CFR 845.12(a) and 845.15(b), respectively. Section 518(i) of SMCRA and the Federal regulations at 30 CFR 840.13(a) require that the civil and criminal penalty provisions of each State program contain penalties no less stringent than those set forth in section 518 of SMCRA. Section 518(i) of SMCRA and 30 CFR 840.13(c) also require that the procedural requirements of each State program relating to penalties and sanctions be the same as or similar to those provided in sections 518 and 521 of SMCRA. Additionally, 30 CFR 840.13(c) provides that State programs shall include civil penalty requirements procedurally similar to those in 30 CFR parts 843 and 845 and Subchapters G and J, although the Federal point system need not be adopted.

If this subsection of the State rules is revised as proposed, the State program would no longer require that imminent harm cessation orders always be assessed a penalty, as required by section 518(a) of SMCRA. Nor would it require that violations in imminent harm cessation orders which are not abated within the prescribed time be assessed an additional penalty of not less than $750 for each day the failure to abate continues, as required by section 518(h) of SMCRA. Therefore, the Director finds that the proposed amendment would render the State program inconsistent with section 518(i) of SMCRA and the Federal regulations at 30 CFR 840.13(a) and (c). Accordingly, he is not approving the proposed revision and he is requiring that the State either amend CSR 38–2–20.5(b) of its rules to remove this provision or revise its program to include penalty provisions no less stringent than those of section 518 of SMCRA. If the State wishes to use the penalty formula established in CSR 38–3–20.7 for cessation orders, it will also need to submit a legal opinion concluding that such procedures are consistent with State law, specifically section 22A–3–17(a) of the WVSCMRA.

(b) Alternative Enforcement

Subsection 20.5(b) of the proposed State rules provides that if a cessation order has not been abated or modified within the thirty (30) day period, the Commissioner shall initiate (alternative enforcement) action pursuant to subsections (b), (f), or (h) of Section 22A–3–17 of the WVSCMRA as appropriate.

The Federal regulations at 30 CFR 845.15(b)(2) contain a nearly identical requirement, but they also include criminal penalties assessed pursuant to section 518(e) of SMCRA in the list of alternative enforcement actions to be taken to ensure that abatement occurs or that there will not be a reoccurrence of the failure to abate.

By failing to reference the criminal penalty provisions of State law, the proposed State rules do not provide for sanctions no less stringent than those required by the Federal rules. Therefore, the Director finds that CSR 38–2–20.5(b) does not meet the standards for approval specified in 30 CFR 840.13(b). Accordingly, he is requiring the State to amend this rule to include criminal penalties in the list of alternative enforcement options available to the Commissioner if a cessation order is not abated or modified within thirty days.

(c) Assessment of Daily Penalty

CSR 38–2–20.5(b) provides that the Commissioner shall, for each cessation order, assess a civil penalty in accordance with Section 22A–3–17(a) of WVSCMRA for each day of continuing violation, except that such penalty shall not be assessed for more than thirty (30) days.

The Federal regulations at 30 CFR 845.15(a) provide that the regulatory authority may assess separately a civil penalty for each day from the date of "issuance" of the notice of violation or cessation order to the date set for abatement of the violation. Subsection 20.5(a) of the proposed State rules allows daily assessment of a civil penalty for a notice of violation from the issuance date of the notice to the abatement date of the violation. However, neither CSR 38–2–20.5(b) nor section 22A–3–17(a) of WVSCMRA provides when civil penalty assessments are to begin for cessation orders. It is a common practice in West Virginia to begin assessing civil penalties for cessation orders from the service date of the order instead of the issuance date. Since it sometimes takes three to five days to serve a cessation order by certified mail, this practice usually results in a reduction of the civil penalty.

Because the proposed State civil penalty assessment procedures are not similar procedurally to the Federal requirements, as required by 30 CFR 840.13 (a) and (c), the Director is requiring the State to amend its program to require that civil penalty assessments begin on the date of issuance of the cessation order and continue until the violation cited in the cessation order has been abated.

2. CSR 38–2–20.6: Procedure for Assessing Civil Penalties

(a) Assessment Officer—Duties

The State proposes to revise CSR 38–2–20.6(a) regarding the assessment officer's duties by adding a requirement that the findings of the violation inspection required by the Commissioner prior to determining the penalty assessment are to be submitted to the assessment officer in writing. The proposal further provides that the assessment officer may continue conferences, conduct investigations, and interview witnesses, as necessary. While there are no direct Federal counterparts to these proposals, the Director finds that they are not inconsistent with the Federal civil penalty assessment procedures at 30 CFR 845.17.

(b) Notice of Assessment

The State proposes to revise CSR 38-2-20.6(c) by adding a provision whereby the service requirements of CSR 38-2-20.6 will be deemed to have been complied with if the copy of the proposed assessment and accompanying worksheet are tendered at the address of the person set forth on the sign required under CSR 38-2-14.1(a), or at any address at which that person is in fact located, whether or not he or she accepts or collects such mailing. The proposal further provides that failure by the Commissioner to serve any proposed assessment within 30 days shall not be grounds for dismissal of all or part of the assessment unless the person assessed proves actual prejudice due to the delay, and makes a timely objection to the delay. A timely objection is one made within the normal course of administrative review. The revised civil penalty procedures at CSR 38-2-20.6(c) are similar to the Federal procedures in 30 CFR 845.17(b). Therefore, the Director finds that the proposal meets the standards for approval established in 30 CFR 840.13(c).

(c) Notice of Informal Assessment Conference

The State proposes to revise CSR 38-2-20.6(d) by adding a provision allowing any person, other than the operator and WVDOE, to submit a written request to present evidence concerning the violation being conferenced. The proposal further provides that the assessment officer shall grant the request only for the specific violation(s), and he or she may continue the conference to a later time and/or date as deemed necessary to honor other scheduled conferences.

There is no direct Federal counterpart to this proposed amendment, but the Director finds that the proposal is not inconsistent with SMCRA or any Federal regulation, except to the extent that public participation is limited to "only" the specific violation(s) which are the subject of the conference, thereby apparently prohibiting public participation at the conference as it relates to penalties and/or penalty assessment. The Federal regulations at 30 CFR 845.18(b)(2) provide that any person shall have a right to attend and participate in the assessment conference. The Director finds that restricting public participation to only the violation renders the proposal less effective than the Federal rules. Therefore, the Director is not approving the proposal to the extent that public participation is so restricted, and he is requiring the State to amend its program accordingly.

(d) Informal Conference

The State is proposing to revise CSR 38-2-20.6(e) by deleting the phrase which references the State's failure to serve a proposed assessment notice pursuant to CSR 38-2-20.6(c). Since the deleted material is proposed to be added to CSR 38-2-20.6(c), where it is more appropriately located, the Director finds that the deletion of the material from CSR 738-2-20.6(e) does not render the State program inconsistent with any Federal requirements.

In addition, the State proposes to change the title of "conference officer" to "assessment officer" throughout CSR 38-2-20.6(e). The Director finds this to be a nonsubstantive change with no programmatic implications.

(e) Mitigation

The State proposes to revise CSR 38-2-20.6(k) by deleting the provision that inability to comply may be considered in establishing the length of a permit suspension. Although the corresponding Federal rule at 30 CFR 843.18(c) contains a similar provision, the Director finds that its deletion from the State rule is approvable since it would not weaken the State's permit suspension sanction. The State program thus would continue to meet the standards of 30 CFR 840.13(b), which requires that the enforcement provisions of each state program contain sanctions which are no less stringent than those set forth in section 521 of SMCRA.

3. CSR 38-2-20.7: Assessment Rates

History of Violation

West Virginia proposes to revise CSR 38-2-20.7(a) to provide that the amount to be assessed, based on a history of violations, shall be determined by multiplying the number of violations written on the subject operation in the previous twelve months by a factor of 100. The current State rule uses a specific dollar rate per violation based upon an escalating range of violations, and appears to produce a lesser amount than that which would result from application of the proposed rule.

Seriousness of Violation

The State also proposes to revise CSR 38-2-20.7(b) which sets forth ratings and penalty amounts based upon the seriousness of the violation. The proposal reorganizes the seriousness ratings by giving a rating of 7-8 to that category of violations which can reasonably be expected to result in significant imminent environmental harm or to create an imminent danger to the health and safety of the public, as opposed to its current rating of 9-10. In addition, the proposal provides that any violation with an initial seriousness rating of 7 or higher is one which is an imminent harm violation and requires an imminent harm cessation order, consistent with the definition of imminent harm cessation order contained in CSR 38-2-20.3(a). Finally, the proposal sets forth minor adjustments in the penalty amounts for seriousness.

Operator Negligence

The State proposes to revise CSR 38-2-20.7(c) which sets forth ratings and penalty amounts based upon the degree of operator negligence. In addition to increasing the amount of penalty assigned to the various operator negligence ratings, the State is revising the narrative descriptions for 4 of the 5 rating categories. The 1-2 rating is being revised to include a violation that may have been avoided if more conscientious effort and/or (rather than just or) reasonable care was given. The rating of 3-4 is being revised to include a violation that was obvious and/or (rather than just and) no action was taken by the operator to prevent (rather than correct) the problem. The rating of 5-6 is being revised to include situations where the operator failed to adequately respond to previous written instructions (as opposed to previous enforcement action) of the inspector to prevent the event. Finally, the rating of 7-8 is being revised to include situations where the operator has been notified, in writing, of the problem, and made no effort to correct it.

Operator's Good Faith

The State proposes to revise CSR 38-2-20.7(d) regarding an operator's good faith in resolving violations. The State proposes to express good faith in terms of a percentage rather than dollars. The proposal excludes the amount assessed for history of violations from the total against which the good faith percentage is to be applied. The proposal also provides for rounding the good faith amount to the nearest dollar. In addition, the State proposes to revise the narrative for the various categories which describe the level of an operator's good faith. For the lowest rating level, which gives no good faith reduction due to an operator's failure to take appropriate action, the proposal adds the criterion that the violation was modified to a cessation order. For the highest rating of 7–8, the proposal clarifies that the violation is abated before the original abatement date.

The State also proposes to revise the amount of the good faith adjustment contained in CSR 38–2–20.7(d) from the current dollar amount ranging from $0 to $2120, to a proposed percentage amount ranging from 0% to 40%.

Determination of Penalty Amount

Finally, West Virginia proposes to revise CSR 38–2–20.7(e) which presents a worksheet for computing the penalty amount. The proposal removes the amount for number of previous violations from the subtotal against which the good faith percentage is applied, and adds the amount after the good faith amount has been subtracted. In addition, the proposal changes the "No. Previous Violations" title to "History of Violations".

West Virginia is proposing numerous technical revisions of the formula it uses to determine the amount of the civil penalty to be assessed for a violation. As discussed in the August 4, 1980, **Federal Register** notice (45 FR 51547–51550), the Secretary suspended 30 CFR 732.15(b)(7) and 840.13(a) insofar as they require that State programs (1) establish a point system for assessing civil penalties, and (2) require that State civil penalty assessments be no less stringent than those which would result from use of the Federal point system. The United States District Court for the District of Columbia had previously remanded those Federal regulations in In re: Permanent Surface Mining Regulation Litigation, 14 Env't. Rep. Cas. 1083, 1089 (D.D.C. February 26, 1980), holding that section 518(i) of SMCRA, like section 521(d), requires State programs to incorporate penalties and procedures that are no less stringent than those set forth in the Act. But because neither the penalties referenced in section 518(i) nor the procedures relative to those penalties refer to a point system, the court found it arbitrary to require the States to exactly parallel the Secretary's civil penalty assessment system. Instead the court concluded that a State need only develop a penalty assessment system that incorporates the four criteria (history of violations, seriousness, negligence and good faith) enumerated in section 518(a) of SMCRA. See also In re: Permanent Surface Mining Regulation Litigation, 19 Env't. Rep. Cas. 1477, 1503 (D.D.C. May 16, 1980) (point system itself is not required by section 518(i) of SMCRA.)

Therefore, since the proposed revisions to CSR 38–2–20.7 continue to rely upon the four statutorily required factors to determine the amount of the civil penalty assessment, the Director finds that it meets the Federal standards for approval of State civil penalty programs at 30 CFR 840.13(a), as modified by the August 4, 1980, suspension notice, except to the extent discussed below.

Since the revisions to CSR 38–2–20.7 delete all references to the monetary units (dollars, cents, etc.) associated with penalty amounts, the Director finds that it lacks the specificity required by 30 CFR 731.14(g)(7), which provides that State program submissions must describe systems for assessing and collecting civil penalties. Therefore, he is requiring that the State further amend this rule to specify that the monetary denomination which will be associated with the number generated by the assessment formula prescribed in CSR 38–2–20.7 will be in dollars.

In addition, for the good faith rating categories 1–2, 3–4 and 5–6, contained in CSR 38–2–20.7(d), the proposals would award the operator with good faith reductions ranging from 5 percent to 30 percent simply for abating the violation no sooner than the time originally given, or extended, for abatement. For these three rating categories, the State also proposes to delete the statement, "(V)iolation was abated before the required date". The Federal rule at 30 CFR 845.13(b)(4) allows for points to be added based on the degree of good faith of the person to whom the notice or order was issued. 30 CFR 845.13(b)(4)(ii)(A) defines rapid compliance to mean that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement. Normal compliance, on the other hand, is defined in 30 CFR 845.13(b)(4)(ii)(B) to mean that the person to whom the notice or order was issued abated the violation within the time given for abatement. Furthermore, under no circumstances can good faith be awarded by the State during initial or final assessment review until abatement of the violation has been accomplished by the operator. Therefore, the Director is not approving the State's proposal at CSR 38–2–20.7(d) to the extent that good faith may be granted where abatement is not achieved before the time set for abatement, and he is requiring the State to amend its civil penalty assessment procedures to be the same or similar to those provisions in section 518 of SMCRA and consistent with 30 CFR 840.13(c) and 845.13(b)(4).

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing was announced in the July 22, 1991 **Federal Register** (56 FR 33399–33401). The comment period closed on August 21, 1991. No one requested an opportunity to testify at the scheduled public hearing so no hearing was held. However, on August 20, 1991, the West Virginia Mining and Reclamation Association (WVMRA) requested that a public meeting be held on the proposed amendment. The public meeting was held on September 3, 1991, at the Charleston Field Office.

Representatives from the WVMRA, OSM, and WVDOE attended the meeting. The WVMRA requested the meeting to express its displeasure with OSM's decision to process the amendment separately from the proposed amendment that was submitted by the State on May 1, 1991. As explained in OSM's proposed rule of July 22, 1991, the WVDOE submitted the proposed civil penalty amendment because of unexpected delays in processing the earlier amendment and to expedite the approval of its proposed civil penalty regulations. In addition, the WVMRA reiterated its comments that were filed on August 20, 1991, in response to the proposed rules. The nature and disposition of those comments are summarized below.

CSR 38–2–20.5(a): Notice of Violation Assessments

The WVMRA requested that the phrase "issuance of a notice of", and language regarding "assessment of civil penalties of less than $1,000" be reinserted in CSR 38–2–20.5(a). Because the proposed amendment submitted by the State on July 12, 1991, does not contain any revisions to CSR 38–2–20.5(a) and the language referred to by the WVMRA is still contained in the State regulations, the Director finds that no action is required. However, the Director notes that on August 14, 1990, former Commissioner Larry George issued a policy determination that all civil penalties in the amount of $1,000 or less would be assessed (Administrative Record No. WV 877). This State policy which requires the assessment of all civil penalties regardless of amount, is still in effect as of the date of this notice.

CSR 38-2-20.6(d): Notice of Informal Assessment Conference

The WVMRA requested clarification regarding the proposed addition to CSR 38-2-20.6(d) which allows public participation at the informal assessment conference. In particular, the WVMRA inquired about the origin of the proposal, whether it had a basis in the Federal rules, and whether the proposal was granting authority to persons without standing in the procedure.

In the preamble to 30 FR 845.18 (44 FR 15308, March 13, 1979), responding to a suggestion that "assessment conferences not be opened to 'any person' who wished to attend", the Secretary said, "[t]his comment was rejected because it would limit the right of citizens to participate in the conference. The Office is obligated under section 102(i) of the Act to assure that 'appropriate procedures are provided for the public participation in * * * enforcement of the regulations'." The right of the public to attend and participate in assessment conferences is specifically provided for in the Federal regulations at 30 CFR 845.18(b)(2).

The Director feels that the concerns raised by WVMRA are adequately addressed by the above discussion. However, as explained in Finding 2(c) herein, the Director also has concerns regarding the State's proposal, and he is not approving the revision to CSR 38-2-20.6(d) to the extent that it limits public participation to the specific violation in question.

CSR 38-2-20.7(b): Seriousness of Violation

The WVMRA requested that the State delete the requirement that "a violation with a seriousness rating of 7 or higher shall be a cessation order." Under the Federal regulations at 30 CFR 840.13(b), States programs must include sanctions no less stringent than those set forth in section 521 of SMCRA. Section 521(a) requires, in part, that a cessation order be issued when there is an imminent danger to the health or safety of the public or when significant environmental harm is imminent or occurring. Since CSR 38-2-20.7(b) defines a seriousness rating of 7 in similar terms, the State's requirement for issuance of a cessation order is appropriate and necessary for the State program to remain in compliance with 30 CFR 840.13(b).

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the West Virginia program. The Mine Safety and Health Administration, U.S. Bureau of Mines, U.S. Fish and Wildlife Service, and U.S. Army Corps of Engineers either considered the amendment to be acceptable or submitted an acknowledgement with no comments.

V. Director's Decision

Based on the above findings, the Director is approving, with certain exceptions, the proposed program amendment submitted by West Virginia on July 12, 1991. The Federal regulations at 30 CFR part 948 codifying decisions concerning the West Virginia program are being amended to implement this decision. The Director is approving these proposed rules with the understanding that they will be promulgated in a form identical to that submitted to OSM and reviewed by the public. Any differences between these rules and the State's final promulgated rules will be processed as a separate amendment subject to public review at a later date.

As discussed in the findings listed below, the Director is not approving the proposed provisions in the cited subsections of the West Virginia regulations which have been found to be less effective than their Federal counterparts, and he is requiring West Virginia to further amend its program to correct the identified deficiencies.

Finding No.	Code of State Regulations
1(a)	38-2-20.5(b)
1(b)	38-2-20.5(b)
1(c)	38-2-20.5(b)
2(c)	38-2-20.6(d)
3	38-2-20.7 and 38-2-20.7(d)

This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated 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.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable under SMCRA until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the West Virginia program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives or other materials, and he will require the enforcement by West Virginia of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA (30 U.S.C. 1292(d)), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would 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.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 8, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations 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. In section 948.15, a new paragraph (m) is added to read as follows:

§ 948.15 Approval of regulatory program amendments.

* * * * *

(m) The following amendment submitted to OSM on July 12, 1991, is approved as set forth in paragraph (m)(1) effective November 19, 1991 with the exception of those provisions identified in paragraph (m)(2).

(1) Revisions of the following rules in the West Virginia Code of State Regulations (CSR):

CSR 38–2–20.5: Civil Penalty Determinations (with the exception noted in paragraph (m)(2) below).
CSR 38–2–20.6: Procedure for Assessing Civil Penalties (with the exception noted in paragraph (m)(2) below).
CSR 38–2–20.7: Assessment Rates (with the exception noted in paragraph (m)(2) below).

(2) Revisions to the following provisions of the West Virginia Code of State Regulations are not being approved to the extent indicated:

CSR 38–2–20.5(b): Cessation Order Assessments—to the extent that it provides that imminent harm cessation orders shall have an initial assessment in accordance with CSR 38–2–20.7.
CSR 38–2–20.6(d): Notice of Informal Assessment Conference—to the extent that public participation at assessment conference is restricted.
CSR 38–2–20.7(d): Operator's Good Faith—to the extent that the operator is awarded good faith where abatement is not achieved before the time set for abatement.

3. In section 948.16, paragraphs (ddd), (eee), (fff), (ggg), (hhh) and (iii) are added to read as follows:

§ 948.16 Required regulatory program amendments.

* * * * *

(ddd) By June 1, 1992, West Virginia shall submit proposed revisions to CSR 38–2–20.5(b) to provide initial and mandatory civil penalty assessment procedures for imminent harm cessation orders that are consistent with Federal requirements. Also, if West Virginia wishes to use the civil penalty assessment formula at CSR 38–2–20.7 for cessation orders, it must submit a legal opinion concluding that it has the authority to do so under State law.

(eee) By June 1, 1992, West Virginia shall submit proposed revisions to CSR 38–2–20.5(b) to allow the Commissioner to initiate action pursuant to West Virginia Code 22A–3–17(e) if a cessation order is not abated or modified within thirty days.

(fff) By June 1, 1992, West Virginia shall submit proposed revisions to CSR 38–2–20.5(b) to require that civil penalty assessments begin to accumulate on the date of issuance of the cessation order and continue until the violation cited in the cessation order has been abated.

(ggg) By June 1, 1992, West Virginia shall submit proposed revisions to CSR 38–2–20.6(d) to remove any restrictions on public participation at assessment conferences.

(hhh) By June 1, 1992, West Virginia shall submit proposed revisions to CSR 38–2–20.7 to specify that the monetary denomination which will be associated with the number generated by the assessment formula prescribed in CSR 38–2–20.7 will be in dollars.

(iii) By June 1, 1992, West Virginia shall submit proposed revisions to CSR 38–2–20.7(d) to insure that the operator is awarded good faith only where abatement is achieved before the time set for abatement.

[FR Doc. 91-27731 Filed 11-18-91; 8:45 am]
BILLING CODE 4310-05-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1254

Use of Motion Picture, Sound, and Video Research Room

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration (NARA) is revising its research room regulations to require researchers using the Motion Picture, Sound, and Video Research Room in the National Archives Building to follow the same "clean research room" procedures that are in force in other research rooms in the National Archives Building. Under this regulation, researchers will no longer be allowed to bring personal audio or video copying equipment into the Motion Picture, Sound, and Video Research Room. The purpose of this regulation is to ensure that statutory and other limitations on the reproduction of materials under NARA's legal custody, including agency and copyright restrictions on Federal records and donated historical materials, are not violated.

EFFECTIVE DATE: This regulation is effective on November 19, 1991.

FOR FURTHER INFORMATION CONTACT: Mary Ann Palmos or Nancy Allard at (202) 501–5110.

SUPPLEMENTARY INFORMATION: In 1986, NARA established by regulation certain "clean" research rooms at the National Archives Building and the Washington National Records Center. The reason for this action was to ensure the physical security of Federal records and other materials over which NARA exercised legal custody.

The Motion Picture, Sound, and Video Research Room (then known as the Motion Pictures Research Room) was exempted from this regulation at the time of its promulgation because researchers used reference copies of original records, rather than the records themselves, in performing their research. At some point after 1986, NARA began permitting researchers, on an informal basis and for their convenience, to bring privately owned audio and video copying equipment into the Motion Picture, Sound, and Video Research Room.

The use of this personal copying equipment has not been unlimited in scope. Some of the materials available for public research in the Motion Picture, Sound, and Video Research Room may not be freely duplicated because of copyright or other restrictions. NARA has always attempted to enforce these restrictions by, among other things, not allowing researchers to use personal copying equipment to reproduce restricted materials. A recent review conducted by the Motion Picture, Sound, and Video Research Room staff has determined, however, that this particular limitation is being circumvented by researchers, thereby resulting in the unauthorized copying of restricted materials. For example, NARA has found that researchers with personal copying equipment are obtaining access to restricted materials by having researchers without personal copying equipment make the desired reference requests.