

amended, subsection 22-3-30a(f) provides that all penalties and liabilities as set forth in subsection 22-3-30a(b) shall be assessed by the Secretary of the WVDEP and deposited with the treasurer of the State of West Virginia in the "general school fund." In our previous finding concerning this provision (November 12, 1999; 64 FR at 61514), we did not approve subsection 22-3-30a(f) because of the requirement that the fees collected would be deposited in the "general school fund," rather than the "special reclamation fund."

The approved State program at W. Va. Code 22-3-17(d)(2) currently requires that civil penalties be deposited into the State's alternative bonding system, known as the "special reclamation fund." Under 22-3-30a(f), penalties collected from blasting violations that resulted in property damage to protected structures will be deposited into the general school fund. We note that W. Va. Code 22-3-30a(f) only concerns punitive penalty assessments relating to property damage violations due to blasting that supplement the State's existing civil penalty assessments at CSR 38-2-20. All blasting related violations will still be assessed under CSR 199-1-8.6, 8.7, and 8.8 and the monies collected will be deposited in the Special Reclamation Fund. Therefore, the Special Reclamation Fund will continue to receive funds from civil penalty assessments under CSR 199-1-8.6, 8.7, and 8.8, while the general school fund will receive funds from the supplemental penalties assessed under 22-3-30a(b) and (f). Given that existing funds will not be diverted from the Special Reclamation Fund, we find that this provision does not render the West Virginia program inconsistent with SMCRA section 518 concerning penalties and section 509(c) concerning alternative bonding systems, and can be approved.

8. 22-3-30a(h) Applicability. This provision is amended to clarify that the provisions of section 22-3-30a do not apply to the extraction of minerals by underground mining methods, provided that nothing contained in section 22-3-30a may be construed to exempt any coal mining operation from the general performance standards as contained in W. Va. Code 22-3-13 and any rules promulgated pursuant thereto. Blasting associated with surface impacts and surface operations incidental to underground coal mining would be subject to the State's blasting requirements, including the supplemental and civil penalty assessment provisions at 22-3-30a(b),

subject to the acreage limitations of that same subsection, and CSR 199-1-8.6, 8.7, and 8.8. We find that as amended, this provision is consistent with SMCRA section 518 and 30 CFR part 845, pertaining to penalty assessments, and can be approved.

#### Code of State Regulations (CSR)

9. CSR 199-1-2 Definitions. CSR 199-1-2 contains definitions, which are discussed next. Except for the definitions at CSR 199-1-2.15, 2.26, 2.30, 2.32, 2.36, and 2.38, the terms that are defined herein have no specific Federal counterparts.

199-1-2.1 Definition of "active blasting experience." Active blasting experience means experience gained by a person who has worked on a blasting crew, or supervised a blasting crew. Two hundred forty (240) 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 mined, 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 Secretary on a case-by-case basis as qualifying experience. We find that this definition is not inconsistent with SMCRA section 515(b)(15)(D) or the Federal regulations at 30 CFR part 850 and can be approved.

199-1-2.2 defines "air blast" to mean an airborne shock wave resulting from the detonation of explosives. We find that this definition is not inconsistent with SMCRA section 515(b)(15) or the Federal regulations at 30 CFR 816/817.67(b) and can be approved.

199-1-2.3 defines "adjuster" to mean an outside party that is assigned to investigate, document, evaluate and make recommendations on a reported loss. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199-1-2.4 defines "arbitrator" as an impartial individual appointed by the Office of Explosives and Blasting with the authority to settle the disputes between property owners and mine operators as they relate to allegations of blasting damage. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199-1-2.5 defines "arbitration" as 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. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199-1-2.6 Definition of "blast." This provision was previously approved and was amended by adding the words "planned or unplanned." As amended, "blast" is defined to mean any planned or unplanned detonation(s) of an explosive(s) being initiated simultaneously by a single source. We find that the definition is not inconsistent with the Federal regulations at 30 CFR 816/817.61 concerning the use of explosives and can be approved.

199-1-2.7 defines "blast area" to mean the area surrounding a blast site where flyrock could occur and which should be guarded against entry during the shot. We find that this definition is not inconsistent with SMCRA section 515(b)(15) or the Federal regulations at 30 CFR 816/817.66 and can be approved.

199-1-2.8 defines "blast site" to mean the area where explosive material is handled during loading including the perimeter formed by the loaded blast holes, and 50 feet in all directions from the collar of the outermost borehole or protected by a physical barrier to prevent access to the loaded blast holes. We find that this definition is not inconsistent with SMCRA section 515(b)(15) or the Federal regulations at 30 CFR 816/817.61 and can be approved.

199-1-2.10 defines "blasting complaint" to mean a communication to the Office from a member of the general public expressing concern, aggravation, fear or indications of blasting damage. A blasting complaint may or may not initially indicate damage. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199-1-2.11 defines "blasting claim" to mean an allegation by the property owner of blasting related damage to property. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199-1-2.12 defines "blasting log" as a written record containing all pertinent information about a specific blast as may be required by law or rule. We find that this definition is not inconsistent with SMCRA section 515(b)(15) or the Federal regulations at 30 CFR 816/817.68 and can be approved.

199-1-2.13 defines "blasting vibration" to mean the temporary ground movement produced by a blast that can vary in both intensity and duration. We find that this definition is