discharge traditional State governmental functions.

F. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), a Federal Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. This rule is deregulatory and so would not impose any additional information collection requirements.

G. National Environmental Policy Act

FHWA has analyzed this rule pursuant to the National Environmental Policy Act (NEPA) and has determined that it is categorically excluded under 23 CFR 771.117(c)(2), which applies to the promulgation of rules, regulations, and directives. Categorically excluded actions meet the criteria for categorical exclusions under 23 CFR 771.117(a) and normally do not require any further NEPA approvals by FHWA. This rule rescinds an outdated regulation and does not require any new Federal actions or procedures. FHWA does not anticipate any adverse environmental impacts from this rule, and no unusual circumstances are present under 23 CFR 771.117(b).

H. Executive Order 13175 (Tribal Consultation)

E.O. 13175 requires Federal Agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. FHWA has assessed the impact of this rule on Indian Tribes and determined that this rule would not have Tribal implications that require consultation under E.O. 13175.

I. Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the spring and fall of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

J. Rulemaking Summary, 5 U.S.C. 553(b)(4)

As required by 5 U.S.C. 553(b)(4), a summary of this rule can be found at *www.regulations.gov,* under the docket number.

List of Subjects in 23 CFR Part 633

Appalachia contracts bidding and implementation, Construction labor and materials, Maintenance, Project agreements, Project funding allocation and obligation.

Issued in Washington, DC, under authority delegated in 49 CFR 1.85.

Sean McMaster,

Administrator, Federal Highway Administration.

For the reasons stated in the preamble, under the authority of 23 U.S.C. 315, 49 CFR 1.81, and 1.85, FHWA amends 23 CFR part 633 as set forth below:

PART 633—REQUIRED CONTRACT PROVISIONS

■ 1. Add an authority citation for part 633 to read as follows:

Authority: 23 U.S.C. 114 and 315; 49 CFR 1.48.

Subpart B—[Removed and Reserved]

■ 2. Remove and reserve subpart B, consisting of §§ 633.201 through 633.211 and appendices A through D.

[FR Doc. 2025–21780 Filed 12–2–25; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[SATS No. WV–124–FOR; Docket No. OSM–2016–0012; S1D1S SS08011000 SX064A000 232S180110; S2D2S SS08011000 SX064A000 23XS501520]

West Virginia Regulatory Program

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

ACTION: Final rule; partial approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), approve in part an amendment to the West Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). This amendment makes changes to the West Virginia Code of State Rules (CSR), authorized under the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA), relating to bonding requirements for operations seeking permit renewals, topsoil, inactive status, and contemporaneous reclamation.

DATES: Effective January 2, 2026.

FOR FURTHER INFORMATION CONTACT: Mr. Justin Adams, Field Office Director, Charleston Field Office, Telephone: (304) 347–7158. Email: *osm-chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Submission of the Amendment
III. OSMRE's Findings
IV. Summary and Disposition of Comments
V. OSMRE's Decision
VI. Statutory and Executive Order Reviews

I. Background on the West Virginia Program

Subject to OSMRE's oversight, section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. 30 U.S.C. 1253(a)(1) and (7). Based on these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find additional background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

By letter dated June 14, 2016, and received by OSMRE on June 21, 2016 (Administrative Record No. WV–1606), the West Virginia Department of Environmental Protection (WVDEP) submitted to us an amendment regarding its approved regulatory program under West Virginia's Surface Mining Reclamation Regulations at CSR title 38, series 2. This amendment includes regulatory revisions to CSR title 38, series 2 with the passage of Committee Substitute for House Bill 117 (H.B. 117) of 2016 (Administrative Record No. WV–1606). *See* 2016 W. Va. Acts ch. 5 (1st Extraordinary Session). The bill includes revisions related to contemporaneous reclamation, inactive

status, topsoil, bonding requirements for permit renewals, and incremental bonding for permit renewals.

We announced receipt of the proposed amendment in the April 3, 2019, **Federal Register** (84 FR 12984). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because none was requested. The public comment period ended on May 3, 2019.

III. OSMRE's Findings

We are partially approving the revisions proposed as described below. We made the following findings concerning West Virginia's amendment under SMCRA and the Federal regulations at 30 CFR 730.5, 732.15 and 732.17. Any revisions that we do not specifically discuss below concerning non-substantive wording or editorial changes can be found in the full text of the program amendment available at *Regulations.gov*.

The following describes the substantive regulatory revisions that West Virginia submitted to OSMRE for approval on June 14, 2016 (Administrative Record No. WV–1606) (WV–124).

West Virginia seeks to amend several administrative regulations at CSR 38–2–3.27 (Permit Renewals), CSR 38–2–7.6 (Forest land), CSR 38–2–7.7 (Wildlife), CSR 38–2–11.4.a.2 (Incremental Bonding), CSR 38–2–14.3 (Topsoil), CSR 38–2–14.11 (Inactive Status), CSR 38–2–14.15 (Contemporaneous Reclamation, Backfilling and Grading, Excess Spoil Disposal, Variance), and CSR 38–2–22.3(t)(4) (Coal Refuse—Abandonment Plan).

1. CSR 38–2–3.27 (Permit Renewals) and CSR 38–2–11.4.a.2 (Incremental Bonding)

West Virginia has proposed to add language to these provisions to exempt operations that have received a waiver of the permit renewal requirement under CSR 38–2–3.27 from the restriction at CSR 38–2–11.4.a.2, which prohibits operators from changing between full permit bonding and incremental bonding after their initial choice to proceed under either system. The proposed addition also provides a process for changing the bonding system by allowing the operation to submit a bonding revision to the Secretary for approval.

OSMRE Finding: Subsequent to West Virginia's submission of this amendment, West Virginia submitted an amendment that included West Virginia Senate Bill 163 of 2018 (S.B. 163), 2018 W. Va. Acts ch. 141, by letter dated May 2, 2018 (Administrative Record No. WV–1613–A), which we docketed as WV–126–FOR. S.B. 163 contained various revisions to the West Virginia CSR, including significant revisions to section CSR 38–2–11.4 (Incremental Bonding). Among those revisions, West Virginia deleted the restriction at CSR 38–2–11.4.a.2, which stated ''[o]nce the operator has chosen to proceed with bonding either the entire permit area or with incremental bonding, he shall continue bonding in that manner for the term of the permit.'' We approved those revisions because they made the regulation substantively identical to the Federal counterpart provision at 30 CFR 800.11. *See* 89 FR 19266 (Mar. 18, 2024). West Virginia's revision to CSR 38–2–11.4.a.2 under S.B. 163 of 2018, and our subsequent approval in WV–126–FOR on March 18, 2024 (89 FR 19262), supersedes the revision addressed in this amendment and renders it moot because it was meant to exempt certain surface mining operations from a restriction that no longer exists.

Regarding the proposed language at CSR 38–2–3.27, neither S.B. 163 nor any subsequent amendment by West Virginia has altered this proposed language, but it now provides an exemption to a restriction in CSR 38–2–11.4.a.2 that no longer exists there. However, the restriction at CSR 38–2–11.4.a.2 comes almost verbatim from section 11 of WVSCMRA, W. Va. Code 22–3–11(a), which has not been amended and still exists. When we approved that statutory provision, we noted that Federal law does not specifically require that the operator's initial choice to bond the entire permit area or increments thereof be continued for the entire term of the permit, but also that West Virginia's proposal would not conflict with any Federal requirement. *See* 60 FR 51900, 51905–06 (Oct. 4, 1995). Therefore, an exemption from this restriction would also not conflict with Federal law.

While this vestigial reference to CSR 38–2–11.4.a.2 would not make the West Virginia program less stringent than SMCRA or less effective than the Federal regulations, we are not making a determination on the revision to CSR 38–2–3.27 at this time because it is unclear whether West Virginia intends the exemption to apply to W. Va. Code 22–3–11(a) or intends to remove it in concert with its revision to CSR 38–2–11.4.a.2. If West Virginia wants us to approve this amendment in the future, it should correct the reference and submit new language for our review.

2. CSR 38–2–14.3 (Topsoil), CSR 38–2–7.6.c. (Forest Land), and CSR 38–2–7.7.c. (Wildlife)

West Virginia seeks to revise its requirements for the postmining land uses of forest land and wildlife, the use of topsoil relating to soil placement, and the use of soil substitute material in sections CSR 38–2–7.6 (Forest Land), CSR 38–2–7.7 (Wildlife), and CSR 38–2–14.3 (Topsoil).

West Virginia has proposed to amend CSR 38–2–7.6.c. 7.6.d.1, 7.7.c, 7.7.d.1, 14.3.a, and 14.3.c to address conflicting uses of the terms ''topsoil,'' ''topsoil substitute,'' ''soil,'' and ''soil substitute'' that West Virginia has asserted were apparent in their review of a Petition made to OSMRE dated June 24, 2013 pursuant to 30 CFR part 733.

Among other issues, the Petitioner alleged that WVDEP failed to enforce the SMCRA requirement at 30 U.S.C. 1265(b)(6) that operators ''[r]estore the topsoil or best available subsoil which is best able to support vegetation . . . .''; however, they made no allegations of specific on-the-ground violations. To adequately evaluate the Petition, OSMRE requested information from WVDEP. In its response to OSMRE, WVDEP explained that the topsoil in portions of West Virginia is very thin and that WVDEP sometimes uses its discretion to allow the use of topsoil substitutes when an applicant has demonstrated the volume of topsoil on the permit is insufficient to meet the mandatory depth requirements for topsoil. *See, e.g.,* CSR 38–2–7.6.c.3. WVDEP also explained that a soil substitute must not only be capable of supporting tree growth but must also provide ground cover needed to control erosion and sedimentation leaving the site. Finally, WVDEP showed that its topsoil replacement regulations, regulations granting variances, and postmining land use regulations all complied with the requirements of the approved State program in its approval of soil media in reclamation. In our response, we found that Petitioner did not appear to present any allegations in this section and, thus, determined Petitioners' allegation would not be evaluated.

West Virginia has proposed three minor revisions to CSR 38–2–14.3, including the insertion of an explicit reference to the definition of ''topsoil'' at CSR 38–2–2.128 to CSR 38–2–14.3.a (which definition is already part of the approved State program), replacing ''Top Soil Substitutes'' with ''Substitute material'' in the title to CSR 38–2–14.3.c, and replacing ''resulting soil medium'' with ''resulting substitute

material'' in CSR 38–2–14.3.c.2. West Virginia has also proposed two more substantive changes. The existing first sentence of CSR 38–2–14.3.a requires that, before disturbance of an area, topsoil will be removed in a separate layer and either immediately redistributed or segregated and stockpiled in a separate stable location as specified in the preplan. West Virginia has proposed to insert, as the next sentence, ''[p]rovided, however, if topsoil is less than 6 inches thick, the permittee may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.'' West Virginia has also proposed to begin CSR 38–2–14.3.c with a similar, related provision: ''[w]here the topsoil is of insufficient quantity or poor quality for supporting and maintaining the approved postmining land use substitute material may be approved by the Secretary.''

West Virginia has also proposed to change CSR 38–2–7.6.c.2–3 and CSR 38–2–7.7.c.2–3 to replace instances of the word ''topsoil'' with ''soil'' and to provide for the use of soil substitutes. Even as amended, CSR 38–2–7.6.c.2 and CSR 38–2–7.7.c.2 explicitly cross-cite to the extensive requirements for soil substitutes at CSR 38–2–7.6.c.1 and CSR 38–2–14.3.c. West Virginia has also proposed to remove the word ''soil'' at various places at CSR 38–2–7.6.d.l and CSR 38–2–7.7.d.1, addressing liming and fertilizing when the soil pH is below 5.0. One instance of the word ''soil'' remains in each provision, and taken altogether, the regulation makes it clear that liming is required if the soil or substitute material pH is less than 5.0.

Even with these changes, the soil or soil substitute is required to be capable of supporting and maintaining the approved postmining land use, its capability for such must be based on the results of appropriate chemical and physical analysis of overburden and topsoil, and the nutrients and soil amendments must be applied to redistributed surface soil to support the approved postmining land use and meet revegetation requirements.

OSMRE Finding: Neither SMCRA nor the Federal implementing regulations define the term ''soil'' by itself. The Federal regulations instead define ''soil horizons'' as four contrasting layers of soil that are differentiated on the basis of field characteristics and laboratory data. 30 CFR 701.5. The four master soil horizons, in descending order of depth, are the A, E, B, and C horizons. Both the Federal regulations and West Virginia's CSR define ''Topsoil'' as the A and E soil horizon layers, while the Federal regulations add that the B horizon is ''often called the subsoil.'' 30 CFR 701.5; CSR 38–2–2.126. Because ''topsoil'' and ''subsoil'' are placed in specific soil horizons, any use of the word ''soil'', without other descriptors, could include any of the four soil horizons, singularly or in combination.

SMCRA and its implementing regulations permit the use of topsoil substitutes in certain circumstances. *See, e.g.,* 30 U.S.C. 1265(b)(6) (''or best available subsoil''); 30 CFR 816.22. The revisions that West Virginia proposes to add to its program bring CSR 38–2–14.3 closer in line with the Federal regulations at 30 CFR 816.22. Like West Virginia's proposed addition to CSR 38–2–14.3.a, 30 CFR 816.22(a)(2) provides ''[i]f topsoil is less than 6 inches thick, the operator may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.'' West Virginia's proposed addition to CSR 38–2–14.3.c. reflects 30 CFR 816.22(a)(ii) and (b), which together allow the regulatory authority to approve the use of select overburden materials as a substitute for, or supplement to, existing topsoil where the topsoil is of insufficient quantity or poor quality for sustaining vegetation. While West Virginia's proposed addition is written to ensure supporting and maintaining the approved postmining land use, 30 CFR 816.22 refers to sustaining vegetation. West Virginia's regulations include paragraphs CSR 38–2–14.3.c.1 and CSR 38–2–14.3.c.2, which require that the substitute material be equally suitable for sustaining vegetation as the existing topsoil and that the material is the best reasonably available in the permit area to support vegetation. 30 CFR 816.22(b); CSR 38–2–14.3.c.1–2. We concluded before that these provisions are ''substantively identical to the Federal requirements.'' S*ee* 55 FR 21304, 21326 (May 23, 1990). Nothing in West Virginia's proposed additions change that conclusion. Because they are in accordance with SMCRA and consistent with the Federal regulations, we approve these amendments.

3. CSR 38–2–14.11—Inactive Status

West Virginia seeks to amend CSR 38–2–14.11 (Procedures to Obtain Inactive Status) in several areas. CSR 38–2–14.11.a.1–9 provides a list of requirements that must be satisfied before the Secretary allows a permittee to cease mining and reclamation operations for a period of thirty days or more. West Virginia has proposed to change one of these requirements at CSR 38–2–14.11.a.6, which required the permittee to make a detailed showing ''that the cessation is necessary because of temporary market conditions which are likely to change in the period for which the temporarily inactive status is sought.'' West Virginia has proposed to amend this requirement to remove references to temporary or changing market conditions, and simply state that the permittee must show that ''cessation is necessary due to market conditions.''

West Virginia has proposed to delete CSR 38–2–14.11.c, which provided for a notice and public comment period for inactive status requests. West Virginia has also proposed to amend CSR 38–2–14.11.d to remove a reference to the deleted public review process, delete a provision limiting the total time granted for inactive status to three (3) years, and delete a provision requiring the applicant to demonstrate the need for extension due to of litigation, labor strike, or if equipment is kept on the permit during the inactive period. With West Virginia's revision, an extension could be granted if an applicant shows that the extensions are necessary and that all provisions of CSR 38–2–14.11.a are satisfied.

West Virginia also has proposed to amend CSR 38–2–14.11.e and CSR 38–2–14.11.f to change the period within which inactive preparation plants, load-out facilities, and underground mining operation must be capable of resuming operations from sixty days to 180 days. Furthermore, West Virginia has proposed to delete the provision at CSR 38–2–14.11.h (related to duration of inactive status for preparation plants, load-out facilities, underground mining operations, and coal refuse sites) that required a permittee to maintain full-cost bonding in effect for the life of the operation, allowing instead that such bonding will remain in effect until the permittee requests termination of inactive status and requests a recalculation of the bond in accordance with W. Va. Code 22–3–11, W. Va. Code 22–3–12, and CSR 38–2–11 (Insurance and Bonding).

OSMRE Finding: Regarding the proposed change to the market conditions showing, the Federal regulations at 30 CFR 816.131 and 817.131 require that a permittee who is seeking inactive status must submit to the regulatory authority a notice of its intention to cease or abandon mining and reclamation operations, include a statement of the exact number of acres that will have been affected in the permit area, the extent and kind of reclamation of those areas that will have been accomplished, and identify the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue

during the temporary cessation. The Federal regulations do not require any finding from the regulatory authority that the cessation is necessary due to market conditions, labor strike, litigation, or upon a showing that the permittee will keep operable equipment onsite.

Regarding the proposed removal of the public notice and comment period for inactive status applications and extension requests, while the Federal regulations do require public review for permit applications, significant revisions to a permit, or renewals of a permit, they do not require public review for permittee applications for temporary cessation of operations. 30 CFR 773.6, 816.131, and 817.131.

Regarding the proposed changes to procedures and time limits for obtaining inactive status, the Federal regulations addressing applications for temporary cessation of operations only require a permittee to submit to the regulatory authority a notice that includes a statement of the exact number of acres that will have been affected in the permit area before such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation. 30 CFR 816.131(b) and 817.131(b). West Virginia's regulations, even as amended, contain safeguard provisions before a permittee may obtain inactive status. These include that the site must remain in full compliance with all standards of the program and permit, including but not limited to contemporaneous reclamation; no outstanding violations or penalties are allowed to exist; significant coal reserves for the mine must remain; all disturbed acreage is bonded; and all required and necessary backfilling, regrading, revegetation, environmental monitoring, and water treatment activities will continue on the mine site. *See* CSR 38–2–14.11.a.1–9. The proposed amendments do not alter the force or effect of those West Virginia provisions that fulfill the minimum Federal requirements.

Accordingly, we approve of the proposed revisions because they are no less stringent than SMCRA and are as effective as Federal regulations at 30 CFR 816.131 and 817.131. We also note that, while no renumbering is apparent on the face of West Virginia's submission, subsequent corrective renumbering to these provisions may occur without our approval.

4. CSR 38–2–14.15—Contemporaneous Reclamation, Backfilling and Grading, Excess Spoil Disposal, Variance

i. Time and Distance Provisions

West Virginia has proposed to revise many provisions that placed time and distance limits on different types of mining operations. West Virginia proposed to amend CSR 38–2–14.15.b.1, which prohibits more than thirty-five acres of disturbed and unreclaimed acreage on an operation consisting only of a single seam contour mining operation, without augering, on steep or non-steep slopes. West Virginia has proposed to strike the thirty-five acre limit. Furthermore, CSR 38–2–14.15.b.1 continued to require that grading and backfilling shall follow the mineral removal by a period not to exceed sixty days or a distance of 1,500 linear feet. West Virginia has proposed to add, ''[p]roviding the provisions of 14.15.d are satisfied'', incorporating by reference the requirements for excess spoil disposal fills.

CSR 38–2–14.15.b.2 provides that for single seam contour mining and augering or highwall mechanical mining operations on steep or non-steep slopes, grading and backfilling must be completed within a certain time limit. West Virginia seeks to extend the time limit from thirty days to 180 days. West Virginia has also proposed to revise CSR 38–2–14.15.b.3, which formerly provided that, for augering or highwall mechanical mining operations only on steep or non-steep slopes, the grading and backfilling must follow the augering or highwall mechanical mining by a period not to exceed thirty days or a distance of not more than 1,000 linear feet. West Virginia has proposed to increase the time limit and highwall length to sixty days and 1,500 linear feet respectively.

West Virginia has proposed to revise CSR 38–2–14.15.b.4 to strike a provision that applied to all area mining operations, limiting the maximum open pit size to 3,000 linear feet and requiring that backfilling and grading occur within 180 days of mineral removal. West Virginia has proposed to replace these general provisions with new language specifying time and distance limits for single seam mining operation as opposed to multiple seam operations. In the proposed language, single seam area operations retain the former time and distance limits. The proposed language would add that multiple seam operations are limited to 3,000 feet for the initial pit with subsequent cuts of the next underlying seam occurring within 180 days, while backfilling and grading would be required within 180 days of mineral removal from the lowest seam to be mined. West Virginia has also proposed to implement these time and distance rules that distinguish between single seam and multiple seam operations at CSR 38–2–14.15.b.5, CSR 38–2–14.15.b.6.A, and CSR 38–2–14.15.b.6.B.2.

West Virginia has proposed to strike certain exceptions to time and distance requirements at CSR 38–2–14.15.b.6.B.1 relating to pre-stripping or benching on entire coal seam removal operations that use draglines with a bucket capacity of greater than forty-five cubic yards. CSR 38–2–14.15.b.6.B.1 prohibits pre-stripping or benching operations from exceeding 400 acres for any single permit, and that such cannot precede dragline operations more than twenty-four months unless otherwise approved by the Secretary, or as necessary to satisfy AOC+ requirements, specific postmining land use requirements, or special materials handling facilities requirements. The proposed changes would leave exceptions simply at the discretion of the Secretary, striking the list of additional exceptions beginning ''or as necessary to satisfy. . . .'' West Virginia has also proposed to strike the final sentence of CSR 38–2–14.15.b.6.B.1, which required that all fill construction must occur during the pre-stripping or benching phase of the operation and be conducted in accordance with CSR 38–2–14.15.d.

Similar to the proposed changes to CSR 38–2–14.15.b.6.B.1, West Virginia has proposed to strike the additional enumerated exceptions to the time requirement at CSR 38–2–14.15.d.1 for the construction of excess spoil disposal fills, which required that spoil fills cannot have a period of inactivity exceeding 180 days unless otherwise approved by the Secretary or certain other conditions exist. The proposed amendment would leave such exceptions to the discretion of the Secretary. West Virginia has also proposed to strike CSR 38–2–14.15.d.3 in its entirety. This provision required that operations that propose excess spoil disposal fills designed with erosion protection zones must bond the proposed fill areas based upon the maximum amount per acre specified in W. Va. Code 22–3–12(b)(1). This would allow the amount of bond required to be posted for such operations to be between $1,000 and $5,000 per acre, rather than requiring bond to be set at the maximum of $5,000 per acre.

OSMRE Finding: The Federal regulations formerly provided schedules for backfilling and grading time and distance requirements for several types of mining operations at 30 CFR 816.101,

but these have been suspended indefinitely. *See* 57 FR 33875 (July 31, 1992). The only remaining Federal guidance on timing is at 30 CFR 816.100 and 817.100, which state that contemporaneous reclamation efforts, including backfilling, grading, topsoil replacement, and revegetation must occur as contemporaneously as practicable. As a result, neither SMCRA nor the Federal regulations provide specific time and distance requirements for backfilling and grading, and there is no Federal counterpart to the time and distance limits which West Virginia has proposed to amend at CSR 38–2–14.15.b.1–4 and CSR 38–2–14.15.b.6.B.1. Furthermore, neither SMCRA nor the Federal regulations provide time requirements for the construction of excess spoil fills or an inactivity period that match those at CSR 38–2–14.15.d.1 which West Virginia has proposed to amend. As we noted in our prior approval of CSR 38–2–14.15.d.3, which required that operations that propose excess spoil disposal fills that are designed with erosion protection zones must bond the proposed fill areas at a set amount, no direct Federal counterpart of this provision exists. *See* 85 FR 27139 (May 7, 2020).

Because the proposed changes and deletions at CSR 38–2–14.15.b and CSR 38–2–14.15.d will not make these regulations less stringent than sections 515(b)(16) and (b)(22) of SMCRA (30 U.S.C. 1265(b)(16) and (b)(22)) or less effective than the Federal regulations at 30 CFR 816.71, 816.100, and 816.102, we approve these proposed amendments.

ii. Variance

West Virginia has proposed to amend CSR 38–2–14.15.g, which specifies that when the Secretary has approved a permit variance from one or more standards related to the contemporaneous reclamation, the amount of bond will be based on the maximum amount per acre specified in W. Va. Code 22–3–12(b)(1). West Virginia has added language that such bond shall remain in effect until the permittee requests termination of variance and requests a recalculation of the bond.

OSMRE Finding: West Virginia law sets the minimum bond for a permit at $10,000 and require the per acre bond to be set between $1,000 and $5,000 dollars per acre, vesting the Secretary with substantial discretion to choose the proper amount of bond required based on a large number of site and operation parameters. W.Va. Code 22–3–11; CSR 38–2–11.5. SMCRA and the Federal regulations also set the minimum bond amount for a permit at $10,000. 30 U.S.C. 1259(a); 30 CFR 800.14(b). Neither SMCRA nor the Federal regulations provide specific per-acre bonding fees, leaving such to the discretion of the regulatory authority based on the site conditions and the nature of the mining operation. 30 U.S.C. 1259(a); 30 CFR 800.14(a). SMCRA and the Federal regulations also allow the bond amount to be adjusted upward or downward by the regulatory authority, as affected land acreages are increased or decreased or where the cost of future reclamation changes. 30 U.S.C. 1259(e); 30 CFR 800.15. We find that the proposed revision, allowing recalculation of the bond at the termination of a variance, is no less effective than the Federal provisions at 30 CFR 800.11, and no less stringent than section 509 of SMCRA (30 U.S.C. 1259). Therefore, we approve this amendment.

5. CSR 38–2–22.3.t.4—Coal Refuse—Abandonment Plan

CSR 38–2–22.3.t.4 states ''[a]t abandonment, all fine refuse in the impoundment pool shall be covered with a minimum three foot layer of coarse refuse or other fill material prior to topsoiling unless otherwise approved by the Secretary.'' West Virginia has proposed to replace the phrase ''prior to topsoiling'' with the phrase ''prior to being covered with the non-toxic and non-combustible material.'' This material is described in further detail at CSR 38–2–22.3.t.5. This revision is related to the foregoing amendments addressing terminology differences between ''topsoil'', ''soil'', and ''soil substitutes''.

OSMRE Finding: Neither SMCRA nor the Federal regulations at 30 CFR 780.25(c)–(e), 784.16(c)–(e), 816/817.81, 816/817.83, and 816/817.84, which relate to coal processing waste banks, dams, embankments, and impoundments, specify any type of soil or material that should be used for the coarse refuse layer covering fine refuse in an impoundment pool. We approve of the proposed revision regarding coal refuse disposal abandonment plans because we find that it is no less stringent than sections 515(b)(5), (11), (13), and (f) of SMCRA (30 U.S.C. 1265(b)(5), (11), (13), and (f)) and no less effective than the Federal regulations at 30 CFR 780.25(c)–(e), 784.16(c)–(e), 816.81, 817.81, 816.83, 817.83, 816.84, and 817.84.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments (Administrative Record No. 1616) on the amendment (Document ID No. OSM–2016–0012). None were submitted.

Federal Agency Comments

On April 5, 2019 (Administrative Record No. 1616), under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the West Virginia program. We received comments from one agency.

By letter dated April 26, 2019 (Administrative Record No. 1625), the United States Forest Service (USFS) within the Department of Agriculture responded with a list of thirty-three (33) comments, which we have summarized, grouped, and addressed in the following 11 general comments.

Comment 1: USFS commented on CSR 38–2–7.6.c.2 as follows. The term 'topsoil' refers to a specific type of soil that has a nutrient status to support seedbed establishment. Topsoil specifically refers to soils that are higher in organic matter and often available nutrients as opposed to subsoil. Also, topsoil has a specific legal definition as defined by the USDA with regard to soil designated as Prime Farmland and other special designations such as hydric soils. It is highly recommended to not leave root balls in the soil or soil substitute. Once this organic material decomposes, it will leave a depression on the surface which on slopes could become instability concerns. It is recommended to only leave them on the soils. Leaving them on the soils will increase organic matter of the soil or soil substitute and also aid in sediment/erosion retention.

OSMRE Response: As explained in more detail in our finding in section III.2, neither SMCRA nor the Federal implementing regulations define the term ''soil'' by itself; instead, the Federal regulations instead define ''soil horizons'' as four contrasting layers of soil that are differentiated on the basis of field characteristics and laboratory data. 30 CFR 701.5.

West Virginia's proposed revisions bring CSR 38–2–14.3 closer in line with the Federal regulations at 30 CFR 816.22, which permit the use of topsoil substitutes. Like West Virginia's proposed addition to CSR 38–2–14.3.a, 30 CFR 816.22(a)(2) provides ''[i]f topsoil is less than 6 inches thick, the operator may remove the topsoil and the

unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.'' West Virginia's proposed addition to CSR 38–2–14.3.c. reflects 30 CFR 816.22(a)(ii) and (b), which together allow the regulatory authority to approve the use of select overburden materials as a substitute for, or supplement to, existing topsoil where the topsoil is of insufficient quantity or poor quality for sustaining vegetation. West Virginia's regulations include subsections CSR 38–2–14.3.c.1 and CSR 38–2–14.3.c.2, which require that the substitute material be equally suitable for sustaining vegetation as the existing topsoil, and that the material is the best reasonably available in the permit area to support vegetation. 30 CFR 816.22(b); CSR 38–2–14.3.c.1–2.

Substitute materials usually have adequate nutritional value but lack organic matter and a seed pool. The topsoil/soil substitute process under CSR 38–2–14.3.c requires comparing the chemical and physical analysis of proposed substitute materials to the existing soil. Substitutes are selected based on nutrient analyses and the ability to meet the proposed postmining land use. Also, by allowing the removal of subsoil with the topsoil under the proposed changes to CSR 38–2–14.3.a, most of the seed pool and organic matter will be captured and redistributed. Incorporating root balls in and on the surface adds organic matter, helps salvage the seed pool, and creates perches for birds to further distribute seeds.

Regarding USFS's comment that root balls left in the soil could decompose and cause instability issues on slopes, we have discovered that salvaging and redistributing the organic matter, including root balls, the topsoil, and the subsoil, all in one process is more efficient to the operator than salvaging and redistributing these materials in separate steps. It also helps minimize the compaction of the growth medium by reducing the number of times the operator must pass over the growth medium with heavy equipment to redistribute these materials. West Virginia has salvaged and redistributed organic matter, including root balls during the reclamation process for the last 15 years, and no stability issues have resulted from this practice. When the root balls buried in the growth medium decompose, it could also create an undulating feature to the surface, which would mimic a more natural condition.

While we appreciate the explanation and concerns raised by the USFS, as explained above, the amendment as proposed is in accordance with SMCRA and consistent with the Federal regulations. Thus, as explained above, we are approving the amendment.

Comment 2: USFS commented on CSR 38–2–7.6.d, stating that, if the desired postmining land use is tree establishment or grass/herbaceous cover, soil medium, whether that be native topsoil/subsoil or alternative soil-like material, ''soil'' instead of crushed rock will be necessary for the success of revegetation. It is suggested to leave the word ''soil'' or include ''soil or soil substitute pH.'' It is also recommended that soil tests be taken and sent to a lab for fertilizer/lime recommendations.

OSMRE Response: Topsoil substitutes have been used for decades in West Virginia for forestland, wildlife habitat, and other postmining land uses that require the establishment of trees with good results. The resulting growth medium is more than just crushed rock. Furthermore, the proposed changes to CSR 38–2–7.6.c.2 require that ''the use of soil substitutes may be approved by the Secretary providing the applicant demonstrates: the volume of soil on the permit area is insufficient to meet the depth requirements of 7.6.c.l, the substitute material consists of at least 75% sandstone, has a composite paste pH between 5.0 and 7.5, has a soluble salt level of less than 1.0 mmhos/cm, and is in accordance with 14.3.c.'' The requirements at CSR 38–2–14.3.c provide many requirements for the quality of substitute material, including that such must be capable of supporting and maintaining the approved postmining land use, that this determination be based on the results of appropriate chemical and physical analysis of overburden and topsoil, that such analyses include at a minimum depth, thickness, and areal extent of the substitute structure or soil horizon, pH, texture class, percent coarse fragments and nutrient content, and that there is a certification of this analysis made by a qualified laboratory.

The growth medium is described by the plan preparer, a registered professional forester for permits with a forestland postmining land use or a biologist employed by the West Virginia Division of Natural Resources for permits with a wildlife postmining land use. The resulting growth medium is usually a mixture of substitute material (crushed rock), pre-mining native soil (subsoil and as much topsoil as possible), and organic material. Standards for success under CSR 38–2–7.6.f for forestland, and CSR 38–2–7.7.f for wildlife, also mandate the number of live trees per acre and percent of ground cover for bond release.

With the requirements of the planting plan preparer under CSR 38–2–7.6.b.1.A and CSR 38–2–7.7.b.1.A, the soil substitutes requirements of CSR 38–2–7.6.c and CSR 38–2–7.7.c, the standards of success of CSR 38–2–7.6.f and CSR 38–2–7.7.f, and the certification process under CSR 38–2–14.3.c, the resulting growth medium should never be just crushed rock.

We can infer that the pH is referring to the soil or soil substitutes in CSR 38–2–7.6.d.l and in CSR 38–2–7.7.d.1 from context. The term soil appears to have been removed to clarify its application to substitutes in addition to topsoil or subsoil.

Soil testing for lime and fertilizer is required at CSR 38–2–14.3.d: ''[n]utrients and soil amendments in the amounts determined by soil tests shall be applied to the redistributed surface soil layer so that it supports the approved postmining land use and meets the revegetation requirements of section 9 of this rule. These tests shall include nutrient analysis and lime requirement tests. Results of these tests shall be submitted to the Secretary with the final planting report as required by this rule.'' These soil tests are usually taken by the operator before hydroseeding the lime, fertilizer, and seed all in one process. The substitute process also requires testing of the soil and the proposed substitutes. Acid-base accounting is also required on all rock layers in the mineral removal area. Also, the planting plan at CSR 38–2–9.2.g.2 requires that ''[t]he proposed treatment to neutralize acidity'' be applied, and at CSR 38–2–9.2.g.4 ''[t]he application rates and analysis of fertilization'' be noted.

We appreciate the comment, but we do not agree that retaining the word ''soil'' or replacing it with ''soil or soil substitute pH'' is necessary for this portion of West Virginia's program to be in accordance with SMCRA and consistent with the Federal regulations. As proposed, West Virginia's proposal complies with both 30 CFR 816.22 and CSR 38–2–14.3. We also do not agree that soil tests be taken and sent to a lab for fertilizer/lime recommendations in this amendment because the requirement for soil tests to be taken and sent to a lab for fertilizer/lime recommendations is already addressed under 30 CFR 816.22, CSR 38–2–14.3, and CSR 38–2–9.2.i.1, and this amendment does not change that requirement.

Comment 3: USFS commented on CSR 38–2–7.7.d.2, suggesting that this language become the primary requirement instead of providing the

minimum/maximum rates and then providing this as the secondary option.

OSMRE Response: We value USFS's suggestion, but, in approving program amendments, we can only consider the submissions of the State, and West Virginia did not submit any proposed changes to CSR 38–2–7.7.d.2. Thus, we are not making any changes as a result of this comment.

Comment 4: USFS suggested the addition of this language: ''Fertilizer and lime rates will be based on soil testing performed by State certified laboratories.''

OSMRE Response: Under West Virginia's program at CSR 38–2–14.3.d, soil tests, including nutrient analysis and lime requirement tests, must be performed and submitted to the State. Likewise, under CSR 38–2–9.2.g.2, the planting plan must contain a statement on how to treat to neutralize acidity. CSR 38–2–7.6.d.1 requires specific liming requirements for a postmining land use of forestland. This standard must be clearly stated in the permit application (planting plan) and is based on past performance. Alternate rates are available, if stated in the planting plan and based on the revegetation species. While we appreciate USFS's suggestion, because this portion of the West Virginia program, as amended, is in accordance with SMCRA and consistent with the Federal regulations, we are not making any changes.

Comment 5: USFS commented on CSR 38–7.7.e, regarding revegetation and seeding methods that provide initial seeding, which includes a mixture of erosion control species and natives, and then a subsequent seeding with the desired native species.

OSMRE Response: While we applaud the use of native species, we are concerned with requiring native species in the temporary seed mixtures, permanent seed mixtures, and tree and shrub mixtures. The provision at CSR 38–2–7.7.e.l requires that ''cover shall consist of a combination of native and domesticated non-competitive and non-invasive cool and warm species grasses and other herbaceous vine or shrub species including legume species and shrubs.'' Most ground covers are established by hydroseeding seed, lime, and fertilizer all in one process. Surface mining permits can cover a very large area, so it is important to complete this process as efficiently as possible. Rarely will the entire mine area be hydroseeded more than once, so the erosion control species should be included with the desired native ground covers. The cost and availability of native seed must also be considered, especially on this scale. Flexibility must be allowed in the species mix to match the site-specific conditions over the entire State. Therefore, we are not making any changes to our decision as a result of this comment.

Comment 6: USFS commented on CSR 38–2–14.3.a stating that it recommends changing the provision to read as follows:

> Provided, however, if the topsoil is less than 6 inches thick, the permittee may remove a general 6 inches of the surface material to stockpile separately and then remove the remaining subsoil material to stockpile separately. During redistribution, the ''subsoil'' stockpile will be redistributed first, followed by the ''topsoil'' stockpile. Stockpiled topsoil and subsoil shall remain in place until . . .

USFS added that it is not recommended to allow topsoil to be mixed with full subsoil plus unconsolidated rock material because it will make nutrients, organic material, and microbes that are beneficial for the planting medium unavailable for plant uptake during reclamation. Even though ''topsoil'' may be less than 6 inches, the benefits of topsoil, (organic matter, microbiological component, available plant nutrients, etc.) even if the horizon is 1–2 inches, are important and necessary for successful reclamation. USFS recommended that CSR 38–2–14.3 specifies a depth of material that may be removed and included below the topsoil.

OSMRE Response: We agree with the USFS that topsoil is extremely important for reforestation purposes. However, it is extremely difficult to salvage and redistribute a thin layer of topsoil on the steep slopes of southern West Virginia for reforestation purposes. Stripping and redistributing this material along with the subsoil and/or weathered sandstone just below the topsoil has proven very effective. Stripping and redistributing this material in one step are also more efficient for the operator and reduce the number of times the operator must pass over the growth medium, minimizing the compaction of this material. Stockpiling of topsoil can also be detrimental to the biota. We encourage stripping of this material and immediately redistributing the material in the contemporaneous reclamation.

The West Virginia State program is consistent with this practice and that espoused in the Forestry Reclamation Approach (FRA) as advocated by the Appalachian Regional Reforestation Initiative (ARRI), which recommends a four-foot-thick growth medium comprised of topsoil, soil, or the best available material. The FRA provides that mixing these materials provides an excellent growth medium for reforestation purposes. Topsoil provides organic material, biota, and a seed pool. Subsoil provides fines for moisture retention. Substitute materials such as weathered and unweathered sandstone provides pore space, which allows for aeration, root penetration, and infiltration of water, and mimics a more natural soil surface for reforestation purposes than using just soil. Mixing these materials has proven very effective for mine land reforestation plan to avoid stockpiling.

Likewise, the West Virginia program at CSR 38–2–7.6.c.1 and 7.7.c.1, states that ''[e]xcept for valley fill faces, soil or soil substitutes shall be redistributed in a uniform thickness of at least four feet across the mine area.'' Thus, the West Virginia State program ensures that enough soil and soil substitutes will be stripped and redistributed to meet the requirements of SMCRA. Therefore, we are making no changes to our approval of this portion of the program amendment as a result of this comment.

Comment 7: USFS commented on CSR 38–2–14.3.c. that the term ''topsoil'' should be replaced with the term ''Soil Substitute Material''.

OSMRE Response: While we recognize that West Virginia's program could have been clearer, we note that the proposed title of subsection c of CSR 38–2–14.3, ''Substitutes material,'' appears within section CSR 38–2–14.3, which is entitled ''Topsoil.'' This structure provides some clarity for a reader to understand that this section refers to soil substitutes in general. Thus, whatever potential ambiguity that there may be, we do not find it rises to the level for us to deny this portion of the program amendment proposed by West Virginia.

Comment 8: USFS commented on subsection 14.3.c. to recommend that West Virginia use the suggested language: ''This determination of capability shall be based on the results of appropriate chemical and physical analysis of overburden and topsoil material. An analysis of overburden material shall include at a minimum depth, thickness, pH, geochemical analysis, and areal extent of the material wanting to be used as substitute. An analysis of substitute topsoil material shall include at a minimum pH, texture, structure, percent coarse fragments, and nutrient content. A certification for all analyses for desired substitute material shall be made by a qualified laboratory stating such.''

OSMRE Response: Although we believe the process contained in West Virginia's program as part of the soil analyses required in the pre-mining

native soil inventory at CSR 38–2–7.6.b.1.A.1 and in the substitute process under CSR 38–2–14.3.c captures the geochemical analyses recommended in the USDA comment, we recommend that West Virginia consider the USFS comment if it makes future revisions to this aspect of its State program. However, this comment does not indicate that the current West Virginia program is not in accordance with SMCRA or inconsistent with the Federal regulations; thus, we still approving this portion of the amendment as proposed by West Virginia.

Comment 9: The USFS recommended that West Virginia change the language of CSR 38–2–14.3.c.l. The USDA also stated that if the permittee is proposing substitute material due to insufficient quantity, but acceptable quality, the proposed substitute material should be of equal or greater suitability for sustaining vegetation and existing topsoil. If the permittee is proposing substitute material due to sufficient quantity, but poor quality, the proposed substitute material should be suitable for sustaining vegetation and the intended postmining land use designation;''

OSMRE Response: CSR 38–2–14.3.c.l requires that the proposed substitute material is equally suitable for sustaining vegetation as the existing topsoil. We recognize that the language that USFS is proposing could be a good alternative, but, as proposed by West Virginia, this program amendment is consistent with 30 CFR 816.22; therefore, we are approving this part of West Virginia's program as proposed.

Comment 10: USFS suggested that the following statement be added to CSR 38–2–14.3.c.3: ''The analyses were conducted using standard testing procedures. These methodologies along with the QA/QC will be included in a final report along with the results of the analyses.''

OSMRE Response: While we understand the point USFS is making with this proposed addition, such a requirement is not necessary for the amendment to be in accordance with SMCRA and consistent with the Federal regulation.

Comment 11: USFS commented on CSR 38–2–22.3.t.4, suggesting that changing the term ''top soiling'' to ''being covered with the non-toxic and non-combustible material'' is overly inclusive of potential material. The USFS recommends consistency with the rewording used previously in the document for topsoiling, such as ''soil or suitable soil substitute.''

OSMRE Response: While we understand the concern of the USFS, West Virginia's proposal is in accordance with SMCRA and consistent with the Federal regulations and we are approving this part of West Virginia's as proposed. We also note that, at abandonment, all fine refuse in the impoundment pool must be covered with a minimum three-foot layer of coarse refuse or other fill material before being covered with the non-toxic and non-combustible material unless otherwise approved by the Secretary. Replacing the term ''topsoil'' with the phrase ''being covered with the non-toxic and non-combustible material'' will make the language more consistent with other provisions of the rule. This cover is intended as a growth medium but concerns over the chemistry and combustibility of this material are paramount.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued 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.*). OSMRE determined that none of the proposed State revisions pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on April 5, 2019, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. 1616). The EPA did not respond to our request.

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On April 5, 2019, we requested comments on West Virginia's amendment (Administrative Record No. 1616). We did not receive comments from the SHPO or ACHP.

V. OSMRE's Decision

Based on the above findings, we are approving in part the amendment (WV–124) that West Virginia submitted on June 14, 2016 (Administrative Record WV–1606). In particular, we are approving the proposed amendments to CSR 38–2–7.6.c–d (Forest land), CSR 38–2–7.7.c–d (Wildlife), CSR 38–2–14.3 (Topsoil), CSR 38–2–14.11 (Inactive Status), CSR 38–2–14.15.b.1 through CSR 38–2–14.15.b.6.B.2 (Contemporaneous Reclamation, Backfilling and Grading), CSR 38–2–14.15.d.1–3 (Excess Spoil Disposal), CSR 38–2–14.15.g (Variance), and CSR 38–2–22.3(t)(4) (Coal Refuse—Abandonment Plan). We are making no determination about CSR 38–2–3.27 (Permit Renewals) because it is moot. We are also making no determination about CSR 38–2–11.4.a.2 (Incremental Bonding) because the proposed amendment contains an apparent reference to an obsolete provision that must be corrected or clarified before we can review.

To implement this decision, we are amending the Federal regulations, at 30 CFR part 948, which codify decisions concerning the West Virginia program. In accordance with the Administrative Procedure Act (5 U.S.C. 533), this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA (30 U.S.C. 1253(a)) requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule would not result in a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Order 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993 (OMB Memo M–94–3), the approval of State program amendments is exempted from OMB review under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by section 3 of Executive Order 12988. The Department determined that this **Federal Register** document meets the criteria of section 3 of Executive Order

12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction.

Because section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive order did not extend to the language of West Virginia regulatory program or amendment that West Virginia drafted.

Executive Order 13132—Federalism

This rule has potential Federalism implications as defined under section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to ''grant the States the maximum administrative discretion possible'' with respect to Federal statutes and regulations administered by the States. West Virginia, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the State level. This rule approves most of an amendment to the West Virginia program submitted and drafted by the State except for certain provisions that we deem to be moot as explained in our finding at section III.1 above. Thus, our approval of this rule is consistent with the direction to provide maximum administrative discretion to States.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on the distribution of power and responsibilities between the Federal Government and Tribes.

The basis for this determination is that our decision on the West Virginia program does not include Indian lands as defined by SMCRA or other Tribal lands, and it does not affect the regulation of activities on Indian lands or other Tribal lands. Indian lands under SMCRA are regulated independently under the applicable Federal Indian program. The Department's consultation policy also acknowledges that our rules may have Tribal implications where the State proposing the amendment encompasses ancestral lands in areas with mineable coal. We are currently working to identify and engage appropriate Tribal stakeholders to devise a constructive approach for consulting on these amendments.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a statement of energy effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not significant energy action under the definition in Executive Order 13211, a statement of energy effects is not required.

Executive Order 14192—Unleashing Prosperity Through Deregulation

State program amendments are not regulatory actions under Executive Order 14192 because they are exempt from review under Executive Order 12866 (OMB Memo M–94–3).

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), State program amendments are not 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 include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

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. 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.

Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2). This rule: (a) does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Ben H. Owens,

Acting Regional Director, North Atlantic—Appalachian Region.

For the reasons set out in the preamble, 30 CFR part 948 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 § 948.15 amended the table by adding a new entry in chronological

order by ''Date of final publication'' to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	* *	* * * *
June 14, 2016	December 3, 2025	CSR 38–2–3.27 (no determination); CSR 38–2–11.4.a.2 (moot, no determination); CSR 38–2–7.6.c.2–3 (approved); CSR 38–2–7.6.d.1 (approved); CSR 38–2–7.7.c.2–3 (approved); CSR 38–2–7.7.d.1 (approved); CSR 38–2–14.3 (approved); CSR 38–2–14.11 (approved); CSR 38–2–14.15.b.1 through CSR 38–2–14.15.b.6.b.2 (approved); CSR 38–2–14.15.d.1–3 (approved); CSR 38–2–14.15.g (approved); CSR 38–2–22.3(t)(4) (approved).

[FR Doc. 2025–21791 Filed 12–2–25; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–116–FOR; OSM–2009–0008; S1D1S SS08011000 SX064A000 245S180110; S2D2S SS08011000 SX064A000 24XS501520]

West Virginia Regulatory Program

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

ACTION: Final rule; partial approval of amendment with 12 approved provisions, 5 provisions receiving qualified approval, and 1 not approved provision.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), approve in part amendments to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). These amendments make changes to the West Virginia Coal Mining and Reclamation Act (WVSCMRA), the Code of West Virginia (W.Va. Code), and the West Virginia Code of State Rules (CSR). We approve 12 provisions, approving with understanding 5 provisions, and not approving 1 provision.

DATES: This rule is effective January 2, 2026.

FOR FURTHER INFORMATION CONTACT: Mr. Justin Adams, Director, Charleston Field Office, Telephone: (304) 977–7450. Email: *osm-chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Submission of the Amendment
III. OSMRE's Findings
IV. Summary and Disposition of Comments
V. OSMRE's Decision
VI. Statutory and Executive Order Review

I. Background on the West Virginia Program

Subject to OSMRE's oversight, section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. 30 U.S.C. 1253(a)(1); 30 U.S.C. 1253(a)(7). Based on these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find additional background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

West Virginia revised its Code of State Regulations (CSR) and the West Virginia Code (W.Va. Code), as reflected in four bills enacted by the legislature in 2009: Senate Bill (SB) 153, SB 436, SB 600, and SB 1011. The amendment approved by this final rule covers a variety of topics, including continuing oversight by the Secretary of the West Virginia Department of Environmental Protection (WVDEP) of ''approved persons'' who prepare, sign, or certify mining permit applications and related materials; incidental boundary revisions (IBRs) to existing permits; deletion of the Coal Bonding Calculations Tables; changing the term ''Bio-oil'' to ''Bio-fuel''; clarifying standards at CSR 38–2–9.3.f that pertain to West Virginia's regulatory program for revegetation success standards for areas developed for hayland or pasture use; and adjusting the per-ton coal tax.

By letter dated May 11, 2009 (Administrative Record No. WV 1522), WVDEP submitted one of several amendments regarding its approved regulatory program under West Virginia's Surface Mining Reclamation Regulations at CSR title 38, series 2. This amendment includes regulatory revisions implemented by the passage of SB 153, which was adopted by the West Virginia Legislature on April 8, 2009, and signed into law by the Governor on April 30, 2009.

SB 153 included provisions for the continued oversight of ''approved persons'' who prepare, sign, or certify mining permit applications and related materials. The bill also included provisions modifying IBR requirements for existing permits by clarifying that certain types of collateral activities are deemed parts of the primary mining operations and, therefore, subject to the same acreage limitations while providing additional criteria for the WVDEP Secretary to consider in evaluating an application for revision. The bill deletes the requirement that the Secretary must advertise all IBR applications and provide a 10-day public comment period and would instead allow IBRs deemed ''insignificant'' to be approved without public notice. In addition, the bill deleted the Coal Bonding Calculations Tables without changing the regulatory criteria the tables represented, changed the term ''Bio-oil'' to ''Bio-fuel,'' and clarified revegetation standards for hayland and pasture use. We initially determined that the change from ''Bio-oil'' to ''Bio-fuel'' was non-substantive and that soliciting public comment was unnecessary, but we later sought further clarification from WVDEP about the use of those terms, as further discussed below.

By letter dated May 22, 2009 (Administrative Record No. WV 1521), WVDEP submitted two additional