proposed recodification and reinstatement of Oklahoma's regulations at OAC 460:20–6–1 through 460:20–6–5.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Oklahoma program. No comments were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed 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.*). None of the revisions that Oklahoma proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment form EPA (Administrative Record No. OK–974.02). EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. OK–974.02). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Oklahoma on April 26, 1996.

The Federal regulations at 30 CFR Part 936, codifying decisions concerning the Oklahoma program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) 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

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB 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 corresponding 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 corresponding Federal regulations.

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 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 3, 1996.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 936 is amended as set forth below:

PART 936—OKLAHOMA

1. The authority citation for Part 936 continues to read as follows:

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

2. Section 936.15 is amended by adding paragraph (r) to read as follows:

§ 936.15 Approval of regulatory program amendments.

* * * * *

(r) The additions of OAC 460:20–6–1 through 460:20–6–5 to the Oklahoma Coal Rules and Regulations, concerning an exemption for coal extraction incidental to government-financed or other construction as submitted to OSM on April 26, 1996, are approved effective July 24, 1996.

[FR Doc. 96–18611 Filed 7–23–96; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 948

[WV–075–FOR]

West Virginia Permanent Regulatory Program

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

amendments to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA Act). The amendments concern revisions to the West Virginia Surface Mining Reclamation Regulations. The amendments are intended to improve the clarity and effectiveness of the West Virginia program, and to revise the State program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 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. Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval can be found in the January 21, 1981, Federal Register (46 FR 5915–5956). Subsequent actions concerning the West Virginia program and previous amendments are codified at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

By letter dated April 2, 1996 (Administrative Record Number WV–1024), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program pursuant to 30 CFR 732.17. The amendment contains revisions to the West Virginia Surface Mining Reclamation Regulations (CSR § 38–2–1 *et seq.*).

The proposed amendment was published in the April 23, 1996, Federal Register (61 FR 17859), and in the same notice, OSM opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 23, 1996.

The last time the State regulations were significantly revised was on February 21, 1996. The Director partially approved the revisions in the February 21, 1996, Federal Register (61 FR 6511–6537). See 30 CFR 948.15 for the provisions partially approved, and 30 CFR 948.16 for the required amendments.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the West Virginia program.

1. § 38–2–2.106 Definition of ''Safety factor.'' This definition is revised to mean the ratio of the sum of the resisting forces to the sum of the loading or driving forces as determined by acceptable engineering practices. Prior to this change, the term was defined as the ratio of the sum of the resisting forces to the sum of the loading forces in a constructed valley fill, backfill, dam, or refuse pile. The Director finds the term as revised to be substantively identical to and no less effective than one of the two options contained in the counterpart Federal definition at 30 CFR 701.5

2. § 38–2–3.2(e) Readvertisement of permit applications. This provision is amended by adding the phrase, ''that do not significantly affect the health, safety or welfare of the public and,'' to the first sentence. With this change, a limited number of minor changes may be grouped and readvertised if the changes do not significantly affect the health, safety or welfare of the public and do not significantly affect the method of operation, the reclamation plan, and/or the original advertisement. This notice is in addition to the original advertisement requirement of one advertisement per week, for four successive weeks. The Director finds the added language does not render the provision less effective than the Federal regulations at 30 CFR 773.13 concerning public participation in permit processing.

3. § 38–2–3.6(h)(5) Certification of drainage/sediment control structure designs. This provision is amended by changing a cited reference concerning dams. ''Article 5D of Chapter 20'' is deleted and replaced by ''Article 14 of Chapter 22.'' The Director finds that the citation change does not render the provision less effective than the Federal regulations at 30 CFR 780.25(a) concerning preparation and certification of plans.

4. § 38–2–3.8(c) Revision or reconstruction of existing structures and support facilities. This provision is amended by adding the following language: ''Provided, that those [existing] structures and facilities, where it can be demonstrated that reconstruction or revision would result in greater environmental harm and the performance standards set forth in the Act and these regulations can otherwise be met, may be exempt from revision or construction.'' This amendment, in effect, provides an alternative to requiring revision or reconstruction of structures or support facilities in cases where greater environmental harm would result from the revisions or reconstruction.

The Federal regulations at 30 CFR 701.11(e)(1), provide for a similar exemption. Such exemptions to design requirements for existing structures can be granted as part of the permit application process after obtaining the information required by the State counterparts to 30 CFR 780.12 or 784.12 and after making the findings required in the State counterparts to 30 CFR 773.15. Proposed subsection 3.8(c) does not refer to these State counterparts. However, since these counterparts are, indeed, part of the State's program (see § 38–2–3.8(b), 3.32(d)(6)), cross-references to those provisions in subsection 3.8(c) are unnecessary.

The Federal regulations at 30 CFR 701.11(e)(2) provide that such exemptions shall not apply to (a) the requirements for existing and new coal mine waste disposal facilities; and (b) the requirements to restore the approximate original contour of the land. The West Virginia program, however, lacks a counterpart to these Federal limitations concerning the applicability of the proposed exemption.

The Director is approving the amendments to CSR 38–2–3.8(c). In addition, the Director is requiring that West Virginia further amend the West Virginia program to be consistent with 30 CFR 701.11(e)(2) by clarifying that the exemption at CSR 38–2–3.8(c) does not apply to 1) the requirements for new and existing coal mine waste disposal facilities; and 2) the requirements to restore the land to approximate original contour.

5. § 38–2–3.27 Permit renewals and extensions. The introductory paragraph of this provision is amended by deleting the word ''may'' and adding in its place the word ''shall.'' In addition, language has been deleted that required all backfilling and grading be completed within 60 days prior to the expiration date of the permit, and that an application for Phase I bond release be filed prior to the expiration date of the

permit. As amended, the provision provides that the Director of the WVDEP shall waive the requirements for renewal if the permittee certifies in writing that all coal extraction is completed, that all backfilling and regrading will be completed and reclamation activities are ongoing. The Director finds that the proposed provision is substantively identical to and no less effective than the Federal regulations at 30 CFR 773.11, which provides that an operator does not have to renew a permit to conduct reclamation activities.

6. § 38–2–4.4 Infrequently used access roads. This provision is revised by deleting and adding rule citations. As amended, infrequently used access roads may not be exempt from the requirements of §§ 38–2–4.2, 4.7(a), 4.8, 4.9, and 5.3. The Director finds the changes to be consistent with the Federal regulations at 30 CFR 816/817.150. In addition, the amendments satisfy the required program amendments codified at 30 CFR 948.16(rr). 30 CFR 948.16(rrr) required that West Virginia revise § 38–2–4.4 to require that all infrequently used access roads comply with § 38–2–4.9. Since this required amendment has been satisfied, it is hereby removed.

7. § 38–2–4.12 Certification of primary roads. This provision is amended by deleting the requirement that changes documented in the as-built plans be submitted to the Director of WVDEP as a permit revision. In its place, the following language is added: ''If as-built plans are submitted, the certification shall describe how and to what extent the construction deviates from the proposed design, and shall explain how and certify that the road will meet performance standards.'' In effect, these amendments replaces a requirement that all changes documented as as-built plans be submitted as a permit revision, with a requirement that when such changes are submitted, the submittal shall include an explanation of the changes, and a certification that the changes will meet performance standards

The Director finds that the deletion of the requirement to submit as-built plans to the Director of the WVDEP renders the amendment provision less effective than the Federal regulations at 30 CFR 774.11(c) concerning regulatory review of permits. In effect, the automatic acceptance of certified as-built plans removes the regulatory authority from its responsibility under 30 CFR 774.11(c) which requires a finding for even minor permit revisions. This finding by the regulatory authority must address all program requirements, not just performance standards.

Therefore, the Director is approving the proposed changes, except to the extent that the Director of the WVDEP is removed from the responsibility of reviewing permit revisions (such as as-built plans changes) as is required under 30 CFR 774.11(c). In addition, the Director is requiring that the State further amend CSR 38–2–4.12 to reinstate the following deleted language: ''and submitted for approval to the Director as a permit revision.''

8. § 38–2–5.4(c) Safety standards for embankment type structures. The first paragraph of this provision is amended by deleting the phrase ''which may include slurry impoundments.'' With this amendment, the provision's safety standards apply to all embankment type sediment control or other water retention structures. The Director finds that the removal of the reference to slurry impoundments renders the States provision unclear as to its application to slurry impoundments. If, the provision does not apply to slurry impoundments (which appears to be the purpose of the deletion), the provision is rendered less effective than the Federal regulations at 30 CFR 816/817.49 and cannot be approved. Therefore, the Director is approving the provision except to the extent that the provision does not apply to slurry impoundments. In addition, the Director is requiring that the State further amend the West Virginia program by clarifying that the requirements at CSR 38–2–5.4(c) also apply to slurry impoundments. The Director notes that this can be accomplished either by reinstating the deleted language or be replacing the term ''water retention structure'' with the term ''impoundment.''

9. § 38–2–11.6(a) Review of permits for adequacy of bond. This provision is amended to relocate the site-specific bonding requirements applicable to all four categories of mining at the time of permit renewal or mid-term review, whichever occurs first. These requirements also do not allow a permit to be renewed until the appropriate amount of bond has been posted. However, the Director finds the proposed revision, which is merely for organizational purposes, is not inconsistent with the Federal bonding requirements at 30 CFR 800.13 and 30 CFR 774.15(c).

10. § 38–2–11.6(c)(6), (d)(6), (e)(5), (f)(5) Bond reduction credits. These provisions are being amended to delete, in various places, the phrase ''within five (5) years of the date of SMA approval.'' In effect, activities for which a permittee may receive bond reduction credits are no longer required to be performed within five years from the date of SMA approval. The Director finds that, although there are no direct Federal counterparts, the proposed provisions would have no significant financial impacts and, therefore, would not adversely affect the findings that formed the basis for the Secretary's approval of the alternative bonding system pursuant to 30 CFR 800.11(e).

11. § 38–2–12.2(e) Bond release—chemical treatment. The existing language of this provision is deleted and replaced by the following:

Notwithstanding any other provisions of this rule, no bond release or reduction will be granted if, at the time, water discharged from or affected by the operation requires chemical treatment in order to comply with applicable effluent limitations or water quality standards; Provided, that the Director may approve a request for Phase I but not Phase II or III, release if the applicant demonstrates to the satisfaction of the Director that either:

(A) The remaining bond is adequate to assure long term treatment of the drainage; or

(B) The operator has irrevocably committed other financial resources which are adequate to assure long term treatment of the drainage; Provided, that the alternate financial resources must be in acceptable form, and meet the standards set forth in Section 11 of the Act and Section 11 of these regulations; provided, however, that the alternate financial arrangements shall provide a mechanism whereby the Director can assume management of the resources and treatment work in the event that the operator defaults for any reason; and provided further, that default on a treatment obligation under this paragraph shall be considered equivalent to a bond forfeiture, and the operator will be subject to penalties and sanctions, including permit blocking, as if a bond forfeiture had occurred.

In order to make such demonstration as referenced above, the applicant shall address, at a minimum, the current and projected quantity and quality of drainage to be treated, the anticipated duration of treatment, the estimated capital and operating cost of the treatment facility, and the calculations which demonstrate the adequacy of the remaining bond or of the alternate financial resources.

In effect, the added language would allow, under the specified circumstances, Phase I bond release on operations which require chemical treatment in order to comply with applicable effluent limitations or water quality standards.

The Director notes that the State's definition of ''chemical treatment'' at § 38–2–2.20 has only been partially approved by OSM. Specifically, the language of the definition that excludes passive treatment systems from being considered ''chemical treatment'' was not approved to the extent that such passive treatment systems would be applied in the context of § 38–2–12.2(e) to authorize bond release for sites with discharges that require passive treatment to meet discharge standards. For a complete explanation of the partial disapproval of the State's definition of ''chemical treatment,'' see Finding B–2, in the February 21, 1996, Federal Register (61 FR 6511) at page 6517.

The proposed language concerning incremental bond release could be implemented in a manner that is no less effective than the Federal requirements at 30 CFR 800.40(c) concerning bond release. The proposed language provides that the bond remaining after Phase I release, or the other financial resources committed to the treatment, must be adequate to assure long-term treatment of this discharge. In addition, the new language provides that the other financial resources committed to long-term treatment must be irrevocably committed, and the currently approved bonding requirements continue to apply. Finally, while these new provisions will provide bond monies for long-term treatment, they in no way eliminate the currently approved provisions that provide for adequate bond monies to assure completion of the approved reclamation plan (for example, to assure revegetation).

Therefore, the Director is approving the proposed revisions at CSR 38–2–12.2(e) to the extent that passive treatment, where it is implemented to achieve compliance with effluent limitations or water quality standards, is chemical treatment under the West Virginia program definition of chemical treatment at CFR 38–2–2.20.

12. § 38–2–14.3(c) Topsoil substitutes. The Director is deferring action on this proposed amendment because it was inadvertently omitted from the proposed rule notice published on April 23, 1996 (61 FR 17859) that announced the changes submitted by the State and requested public comment. The Director will provide opportunity for public comment on this change in the near future by notice in the Federal Register.

13. § 38–2–14.14(e)(4) Valley fills—rock core chimney drains. This provision is being amended by deleting the third sentence, which concerns the control of surface water runoff, and replacing that language with the following:

Surface water runoff from areas above and adjacent to the fill shall be diverted into properly designed and constructed stabilized diversion channels which have been designed using best current technology to safely pass the peak runoff from a 100 year, 24-hour precipitation event. The channel shall be designed and constructed to ensure stability of the fill, control erosion, and minimize water infiltration into the fill.

The Federal regulations prohibit uncontrolled flow onto excess spoil fills and require that diversion channels be constructed off the fills. OSM's technical committee agreed that such diversions could be constructed on durable rock fills, but it never addressed their use on valley fills. (See the August 16, 1995, Federal Register (60 FR 42437) for a discussion of OSM's approval of West Virginia's recently revised provisions concerning durable rock fills.) Given the differences in the construction techniques of the two types of fills, OSM cannot say with any confidence that the proposal, which would allow the construction of diversions on valley fills, its environmentally sound. The State needs to submit scientific evidence to OSM demonstrating that the proposed method of construction will not harm the long-term integrity of valley fills. A technical evaluation of this issue must occur before OSM can find the proposed State requirements at subsection 14.14(e)(4) to be no less effective than 30 CFR 816/817.72(a)(2). Therefore, the Director is not approving the proposed amendments at this time. Since this requirement is to take effect on July 1, 1996, OSM requests that its implementation be delayed and the WVDEP continue to require that runoff be diverted around valley fills until the study can be completed and a final determination is rendered by OSM.

14. § 38–2–14.15(m) Coal processing waste disposal. This provision is being amended by deleting the prohibition at 14.15(m)(1) that coal processing waste ''will not contain acid producing or toxic forming material.'' A new provision at 14.15(m)(2) is added to provide as follows:

(2) The coal processing waste will not be placed in the backfill unless it has been demonstrated to the satisfaction of the Director that: (A) the coal processing waste to be placed based upon laboratory testing (sic) to be non-toxic and/or non-acid producing; or (B) an adequate handling plan including alkaline additives has been developed and the material after alkaline addition is non-toxic and/or non-acid producing.

The Director finds, that in accordance with 30 CFR 816/817.102(e), except for the requirements concerning disposal, foundation investigations, and emergency procedures, the proposed language is consistent with and no less effective than the Federal regulations at 30 CFR 816/817.81 concerning coal mine waste. The Director is approving this amendment only to the extent that, with the disposal of coal processing waste in the backfill, the backfill will not exceed the approximate original contour (AOC). If AOC is exceeded, then the disposal of coal processing waste in the backfill must comply with the West Virginia program counterparts to 30 CFR 816/817.83 concerning coal mine waste—refuse piles. In addition, the Director is requiring that the State further amend the West Virginia program to require compliance with 30 CFR 816/817.81 (b), (d), and (e) regarding coal refuse disposal, foundation investigations and emergency procedures and to clarify that where the coal processing waste proposed to be placed in the backfill contains acid- or toxic-producing materials, such material must not be buried or stored in proximity to any drainage course such as springs and seeps, must be protected from groundwater by the appropriate use of rock drains under the backfill and along the highwall, and be protected from water infiltration into the backfill by the use of appropriate methods such as diversion drains for surface runoff or encapsulation with clay or other material of low permeability. That is, such acid- or toxic-producing materials must be hydraulically separated from any groundwater and from water infiltration into the backfill.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), on May 1, 1996, comments were solicited from various interested Federal agencies (Administrative Record Number WV–1030). The U.S. Army Corps of Engineers responded that they found the amendments to be satisfactory. The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded with several comments. However, non of the comments MSHA submitted pertain to the provisions that are being amended by the State. Therefore, those comments will not be discussed in this notice.

Public Comments

A public comment period and opportunity to request a public hearing was announced in the April 23, 1996, Federal Register (61 FR 17859). The comment period closed on May 23, 1996. No one requested an opportunity to testify at the scheduled public hearing so no hearing was held. The West Virginia Mining and Reclamation Association and the West Virginia Coal Association responded and urged approval of the amendments. No other public comments were received.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the 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 Clear Air Act (42 U.S.C. 7401 *et seq.*). On May 1, 1996, the Director requested EPA's concurrence and comments (Administrative Record Numbers WV–1029, 1030).

EPA responded on June 27, 1996 (Administrative Record No. WV–1037) and commented on two provisions. Concerning CSR 38–2–12.2(e), EPA conditionally concurred, and stated that the proposed revision for allowing bond release could result in a situation where less funds would be available for long term treatment unless three critical areas are addressed: (1)An accurate determination of the effectiveness, duration, and long term costs of treatment must be made to avoid underestimating abatement needs; (2) An assurance that the alternate financial resources, which are described by the proposed revision, will be irrevocably committed (such as in a trust fund, dedicated escrow account, or other similar manner) to assure its availability for treatment in case of bankruptcy; and (3) Assurance that the bond monies set aside for long term water treatment are in addition to the bond monies needed to assure the completion of the reclamation plan (such as for revegetation).

In response, the Director acknowledges the EPA's concerns, but believes that these results are not likely to occur. The proposed language provides that the bond remaining after Phase I release, or the other financial resources committed to the treatment, must be adequate to assure long term treatment of the discharge. In addition, the new language provides that the other financial resources committed to long term treatment must be irrevocably committed, and the currently approved bonding requirements continue to apply. Finally, while these new provisions will provide bond monies for long term treatment, they in no way eliminate the currently approved provisions that provide for adequate bond monies to assure completion of the approved reclamation plan (for example, to assure revegetation). Therefore, the Director is approving the provisions.

The EPA commented that the revisions at CSR 38–2–14.15(m) could result in acid seepage unless the approved handling plans include diversion drains for surface runoff, refuse encapsulation with clay or other material of low permeability, and rock drains under the backfill and along the highwall, to intercept and convey groundwater away from the refuse. As discussed above in Finding 14, the Director agrees and is requiring that the State further amend the West Virginia program to clarify that where the coal processing waste proposed to be placed in the backfill contains acid- or toxic-producing materials, such material must not be buried or stored in proximity to any drainage course such as springs and seeps, must be protected from groundwater by the appropriate use of rock drains under the backfill and along the highwall, and be protected from water infiltration into the backfill by the use of appropriate methods such as diversion drains for surface runoff, encapsulation with clay or other material of low permeability. That is, such acid- or toxic-producing materials must be hydraulically separated from any groundwater and from water infiltration into the backfill.

V. Director's Decision

Based on the findings above, the Director is approving the amendment submitted by West Virginia on April 2, 1996, except as noted below.

The Director is requiring that WVDEP further amend the West Virginia program to be consistent with 30 CFR 701.11(e)(2) by clarifying that the exemption at CSR 38–2–3.8(c) does not apply to (1) the requirements for new and existing coal mine waste disposal facilities; and (2) the requirements to restore the land to approximate original contour.

The amendments at CSR 38–2–4.4 satisfy the required program amendment codified at 30 CFR 948.16(rrr), which is hereby removed.

CSR 38–2–4.12 is approved except to the extent that the Director of the WVDEP is removed from its responsibility (under 30 CFR 774.11(c)) of reviewing permit revisions (such as reviewing as-built plans changes). In addition, the Director is requiring that the State further amend CSR 38–2–4.12 to reinstate the following deleted language: ''and submitted for approval to the Director as a permit revision.''

CSR 38–2–5.4(c) is approved except to the extent that the provision does not apply to slurry impoundments. In addition, the Director is requiring that the State further amend the West Virginia program by clarifying that the requirements at CSR 38–2–5.4(c) also apply to slurry impoundments.

CSR 38–2–12.2(e) is approved to the extent that passive treatment, where it is implemented to achieve compliance with effluent limitations or water quality standards is chemical treatment under the West Virginia program definition of chemical treatment at CFR 38–2–2.20.

§ 38–2–14.3(c) Topsoil substitutes. The Director is deferring action on this proposed amendment because it was inadvertently omitted from the proposed rule notice published on April 23, 1996 (61 FR 17859) that announced the changes submitted by the State.

CSR 38–2–14.14(e)(4) which would allow drainage to be diverted onto valley fills is not approved and its implementation is to be delayed pending the submission and approval of scientific evidence showing that the proposed construction of diversions on valley fills will not adversely affect their long-term stability.

CSR 38–2–14.15(m) is approved only to the extent that, with the disposal of coal processing waste in the backfill, the backfill will not exceed the approximate original contour (AOC). If AOC is exceeded, then the disposal of coal processing waste in the backfill must comply with the West Virginia program counterparts to 30 CFR 816.83 concerning coal processing waste—refuse piles. In addition, the Director is requiring that the State further amend the West Virginia program to require compliance with the State counterparts to 30 CFR 816/817.81 (b), (d) and (e) regarding disposal, foundation investigations and emergency procedures and to clarify that where the coal processing waste proposed to be placed in the backfill contains acid-or toxic-producing materials, such material must not be buried or stored in proximity to any drainage course such as springs and seeps, must be protected from groundwater by the appropriate use of rock drains under the backfill and along the highwall, and be protected from water infiltration into the backfill by the use of appropriate methods such as diversion drains for surface runoff or encapsulation with clay or other

material of low permeability. That is, such acid- or toxic-producing materials must be hydraulically separated from any groundwater and from water infiltration into the backfill.

The Federal regulations at 30 CFR Part 948 codifying decisions concerning the West Virginia program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

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 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 and other materials, and will require the enforcement by West Virginia of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) 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

No environmental impact statement is required for this rule section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB 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 regulations.

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 10, 1996.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating 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, paragraph (q) is added to read as follows:

§ 948.15 Approval of regulatory program amendments.

* * * * *

(q) The amendment to the West Virginia program concerning changes to the West Virginia regulations as submitted to OSM on April 2, 1996, is approved effective July 24, 1996 except as noted below:

CSR 38–2–4.12 is approved except to the extent that the Director of the WVDEP is removed from the responsibility (as is required by 30 CFR 774.11(c)) of reviewing permit revisions (such as reviewing as-built plans changes).

CSR 38–2–5.4(c) is approved except to the extent that the provision does not apply to slurry impoundments.

CSR 38–2–12.2(e) is approved to the extent that passive treatment, where it is implemented to achieve compliance with effluent limitations or water quality standards is chemical treatment under the West Virginia program definition of chemical treatment at CFR 38–2–2.20.

§ 38–2–14.3(c) Topsoil substitutes. The Director is deferring action on this proposed amendment because it was inadvertently omitted from the proposed rule notice published on April 23, 1996 (61 FR 17859) that announced the changes submitted by the State.

CSR 38–2–14.14(e)(4) which would allow drainage to be diverted onto valley fills is not approved.

CSR 38–2–14.15(m) is approved to the extent that, with the disposal of coal processing waste in the backfill, the backfill will not exceed the approximate original contour (AOC). If AOC is exceeded, then the disposal of coal processing waste—refuse piles.

3. Section 948.16 is amended by removing and reserving paragraph (rrr), and adding paragraph (vvv) to read as follows:

§ 948.16 Required regulatory program amendments.

* * * * *

(vvv) By January 15, 1997, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise the West Virginia program as follows:

(1) Amend the West Virginia program to be consistent with 30 CFR 701.11(e)(2) by clarifying that the exemption at CSR 38–2–3.8(c) does not apply to (1) the requirements for new and existing coal mine waste disposal facilities; and (2) the requirements to

restore the land to approximate original contour.

(2) Amend CSR 38–2–4.12 to reinstate the following deleted language: ''and submitted for approval to the Director as a permit revision.''

(3) Amend the West Virginia program by clarifying that the requirements at CSR 38–2–5.4(c) also apply to slurry impoundments.

(4) Amend CSR 38–2–14.15(m), or otherwise amend the West Virginia program to require compliance with 30 CFR 816/817.81 (b), (d), and (e) regarding coal refuse disposal, foundation investigations and emergency procedures and to clarify that where the coal processing waste proposed to be placed in the backfill contains acid- or toxic-producing materials, such material must not be buried or stored in proximity to any drainage course such as springs and seeps, must be protected from groundwater by the appropriate use of rock drains under the backfill and along the highwall, and be protected from water infiltration into the backfill by the use of appropriate methods such as diversion drains for surface runoff or encapsulation with clay or other material of low permeability.

[FR Doc. 96–18610 Filed 7–23–96; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA032–5013, VA030–5014; FRL–5534–4]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of Revised Confidentiality Provisions; Approval and Disapproval of Minor New Source Permit Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving in part and disapproving in part State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. This action proposes approval of changes submitted by Virginia in March 1993 to the provisions governing confidentiality of information. This action disapproves the public participation requirements associated with the permitting of minor new sources, and approves all other revisions to Virginia's revised new source permit provisions. The intended effect of this action is to approve those State provisions which meet the requirements of the Clean Air Act, and disapprove those State provisions which do not. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on August 23, 1996.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 566–2108 or FRANKFORD.HAROLD@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: On September 12, 1995 (60 FR 47320), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of revised provisions of the Virginia Regulations for the Control and Abatement of Air Pollution, Sections 120–02–30 and 120–08–01 (except for Sections 120–08–01G.1 and –01G.4.b), as well as the definition of ''confidential information.'' EPA also proposed approval of the revised exemption levels of Appendix R, provided that Virginia supply additional documentation that the exemptions provided for wood manufacturing operations and wood sawmills are consistent with all applicable Agency criteria for minor new source permit programs. At the same time, EPA proposed to disapprove the public participation requirements set forth in Sections 120–08–01G.1 and –01G.4.b, and retain in its place the current Virginia SIP-approved public participation provisions of Section 120–08–01C.4.a. The formal SIP revisions were submitted by Virginia on March 18, 1993 and March 29, 1993.

Other specific requirements of Sections 120–01–02C, 120–02–30, 120–08–01, and Appendix R submitted March 18, 1993 and March 29, 1993, and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. In addition, the following provisions of Section 120–08–01 govern sources that are not covered by the SIP, and have neither been reviewed nor evaluated as part of this SIP revision action:

Sections 120–08–01C.1.b, 120–08–01G.4.a, 120–08–01H.1, 120–08–01I.2, and 120–08–01J.2.

Summary of Public Comments and EPA Response

During the public comment period, which ended on October 12, 1995, EPA received two comments. One commenter supported EPA's proposed action to disapprove the revised public participation requirements set forth in Section 120–08–01G.1 and 01G.4. The other commenter raised two issues regarding (1) The scope of the public participation provisions that the SIP should require and (2) the issue of federal enforceability in the definitions of ''allowable emissions'' and ''potential to emit.''

The second commenter urged EPA to approve in its entirety the revised provisions to Section 120–08–01. With regard to the public participation issue, the commenter stated that the public participation provisions in 40 CFR section 51.161 should only apply to federally required new source review programs; they should not apply to the less environmentally significant sources subject to new source review. The commenter further stated its opinion that Virginia has provided reasonable public participation provisions in its proposed revised SIP, allowing public comment or hearing only for the most environmentally significant sources or modifications or sources which have the potential for public interest concerning air quality issues.

However, this commenter also raised the issue that the wording of the definitions ''allowable emissions'' and ''potential to emit'' found in Section 120–08–01B is inconsistent with a recent U. S. Court of Appeals decision on the issue of federal enforceability [*National Mining Association* v. *United States Environmental Protection Agency*, 59 F.3d 1351 (D.C. Cir. 1995)], and that EPA should address this issue. The SIP language requires that control requirements be both state and federally enforceable, while the Court decision holds that such control requirements are acceptable as long as they are either state enforceable or federally enforceable.

EPA provides the following response:

(1) With regard to the commenter's statement regarding EPA's disapproval action, EPA has determined that the thresholds which constitute environmentally significant modifications are specified in the definition of ''significant'' found in both 40 CFR section 51.165(a)(1)(x) and Section 120–08–03C of Virginia's air pollution control regulations. The term