

Substances	Limitations
Alkylthiophenolics: 1. Acid-catalyzed condensation reaction products of 4-nonylphenol, formaldehyde, and 1-dodecanethiol (CAS Reg. No. 164907-73-7). 2. Acid-catalyzed condensation reaction products of branched 4-nonylphenol, formaldehyde, and 1-dodecanethiol (CAS Reg. No. 203742-97-6).	For use only: 1. At levels not to exceed 2 percent by weight of adhesives complying with § 175.105 of this chapter, of pressure-sensitive adhesives complying with § 175.125 of this chapter, and of rubber articles complying with § 177.2600 of this chapter. 2. Do.

Dated: April 25, 2000.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV-080-FOR]

West Virginia Regulatory Program

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

ACTION: Final rule.

SUMMARY: OSM is approving, with certain exceptions, 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). The amendment consists of the revisions to the West Virginia Surface Mining Reclamation Regulations. The amendments are intended to improve the operational efficiency of the West Virginia program.

EFFECTIVE DATE: May 5, 2000.

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

SUPPLEMENTARY INFORMATION:

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I. Background on the West Virginia Program

The Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval in the January 21, 1981, **Federal Register** at 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 May 11, 1998 (Administrative Record Number WV 1086), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved regulatory program pursuant to the Federal regulations at 30 CFR 732.17(b). The amendment consists of revisions to CSR 38-2, the State's Surface Mining Reclamation Regulations, which the Governor signed on April 12, 1998.

We published the proposed rulemaking in the **Federal Register** on June 15, 1998 (63 FR 32632). The public comment period closed on July 15, 1998. Since no one requested an opportunity to speak at a public hearing, we did not hold a hearing.

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 amendments to the West Virginia regulatory program.

1. CSR 38-2-2 Definitions

West Virginia is amending the definition of "Coal Remining Operation" in CSR 38-2-2.25 to mean a coal mining operation on lands which would be eligible for expenditures under section 22-2-4 of the West

Virginia Surface Coal Mining and Reclamation Act (WVSCMRA). Section 22-2-4(c) provides that lands and water eligible for reclamation are those which were mined for coal or which were affected by the mining, waste banks, coal processing or other coal mining processes, and abandoned or left in an inadequate status prior to August 3, 1977, and for which there is no continuing reclamation responsibility. This language is substantively identical to the corresponding Federal provision in section 404 of SMCRA. Section 22-2-4(c) also includes certain lands for which bond forfeiture proceeds are inadequate to completely reclaim the site, as authorized by section 402(g)(4) of SMCRA. Hence, the State definition is substantively identical to the Federal definition of "lands eligible for remining" at 30 CFR 701.5, which provides that the term "means those lands that would otherwise be eligible for expenditures under section 404 or under section 402(g)(4) of the Act."

The State also is amending the definition of "Remined Area" in CSR 38-2-2.102 to mean the area of any coal remining operation. This definition has no precise Federal counterpart, but we find that it is not inconsistent with the Federal definition of "lands eligible for remining" at 30 CFR 701.5 or any other SMCRA-related provision. Hence, it can be approved.

2. CSR 38-2-3.14 Removal of Abandoned Coal Refuse Disposal Piles

West Virginia has revised paragraphs a. and b. of subsection 3.14 by replacing the term "special permit" with the term "reclamation contract" and by replacing "permit application" and "application" with "request." The State also made numerous other revisions to this subsection. For the reasons set forth below, these revisions need not be discussed here.

Subsection 3.14 authorizes the State to issue reclamation contracts "solely for the removal of existing abandoned

coal processing waste piles." It further provides that, "if the average quality of the refuse material meets the minimum BTU value standards to be classified as coal, as set forth in ASTM Standard D 388-88, a request which meets all applicable requirements of this section shall be required." In addition, subsection 3.14.c. implies that the State may issue a reclamation contract for operations that involve on-site reprocessing of abandoned coal refuse piles.

While we approved previous versions of subsection 3.14, our approval was limited to the removal of abandoned refuse piles that do *not* meet the definition of coal in 30 CFR 700.5. For example, in 1990, at 30 CFR 948.12(k)(4), we disapproved the initial version of subsection 3.14 "to the extent that it applies to the removal of abandoned coal mine refuse piles where the material being removed meets the definition of coal (ASTM Standard D 388 77)." 55 FR 21304, 21313-14, May 23, 1990. We based that decision on the definition of "surface coal mining operations" in 30 CFR 700.5, which specifically includes "the extraction of coal from coal refuse piles." The term "extraction" includes both the removal of coal refuse material that already meets the definition of coal and the on-site reprocessing of coal refuse to separate coal from waste rock and other materials. SMCRA and the Federal regulations do not establish lesser permitting requirements for the extraction of coal from coal refuse piles than they do for other types of re-mining operations.

Subsection 3.14 is less stringent than SMCRA and less effective than the Federal regulations because it would allow the issuance of a reclamation contract for the removal of coal refuse piles that meet the definition of coal rather than requiring that such operations obtain a standard regulatory program permit for surface coal mining operations as do the Federal regulations. In addition, subsection 3.14.c. is less stringent than SMCRA and less effective than the Federal regulations to the extent that it may be interpreted as authorizing the State to issue a reclamation contract rather than a surface coal mining operations permit for on-site reprocessing operations. As discussed above, under the Federal definition of surface coal mining operations in 30 CFR 700.5, all on-site reprocessing operations that separate coal from other materials in the pile must be regulated as surface coal mining operations.

Therefore, we are not approving subsection 3.14 to the extent that it

would apply to the removal of abandoned coal mine refuse piles where, on average, the material to be removed meets the definition of coal in 30 CFR 700.5. In addition, we are not approving subsection 3.14 to the extent that it could be interpreted as applying to the on-site reprocessing of abandoned coal refuse piles.

Otherwise, we take no position on the revisions that West Virginia has made to subsection 3.14. As we stated in 1990, "the removal, transport and use (without onsite reprocessing) of coal mine refuse which does not meet the definition of 'coal' set forth in 30 CFR 700.5; i.e., ASTM Standard D 388-77, is not subject to regulation [under SMCRA]." 55 FR 21314, May 23, 1990.

Consistent with this decision, we are requiring that West Virginia amend its program to either: (1) Delete subsection 3.14; or (2) revise subsection 3.14 to clearly specify that its provisions apply only to activities that do not qualify as surface coal mining operations as that term is defined in 30 CFR 700.5; i.e., that subsection 3.14 does not apply to either the removal of abandoned coal mine waste piles that, on average, meet the definition of coal or to the on-site reprocessing of coal mine waste piles. If the State chooses the second option, it should also submit the sampling protocol that will be used to determine whether the refuse piles meet the definition of coal. The sampling protocol must be designed to ensure that no activities meeting the definition of surface coal mining operations escape regulation under the State counterpart to SMCRA and the Federal regulations.

The previous discussion notwithstanding, the removal or reprocessing of any coal refuse pile may qualify for the government-financed construction exemption under section 528(2) of SMCRA. Section 528(2) of SMCRA states that SMCRA shall not apply to the extraction of coal as an incidental part of Federal, State, or local government-financed highway or other construction under regulations established by the regulatory authority. Section 22-3-26(b) of the WVSCMRA contains a similar provision.

The Federal regulations at 30 CFR part 707 provide the standards for implementing SMCRA section 528(2). Essentially, part 707 provides that, to be exempt from regulation as a surface coal mining operation under SMCRA, coal extraction must be a component of a government-financed construction project, and the extraction of coal must be incidental to the construction. CSR 38-2-3.31 is the approved West Virginia program regulation governing government-financed highway or other

construction exemptions that are exempt from the provisions of WVSCMRA.

On February 12, 1999 (64 FR 7469-83), we amended the definition of "government-financed construction" at 30 CFR 707.5 to provide that government funding of less than 50 percent of a project's costs may qualify if the construction is undertaken as an approved abandoned mine reclamation project under Title IV of SMCRA. We also added 30 CFR 874.17, which establishes requirements and procedures for reclamation projects receiving less than 50 percent government funding. The West Virginia program lacks counterparts to the revised Federal definition of "government-financed construction" at 30 CFR 707.5 and the Federal regulations at 30 CFR 874.17. Therefore, at present, the government-financed construction exemption is not available to West Virginia projects with less than 50 percent government financing.

3. CSR 38-2-3.32 Findings—Permit Issuance

Subsection 3.32.d.12 is amended by replacing the reference to former subsection 14.16 with a reference to new section 24, where the performance standards applicable only to re-mining operations have been relocated. We find this change to be a non-substantive organizational revision that does not render the State program less stringent than SMCRA or less effective than the Federal regulations.

In addition, West Virginia is replacing the phrase "and prior to August 3, 1977" with "would be eligible for expenditures under Section 4, Article 2 of Chapter 22." We find that this revision is approvable because it is consistent with the Federal definition of "lands eligible for re-mining" at 30 CFR 701.5, a term that appears in 30 CFR 773.15(c)(13), the Federal counterpart to the West Virginia provision.

West Virginia also proposes to add subsection 3.32.g to read as follows: "The prohibition of subsection c. shall not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface mine eligible for re-mining held by the applicant." The Federal counterpart to this new provision is 30 CFR 773.15(b)(4). However, the State rule lacks a counterpart to the restrictions that 30 CFR 773.15(b)(4) places on the exception. Therefore, the proposed amendment is less effective than 30 CFR 773.15(b)(4) and it cannot be approved. In addition, the State provision is less effective than its Federal counterpart because it does not

define the meaning and limits of the term “unanticipated event or condition” as does 30 CFR 773.15(b)(4)(ii).

4. CSR 38-2-14.14.a.1. Disposal of Excess Spoil

This subdivision is amended by adding language to allow excess spoil to be deposited on abandoned mine lands and/or bond forfeiture sites under a reclamation contract pursuant to Section 28 of WVSCMRA. The new language requires that the permittee obtain right of entry and any necessary approvals from the appropriate environmental agencies or other agencies. The WVDEP stated that these changes will allow the director to issue no-cost reclamation contracts to a permittee to reclaim abandoned and forfeited sites.

We recently approved an amendment to the Pennsylvania program that authorizes the placement of excess spoil on AML reclamation project sites (64 FR 14610, March 26, 1999). The Pennsylvania amendment authorizes the use of excess spoil from a valid, permitted coal mining operation for the reclamation of an abandoned, unreclaimed area outside the permit area. As a prerequisite for approval, we informed Pennsylvania that the Commonwealth must either handle these projects as traditional Federally funded AML reclamation projects or identify the administrative, financial, contractual and environmental safeguards that will be applied to these “no-cost” government-financed construction contracts. In addition, Pennsylvania also needed to show how the safeguards would ensure the same level of environmental protection as that provided by traditional Federally funded AML reclamation projects.

The same standard applies to West Virginia. That is, West Virginia must either limit excess spoil disposal to traditional Federally funded AML reclamation projects or identify alternative procedures that will afford the same level of protection.

The proposed amendment at CSR 38-2-14.14.a.1. provides that the disposal of excess spoil on abandoned mine lands must be conducted under a reclamation contract pursuant to section 22-3-28 of WVSCMRA and “this rule.” The meaning of the phrase “this rule” is unclear. While it could mean all of subsection 14.14, this is unlikely, because 14.14.c. limits placement of excess spoil to permitted areas and approved AML reclamation projects. If these restrictions are meant to apply to projects authorized under 14.14.a.1., then the new provision is superfluous, since it would not expand the universe

of sites eligible for excess spoil disposal. In particular, the authorization to place excess spoil on bond forfeiture sites would be meaningless, since it would be limited to bond forfeiture sites that are also eligible for and approved for AML reclamation funding—and such sites are already candidates for excess spoil placement pursuant to subsection 14.14.c. Therefore, we believe the phrase “this rule” means subsection 14.14.a. Consequently, our analysis must focus on the issue of whether section 22-3-28 of WVSCMRA and subsection 14.14.a. of the regulations provide safeguards that will ensure the same level of environmental protection as that provided by Federally funded AML reclamation projects.

In authorizing the issuance of “no cost” contracts for reclamation projects, section 22-3-28(e) of WVSCMRA provides no specific safeguards for the disposal of excess spoil on abandoned mine lands. CSR 38-2-14.14.a. contains some safeguards, such as the requirement that acid and toxic-forming materials be covered with nonacid, nontoxic and noncombustible materials (14.14.a.5.) and the requirements for slope protection (14.14.a.6.) and postmining land use suitability (14.14.a.7.). However, there is no meaningful performance incentive, such as the requirement to file a bond, to ensure completion of reclamation in accordance with the contract. And neither the statute nor the regulations provide an alternate guarantee that the necessary reclamation will be completed, such as commitment of AML moneys or other sources of funding. Because section 22-3-28 of WVSCMRA and CSR 38-2-14.14.a. do not contain safeguards that will ensure the same level of environmental protection as that provided by a permit and bond or by Federally funded AML reclamation projects, we are not approving CSR 38-2-14.14.a.1. at this time.

We recommend that the WVDEP identify the specific provisions of section 22-3-28 of the WVSCMRA and CSR 38-2-14.14 that apply to the placement of excess spoil on abandoned mine lands. The WVDEP should also clarify that spoil may only be placed on sites eligible for reclamation under the abandoned mine land reclamation program and listed on the abandoned mine land inventory. The program also must require that excess spoil placed on bond forfeiture sites be placed in accordance with the reclamation plan of the forfeited permit.

In short, the WVDEP must provide safeguards that will ensure the same level of environmental protection as that provided by a permit and bond issued

under the State’s approved regulatory program, or as provided by a Federally funded AML reclamation project. When these safeguards are developed, we encourage the WVDEP to resubmit its amendment concerning the disposal of excess spoil on abandoned mine lands and bond forfeiture sites for our review. At that time, we will also reconsider the proposed amendments to sections 22-3-3(u)(2)(3) and 22-3-28(e) of WVSCMRA to the extent that they authorize reclamation of abandoned mine lands and bond forfeiture sites under no-cost reclamation contracts.

5. Redesignation of CSR 38-2-14.16 Through 38-2-14.19

As discussed in Finding 9, West Virginia is incorporating CSR 38-2-14.16 into new section CSR 38-2-24. As a consequence of this action, CSR 38-2-14.17 is redesignated as CSR 38-2-14.16; CSR 38-2-14.18 is redesignated as CSR 38-2-14.17; and CSR 38-2-14.19 is redesignated as CSR 38-2-14.18. These are non-substantive organizational changes that do not render the West Virginia program less effective than the Federal regulations.

6. CSR 38-2-14.18 Disposal of Noncoal Mine Wastes

West Virginia is deleting subsection 14.18.d. (formerly codified as subsection 14.19.d.) because it conflicts with CSR 38-2-8.2.e., which was added during the last legislative session. In our approval of CSR 38-2-8.2.e., we noted that 30 CFR 948.16(ttt) continued to require that the State regulations at CSR 38-2-14.19.d. (now 14.18.d.) concerning the windrowing of timber be amended. We also noted that West Virginia indicated that 38-2-14.19.d. (now 14.18.d.) would be deleted in a future rulemaking session, which would satisfy this requirement. See 64 FR 6201, 6209 (February 9, 1999).

For this reason, we find that the State’s deletion of CSR 38-2-14.18.d. does not render the West Virginia program less effective than the Federal regulations. In addition, we are removing 30 CFR 948.16(ttt) for the same reason.

7. CSR 38-2-22.5.1 Removal of Abandoned Coal Refuse Piles

Subsection 22.5.1 applies to the removal or reprocessing of abandoned coal refuse piles under CSR 38-2-3.14 and subsection 22-3-28(d) of WVSCMRA. West Virginia is revising this subsection by deleting the term “special permit” and replacing it with “reclamation contract” to more accurately reflect actual practice. Therefore, we find that this change is

non-substantive. However, as discussed in Finding 2, we are not approving CSR 38-2-3.14 to the extent that it applies to the on-site reprocessing of any abandoned coal mine waste piles or to the complete or partial removal of abandoned refuse piles that meet the definition of coal in 30 CFR 700.5.

8. CSR 38-2-23 Special Authorization for Coal Extraction as an Incidental Part of Development of Land for Commercial, Residential, or Civic Use

This new section would allow special authorization for coal extraction as an incidental part of development of land for commercial, residential, industrial, or civic use. The section contains provisions for applicant information, site development and sampling information; provisions for approval of a notice of intent for coal extraction as an incidental part of development of land for commercial, residential, or civic use; performance standards; expiration of a notice of intent coal extraction as an incidental part of development; escrow release; notice on site; and public records. The WVDEP explained that the new language is intended to implement new statutory provisions. The new provisions (subsections 22-3-28 (a) through (c) of WVSCMRA) allow the director to apply lesser standards to coal extraction conducted as an incidental part of development of land for commercial, residential, industrial, or civic use.

On February 9, 1999 (64 FR 6204, Finding 12), we found subsections 22-3-28 (a) through (c) of WVSCMRA to be less stringent than sections 528 and 701(28) of SMCRA and therefore unapprovable. As noted in that finding, the Interior Board of Surface Mining Appeals (IBSMA), which was subsequently incorporated into the Interior Board of Land Appeals (IBLA), twice ruled that "the extraction of coal as an incidental part of privately financed construction is not an activity excluded as such from the coverage of the * * * regulatory program." See *James Moore*, 1 IBSMA 216 (1979) and *Gobel Bartley*, 4 IBSMA 219 (1992). In addition, we have previously determined that subsections 22-3-28 (a) through (c) of WVSCMRA are inconsistent with SMCRA. See Finding 14.4 at 46 FR 5915, 5924 (January 21, 1981). Therefore, we are not approving CSR 38-2-23. Furthermore, we are requiring that West Virginia revise its regulations to remove CSR 38-2-23.

9. CSR 38-2-24 Performance Standards Applicable Only to Remining Operations

This section is largely new. However, subsections 24.1.a. through 24.1.l. were formerly codified as subsections 14.16.a. through 14.16.l, subsection 24.2.a. was previously codified as subsection 14.16.m, and subsection 24.3 was previously codified as subsection 14.16.n. Because the redesignated subsections are otherwise unchanged, we find that the redesignation does not render the State program less effective than SMCRA and the Federal regulations.

We also note that redesignated subsection 24.3 concerns only the standards for issuance of National Pollutant Discharge Elimination System (NPDES) permits for remining operations. We have no jurisdiction over the NPDES program. Therefore, subsection 24.3 is not subject to review and approval under SMCRA and we do not consider it to be part of the State's approved SMCRA regulatory program.

New subsection 24.2.b. provides that the revegetation responsibility period for remining operations must be not less than two growing seasons after the last year of augmented seeding, fertilizing, irrigation or other work. The counterpart Federal regulations at 30 CFR 816.116(c)(2)(ii) provide that the period of responsibility must be two full years for lands eligible for remining. Since the State's rules at CSR 38-2-2.57 define growing season to mean one year, the proposed responsibility period of two growing seasons is equivalent to, and therefore no less effective than, the Federal regulations at 30 CFR 816.116(c)(2)(ii).

New subsection CSR 38-2-24.4 provides that bond release for remining operations must comply with CSR 38-2-12.2, with the exception of subdivision 12.2.e. for Phase I, II, or III release. If all other requirements of subsection 12.2 are satisfied, then the Director may approve a request for Phase I, II, or III release if the quality of untreated water discharging from the site is equal to or better than the pre-remining water quality discharged from the site. In its submittal of this amendment, the WVDEP stated that this change will allow for the release of the land reclamation bond if the post-remining water quality discharging from the site is equal to or better than pre-remining water quality.

Under section 301(p) of the Clean Water Act, the State may issue an NPDES permit which modifies the pH, iron, and manganese standards for pre-existing discharges from the remined

area or affected by a qualifying remining operation. However, the permit may not allow the pH, iron, or manganese levels of any discharge to exceed the levels being discharged from the remined area before the advent of the coal remining operation.

But section 301(p) does not apply to all remining operations. Instead, it defines "coal remining operation" to mean a coal mining operation which begins after February 4, 1987 (the date of enactment of section 301(p)), at a site on which coal mining was conducted before August 3, 1977 (the effective date of SMCRA). The U.S. Environmental Protection Agency (EPA) declined to concur with the approval of subsection CSR 38-2-24.4 because that subsection would allow use of the section 301(p) standards for remining operations that began prior to February 4, 1987, and for sites on which coal mining was originally conducted on or after August 3, 1977.

The Federal regulations at 30 CFR 816/817.42 provide that discharges of water from areas disturbed by surface mining activities must be made in compliance with all applicable State and Federal water quality laws and regulations. Because CSR 38-2-24.4 does not comply with this requirement, it is less effective than the Federal rules. Accordingly, we are not approving this provision. We also are requiring that West Virginia further amend its regulations to remove CSR 38-2-24.4.

IV. Summary and Disposition of Comments

Federal Agency Comments

On June 12, 1998, we asked for comments from various Federal agencies who may have an interest in the West Virginia amendment (Administrative Record Number WV-1088). We solicited comments in accordance with section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations. The Department of the Army, U.S. Army Corps of Engineers responded and stated that the changes are satisfactory to the Corps.

The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) provided the following comments. MSHA expressed concern with section 38-2-24.1.g. which allows coal processing and underground development waste embankments in mined-out areas to have a long-term slope stability safety factor of 1.3. MSHA stated that a safety factor of 1.5 is required by 30 CFR 77.215(h).

The Federal regulations at 30 CFR 77.215(h), to which MSHA referred in its comment, requires a static safety

factor of 1.5 for refuse piles. Refuse piles are structures that are built above the ground level where no material previously existed, or are built upon previously existing built-up structures. The Federal regulations for impoundments (30 CFR 816.49), excess spoil disposal (30 CFR 816.71), durable rock fills (30 CFR 816.73), and coal mine waste disposal areas (30 CFR 816.81) all provide for static safety factor of 1.5. These are all structures that are constructed above the ground level, where no material previously existed. However, the stability of materials that will be returned to or be used to backfill the mined out area as provided by 30 CFR 816.102 can achieve a lesser static safety factor of 1.3. 30 CFR 816.102(e) provides that the disposal of coal processing waste and underground development waste in the mined-out area shall be in accordance with sections 816.81 and 816.83, except that a long-term static safety factor of 1.3 shall be achieved. The higher 1.5 static safety factor standard is only required where refuse or waste will be piled into above-ground structures. The lesser 1.3 static safety factor standard is required where refuse or waste will be used to backfill mined out areas, or to bring the land back to its approximate original contour. The West Virginia standard at section 38-2-24.1.g. applies only to the disposal of waste in previously mined out areas. Therefore, the static safety standard of 1.3 is appropriate, and no less effective than the Federal regulations at 30 CFR 816.102(e) which provide the same standard for waste disposal in a mined-out area.

The National Park Service requested that we review the proposed changes carefully to examine the full implication of the revisions on the overall effectiveness of the West Virginia program. The National Park Service also stated that, while the proposed revisions do not alter provisions pertinent to section 522(e)(3) of SMCRA, they nonetheless may affect the level of protection afforded various areas under this section of SMCRA. Section 522(e)(3) provides that, subject to valid existing rights, no surface coal mining operations except those which exist on August 3, 1977, may be permitted if the operations would adversely affect any publicly owned park or place included in the National Register of Historic Places, unless the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or the historic site jointly approve these operations. In response to the Park Service's concerns, we note that the amendment does not in any way

compromise the protections afforded under section 522(e)(3) of SMCRA.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(i) and (ii), OSM is required to solicit comments and 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.*). By letter dated June 12, 1998, we requested comments and concurrence from EPA on the State's proposed amendment of May 14, 1998 (Administrative Record Number WV-1089).

By letter dated November 29, 1999 (Administrative Record Number WV-1141), the EPA provided comments on the proposed amendment. In addition, the EPA stated that it could not concur with the approval of CSR 38-2-24.4 because that subsection appears to allow bond release for sites on which re-mining began before February 4, 1987, and/or for sites mined after August 3, 1977, even if the discharges from those sites do not meet applicable effluent limitations and water quality standards. The EPA noted that such a provision would not comply with section 301(p) of the Clean Water Act, 33 U.S.C. 1311(p).

As discussed in Finding 9, we are not approving CSR 38-2-24.4 because it would allow issuance of modified NPDES permits for operations that do not meet the criteria established in section 301(p). To be eligible under section 301(p), a re-mining operation must be a site on which coal mining was conducted before the effective date of SMCRA (August 3, 1977), and the re-mining operation must begin after the date of the enactment of section 301(p) of the Clean Water Act (February 4, 1987). Therefore, as submitted, CSR 38-2-24.4 is less effective than 30 CFR 816/817.42 and we are not approving it.

The EPA supported CSR 38-2-3.14, which concerns no-cost contracts for the removal of abandoned coal refuse piles. However, the EPA noted that CSR 38-2-3.14.b.4.E., which requires that all necessary permits be obtained from environmental agencies, must be interpreted as including NPDES permits for stormwater discharges from the refuse removal operation sites, where applicable.

As discussed in Finding 2, we are not approving subsection 3.14 to the extent that it would apply to the removal of abandoned coal mine refuse piles where, on average, the material to be removed meets the definition of coal in

30 CFR 700.5. In addition, we are not approving subsection 3.14 to the extent that it could be interpreted as applying to the on-site reprocessing of abandoned coal refuse piles.

We determined that subsection 3.14 is less stringent than SMCRA and less effective than the Federal regulations because it would allow the issuance of a reclamation contract for the removal of coal refuse piles that meet the definition of coal rather than requiring that such operations obtain a standard regulatory program permit for surface coal mining operations as do the Federal regulations. We also determined that subsection 3.14.c. is less stringent than SMCRA and less effective than the Federal regulations to the extent that it may be interpreted as authorizing the State to issue a reclamation contract rather than a surface coal mining operations permit for on-site reprocessing operations. Under the Federal definition of surface coal mining operations in 30 CFR 700.5, all on-site reprocessing operations that separate coal from other materials in the pile must be regulated as surface coal mining operations.

We took no position on the other revisions that West Virginia has made to subsection 3.14. As we stated in 1990, "the removal, transport and use (without onsite reprocessing) of coal mine refuse which does not meet the definition of 'coal' set forth in 30 CFR 700.5; i.e., ASTM Standard D 388-77, is not subject to regulation [under SMCRA]." 55 FR 21314, May 23, 1990.

The EPA also stated that CSR 38-2-24.3 correctly provides that re-mining operations that begin after February 4, 1987, on a site that was mined prior to August 3, 1977, may qualify for less stringent effluent limits under section 301(p) of the Clean Water Act. The EPA explained that, subject to certain conditions, section 301(p) allows replacement of most effluent limits in 40 CFR 434 with less stringent, best professional judgement (BPJ) effluent limits if the applicant can demonstrate that the post-re-mining discharge quality will be better than, or at least equal to, the pre-re-mining discharge quality. As noted in Finding 9, subsection 24.3 concerns only the issuance of NPDES permits. Therefore, it is not subject to review and approval under SMCRA and we do not consider it to be part of the State's approved SMCRA regulatory program.

Public Comments

We received no comments from the public.

V. Director's Decision

Based on the findings in Part III of this preamble, we are approving the proposed amendments to the West Virginia program, except as noted below.

We are not approving CSR 38-2-3.14 to the extent that it would apply to the removal of abandoned coal mine refuse piles where, on average, the material to be removed meets the definition of coal in 30 CFR 700.5. In addition, we are not approving this subsection to the extent that it could be interpreted as applying to the on-site reprocessing of abandoned coal refuse piles. We take no position on subsection 3.14 to the extent that it may concern the removal, transport and use (without onsite reprocessing) of coal mine refuse which does not meet the definition of "coal" in 30 CFR 700.5; such activities are not subject to regulation under SMCRA.

In addition, we are requiring that West Virginia amend its program to either: (1) delete subsection 3.14; or (2) revise subsection 3.14 to clearly specify that its provisions apply only to activities that do not qualify as surface coal mining operations as that term is defined in 30 CFR 700.5; i.e., that subsection 3.14 does not apply to either the removal of abandoned coal mine waste piles that, on average, meet the definition of coal or to the on-site reprocessing of coal mine waste piles. If the State chooses the second option, it should also submit the sampling protocol that will be used to determine whether the refuse piles meet the definition of coal. The sampling protocol must be designed to ensure that no activities meeting the definition of surface coal mining operations escape regulation under the State's SMCRA regulatory program.

We are not approving CSR 38-2-3.32.g., 38-2-14.14.a.1., 38-2-23, and 38-2-24.4. In addition, we are requiring that West Virginia remove CSR 38-2-23 and 38-2-24.4.

We are removing 30 CFR 948.16(ttt).

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.

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 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 23, 2000.

Michael K. Robinson,

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. Section 948.12 is amended by revising the section heading and adding a new paragraph (a) to read as follows:

§ 948.12 State statutory, regulatory, and proposed program amendment provisions not approved.

(a) We are not approving the following provisions of the proposed program amendment that West Virginia submitted on May 11, 1998:

(1) CSR 38-2-3.14, to the extent that it could be interpreted as applying to the on-site reprocessing of abandoned coal mine waste piles or to the extent that it would apply to the removal of abandoned coal refuse piles where, on average, the material to be removed meets the definition of coal in 30 CFR 700.5.

(2) CSR 38-2-3.32.g., which concerns unanticipated events or conditions.

(3) CSR 38-2-14.14.a.1., which concerns placement of excess spoil outside the permit area.

(4) CSR 38-2-23, which concerns coal extraction as part of land development activities.

(5) CSR 38-2-24.4, which concerns water quality standards for bond release.

* * * * *

3. Section 948.15 is amended by revising the introductory text, the table headings, and by adding a new entry to the table in chronological order by date

of final rule publication to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

The following table lists the dates that West Virginia submitted proposed amendments to OSM, the dates when

OSM published final rules approving all or portions of those amendments in the **Federal Register**, and the State statutory or regulatory citations for those amendments (or a brief description of the amendment). The amendments appear in order of the date of

publication of the final rules announcing OSM's decisions on the amendments. The preambles to those final rules identify and discuss any assumptions underlying approval, any conditions placed on the approval, and any exceptions to the approval.

Original amendment submission date	Date of publication of final rule	Citation/description of approved provisions
May 11, 1998	May 5, 2000	West Virginia regulations at CSR 38-2-2.25; 2.102; 3.32.d.12; 14.16 through 14.19; 22.5.1; 24 (except 24.4).

4. Section 948.16 is amended by removing and reserving paragraph (ttt) and by adding paragraphs (nnnn), (oooo), and (pppp) to read as follows:

§ 948.16 Required regulatory program amendments.

* * * * *

(nnnn) By July 5, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to either delete CSR 38-2-3.14 or revise CSR 38-2-3.14 to clearly specify that its provisions apply only to activities that do not qualify as surface coal mining operations as that term is defined in 30 CFR 700.5; i.e., that subsection 3.14 does not apply to either the removal of abandoned coal mine waste piles that, on average, meet the definition of coal or to the on-site reprocessing of coal mine waste piles. If the State chooses the second option, it should also submit the sampling protocol that will be used to determine whether the refuse piles meet the definition of coal. The sampling protocol must be designed to ensure that no activities meeting the definition of surface coal mining operations escape regulation under the State's SMCRA regulatory program.

(oooo) By July 5, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove CSR 38-2-23.

(pppp) By July 5, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove CSR 38-2-24.4.

[FR Doc. 00-10972 Filed 5-4-00; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF EDUCATION

34 CFR Part 674

Federal Perkins Loan Program; Correction of Effective Date

AGENCY: Department of Education.

ACTION: Final regulations; correction of effective date.

SUMMARY: On April 6, 2000 technical amendments to regulations governing the Federal Perkins Loan Program were published in the **Federal Register** (65 FR 18001). This document corrects the effective date of May 8, 2000 announced. The correct effective date for the technical amendments is July 1, 2000. These technical amendments are to take effect immediately following the incorporation of previous amendments to 34 CFR part 674 published on October 28, 1999 (64 FR 58298-58315) with an effective date of July 1, 2000.

DATES: The regulations amending 34 CFR part 674 published on April 6, 2000 (65 FR 18001-18003) are effective July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Vanessa Freeman, Program Specialist, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building 3, Washington, DC 20202-5449. Telephone: (202) 708-8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

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(Catalog of Federal Domestic Assistance Number: 84.037 Federal Perkins Loan Program)

List of Subjects in 34 CFR Part 674

Loan programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: May 1, 2000.

Maureen McLaughlin,

Acting Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00-11230 Filed 5-4-00; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

36 CFR Part 327

RIN 0710-AA45

Public Use of Water Resources Development Projects Administered by the Chief of Engineers

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations (RIN #0710-AA45), which were published in