

Issued in College Park, Georgia, on June 30, 2000.

**Wade T. Carpenter,**

*Acting Manager, Air Traffic Division,  
Southern Region.*

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**BILLING CODE 4910-13-M**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-117162-99]

**RIN 1545-AY23**

#### Tax Treatment of Cafeteria Plans; Hearing

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of public hearing on proposed rulemaking.

**SUMMARY:** This document contains a notice of public hearing on proposed regulations relating to the tax treatment of cafeteria plans.

**DATES:** The public hearing is being held on August 17, 2000, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by August 3, 2000.

**ADDRESSES:** The public hearing is being held in Room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building.

Mail outlines to: Regulations Unit CC (REG-117162-99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Hand deliver outlines Monday through Friday between the hours of 8 a.m. and 5 p.m. to: Regulations Unit CC (REG-117162-99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Submit outlines electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting them directly to the IRS Internet site at [http://www.irs.gov/tax\\_regs/regslst.html](http://www.irs.gov/tax_regs/regslst.html).

**FOR FURTHER INFORMATION CONTACT:** Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing Treena Garrett, (202) 622-7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is the

notice of proposed regulations (REG-117162-99) that was published in the **Federal Register** on March 23, 2000 (65 FR 15587).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who have submitted written comments and wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by August 3, 2000.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Office of Special Counsel (Modernization and Strategic Planning).*

[FR Doc. 00-17806 Filed 7-13-00; 8:45 am]

**BILLING CODE 4830-01-U**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 946

[VA-118-FOR]

#### 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 Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The program amendment consists of changes to the Virginia Surface Mining Reclamation Regulations concerning subsidence control. The amendment is intended to revise the Virginia program to be consistent with the corresponding Federal regulations.

**DATES:** If you submit written comments, they must be received on or before 4:00

p.m. (local time), on August 14, 2000. If requested, a public hearing on the proposed amendment will be held on August 8, 2000. Requests to speak at the hearing must be received by 4:00 p.m. (local time), on July 31, 2000.

**ADDRESSES:** Mail or hand-deliver your written comments and requests to speak at the hearing to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the address listed below.

You may review copies of the 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 Big Stone Gap Field Office.

Mr. Robert A. Penn, Director, Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (540) 523-4303, E-mail: [rpenn@osmre.gov](mailto:rpenn@osmre.gov)  
Virginia Division of Mined Land Reclamation, P. O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (540) 523-8100, E-mail: [whb@mme.state.va.us](mailto:whb@mme.state.va.us)

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert A. Penn, Director, Big Stone Gap Field Office; Telephone: (540) 523-4303.

#### SUPPLEMENTARY INFORMATION:

##### I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the December 15, 1981, **Federal Register** (46 FR 61085-61115). You can find later actions concerning the conditions of approval and program amendments at 30 CFR 946.12, 946.13, 946.15, and 946.16.

##### II. Discussion of the Proposed Amendment

By letter dated June 27, 2000 (Administrative Record Number VA-999) the Virginia Department of Mines, Minerals and Energy (DMME) submitted an amendment to the Virginia program. In its letter, the DMME stated that on December 22, 1999, OSM suspended and modified portions of 30 CFR 784.20 and 30 CFR 817.121 pursuant to an order of the United States Appeals Court for the District of Columbia. The DMME

further stated that the corresponding sections of the Virginia Surface Mining Reclamation Regulations also contain the same language the court found inappropriate and which OSM consequently removed from the Federal rules. The DMME stated that it proposes to amend its rules to be consistent with and in the same manner that OSM modified the Federal regulations.

The Energy Policy Act was enacted October 24, 1992, Pub. L. 102-486, 106 Stat. 2776 (1992) (hereinafter, "The Energy Policy Act or EAct"). Section 2504 of that Act, 106 Stat. 2776, 3104, amends SMCRA, 30 U.S.C. 1201 *et seq.* Section 2504 of EAct added a new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for material damage to non-commercial buildings and occupied residential dwellings and related structures as a result of subsidence due to underground coal mining operations. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified by section 720(a)(1), and compensation must be provided to the owners in the full amount of the diminution in value resulting from the subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies which have been adversely affected by underground coal mining operations. Under section 720(b), the Secretary of the Interior was required to promulgate final regulations to implement the provisions of section 720(a).

On September 24, 1993 (58 FR 50174), OSM published a proposed rule to amend the regulations applicable to underground coal mining and control of subsidence-caused damage to lands and structures through the adoption of a number of permitting requirements and performance standards. We adopted final regulations on March 31, 1995 (60 FR 16722).

The rules were challenged by the National Mining Association in the District Court for the District of Columbia and in the U.S. Court of Appeals for the District of Columbia Circuit. On April 27, 1999, the U.S. Court of Appeals issued a decision vacating certain portions of the regulatory provisions of the subsidence regulations. See *National Mining Association v. Babbitt*, 173 F.3d 906 (1999). We suspended those regulatory provisions that are inconsistent with the rationale provided in the U.S. Court of Appeals' decision. The following Federal provisions were suspended.

#### 1. 30 CFR 817.121(c)(4)(i)–(iv)

This regulation provided that if damage to any non-commercial building or occupied residential dwelling or structures related thereto occurred as a result of earth movement within an area determined by projecting a specific angle of draw from the outer-most boundary of any underground mine workings to the surface of the land, a rebuttable presumption would exist that the permittee caused the damage. The presumption typically would have applied to a 30-degree angle of draw. Once the presumption was triggered, the burden of going forward shifted to the mine operator to offer evidence that the damage was attributable to another cause. The purpose of this regulatory provision was to set out a procedure under which damage occurring within a specific area would be subject to a rebuttable presumption that subsidence from underground mining was the cause of any surface damage to non-commercial buildings or occupied residential dwellings and related structures.

The Court of Appeals vacated, in its entirety, this rule that established an angle of draw and that created a rebuttable presumption that damage to EAct protected structures within an area defined by an "angle of draw" was in fact caused by the underground mining operation. 173 F.3d at 913.

In reviewing the regulation, the Court rejected the Secretary's contention that the angle of draw concept was reasonably based on technical and scientific assessments and that it logically connected the surface area that could be damaged from earth movement to the underground mining operation. The angle of draw provided the basis for establishing the surface area within which the rebuttable presumption would apply. The Secretary had explained that the rebuttable presumption merely shifted the burden of document production to the operator in evaluating whether the damage was actually caused by the underground mining operation within the surface area defined by the angle of draw. The Court nevertheless held that the angle of draw was irrationally broad and that the scientific facts presented did not support the logical inference that damage to the surface area would be caused by earth movement from underground mining within the area.

Based on the conclusion that there was no scientific or technical basis provided for establishing a rational connection between the angle of draw and surface area damage, the Court further concluded that the rebuttable

presumption failed. In reviewing the rebuttable presumption requirement, the Court held "an evidentiary presumption is 'only permissible if there is sound and rational connection between the proved and inferred facts, and when proof of one fact renders the existence of another fact so probable that it is sensible and timesaving to assume the truth of [the inferred] fact \* \* \* until the adversary disproves it.'" That is to say, for the presumption to be permissible, the facts would have to demonstrate that the earth movement from the underground mining operation "more likely than not" caused the damage at the surface. See *National Mining Association*, 173 F.3d at 906–910. In compliance with the Court of Appeals' decision of April 27, 1999, we suspended 30 CFR 817.121(c)(4)(i) through (iv).

Paragraph (v) within this section applies generally to the types of information that must be considered in determining the cause of damage to an EAct protected structure and is not limited to or expanded by the area defined by the angle of draw. Therefore, paragraph (v) remains in force.

#### 2. Section 784.20(a)(3)

This regulatory provision required, unless the applicant was denied access for such purposes by the owner, a survey which identified certain features. First, the survey had to identify the condition of all non-commercial buildings or occupied residential dwellings and related structures which were within the area encompassed by the applicable angle of draw and which might sustain material damage, or whose reasonably foreseeable use might be diminished, as a result of mine subsidence. Second, the survey had to identify the quantity and quality of all drinking, domestic, and residential water supplies within the proposed permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. In addition, the applicant was required to notify the owner in writing that denial of access would remove the rebuttable presumption that subsidence from the operation caused any postmining damage to protected structures that occurred within the surface area that corresponded to the angle of draw for the operation. (See discussion of angle of draw above). This regulatory provision was challenged insofar as it required a specific structural condition survey of all EAct protected structures. The Court of Appeals vacated the specific structural condition survey regulatory requirement in its decision on April 27, 1999. In reviewing the

Secretary's requirement, the Court clearly upheld the Secretary's authority to require a pre-subsidence structural condition survey of all EAct protected structures. The Court accepted the Secretary's explanation that this specific structural condition survey was necessary, among other requirements, in order to determine whether a subsidence control plan would be required for the mining operation. However, because of the Court's ruling on the "angle of draw" regulation discussed above, it vacated the requirement for a specific structural condition survey because it was tied directly to the area defined by the "angle of draw."

In compliance with the Court of Appeals' decision, we suspended that portion of 30 CFR 784.20(a)(3) which required a specific structural condition survey of all EAct protected structures. The remainder of this section continues in force to the extent that it applies to the EAct protected water supplies survey and any technical assessments or engineering evaluations necessarily related thereto.

The amendment submitted by the DMME is described below.

#### *4 VAC 25-130-784.20. Subsidence Control Plan*

Subsection 4 VAC 25-130-784.20(a)(3) is amended by adding the following language at the end of subdivision (3).

However, the requirements to perform a survey of the condition of all noncommercial buildings or occupied residential dwellings and structures related thereto, that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the areas encompassed by the applicable angle of draw is suspended consistent with the Secretary's suspension of the corresponding federal rule.

#### *4 VAC 25-130-817.121. Subsidence Control*

Section 4 VAC 25-130-817.121(c)(4), is revised by deleting the title "Rebuttable presumption of causation by subsidence," and by deleting paragraphs (c)(4)(i) through (iv). New language is added which states that "Section (4)(i) through (iv) are suspended consistent with the Secretary's suspension of the corresponding federal rule". The paragraph designation "(v)" is deleted.

As amended, section 4 VAC 25-130-817.121(c)(4) provides the following.

(4) Section (4)(i) through (iv) are suspended consistent with the Secretary's suspension of the corresponding federal rule.

Information to be considered in determination of causation. In determination whether damage to protected structures was

caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the division.

### **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 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. VA-118-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 Big Stone Gap Field office at (540) 523-4303.

#### *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

### **FOR FURTHER INFORMATION**

**CONTACT** by 4:00 p.m. (local time), on July 31, 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: July 5, 2000.

**Michael K. Robinson,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[AZ092-002; FRL-6736-1]

**Approval and Promulgation of Implementation Plans; Arizona—Maricopa County PM-10 Nonattainment Area; Serious Area Plan for Attainment of the Annual PM-10 Standard; Further Extension of Comment Period**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; further extension of comment period.

**SUMMARY:** EPA is extending the comment period for its proposed action to approve provisions of the Revised MAG 1999 Serious Area Particulate Plan for PM-10 for the Maricopa County (Phoenix) Nonattainment Area, February 2000, and the control measures on which it relies, that address the annual PM-10 national ambient air quality standard. As part of this proposal, we also proposed to grant Arizona's request to extend the Clean Air Act deadline for attaining the annual PM-10 standard in the Phoenix area from 2001 to 2006 and to approve two particulate matter rules adopted by the Maricopa County Environmental Services Department and Maricopa County's Residential Woodburning Restrictions Ordinance.

**DATES:** Comments must be received by July 28, 2000.

**ADDRESSES:** Mail comments to Frances Wicher, Air Planning Office (Air-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

**FOR FURTHER INFORMATION CONTACT:** Frances Wicher, Air Planning Office (Air-2), U.S. Environmental Protection Agency, Region IX, (415) 744-1248.

**SUPPLEMENTARY INFORMATION:** On April 13, 2000 (65 FR 19963), we proposed to approve the serious area air quality plan for attainment of the annual PM-10 standard in the Phoenix, Arizona, metropolitan area. The proposed actions are based on our initial determination that this plan complies with the Clean Air Act's requirements for attainment of the annual PM-10 standard in serious PM-10 nonattainment areas.

Specifically, we proposed to approve the following elements of the plan as they apply to the annual PM-10 standard:

- The base year emissions inventory of PM-10 sources,
- The demonstration that the plan provides for implementation of