

(1) Data and information contained in any report or other document filed pursuant to Sections 201, 202, 203, 211, and 301 of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 524-528, 530, 79 Stat. 888; 29 U.S.C. 431-433, 441, 461).

(2) Data and information contained in any report or other document filed pursuant to the reporting requirements of Part 208 of this title, which are the regulations implementing the standards of conduct provisions of the Civil Service Reform Act of 1978, 5 U.S.C. 7120, and the Foreign Service Act of 1980, 22 U.S.C. 4117. The reporting requirements are found in Part 208 of this title, § 208.3.

Address: U.S. Department of Labor, Office of Labor-Management Standards, Public Documents Room N-5626, 200 Constitution Avenue, NW., Washington, D.C. 20210.

(b) Upon request of the Governor of a State for copies of any reports or documents filed pursuant to Sections 201, 202, 203, 211 of the Labor-Management Reporting and Disclosure Act 1959 (73 Stat. 524-528, 79 Stat. 888;

29 U.S.C. 431-441), or for information contained therein, which have been filed by any person whose principal place of business or headquarters is in such State, the Office of Labor-Management Standards shall:

(1) Make available without payment of a charge to the State agency designated by law or by such Governor, such requested copies of information and data, or:

(2) Require the person who filed such reports and documents, to furnish such copies or information and data directly to the state agency thus designated.

7. A new § 70.78, entitled *Pension and welfare benefit programs*, is added to Part 70 to read as follows:

**§ 70.78 Pension and welfare benefit programs.**

The following documents are in the custody of the Office at the address indicated below, and the right of inspection and copying provided in this Part 70 may be exercised at such offices:

(a) Copies of the description of welfare or pension benefit plans, amendments or modifications thereto

and entire or individual pages of annual financial reports thereon, filed pursuant to section 8(b) of the Welfare and Pension Plans Disclosure Act (72 Stat. 1002, 29 U.S.C. 307).

(b) Copies of plan descriptions, annual reports, statements and other documents filed pursuant to the Employment Retirement Income Security Act, Title 1, part 1, except that information described in section 105(a) and 105(c) with respect to a participant may be disclosed only to the extent that information respecting that participants benefits under Title II of the Social Security Act may be disclosed under such Act.

Address: U.S. Department of Labor, Office of Pension and Welfare Benefit Programs, Public Documents Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 2nd day of July, 1985.

William E. Brock,  
Secretary of Labor.

[FR Doc. 85-16459 Filed 7-10-85; 8:45 am]

BILLING CODE 4510-23-M

# Registered Federal Reporter

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Thursday  
July 11, 1985

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## Part III

### Department of Education

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Rehabilitation Long-Term Training  
Program; Final Funding Priority for Fiscal  
Year 1985; Notice

Project - 1960

Department of  
Education

Rehabilitation Long Term Training  
Program for the Blind  
and Visually Handicapped

Part II

**DEPARTMENT OF EDUCATION****Rehabilitation Long-Term Training Program; Final Funding Priority for Fiscal Year 1985****AGENCY:** Department of Education.**ACTION:** Notice.

**SUMMARY:** The Secretary issues a funding priority for long-term training grants in the field of Rehabilitation Counseling in order to ensure effective use of program funds and direct funds to an area of the identified need during Fiscal Year 1985. The Secretary will reserve funds for applications meeting this priority.

**EFFECTIVE DATE:** This priority will take effect either 45 days after publication in the *Federal Register* or later if Congress takes certain adjournments. If you want to know the effective date of this final funding priority, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** James W. Moss, Office of Developmental Programs, Rehabilitation Services Administration. Telephone: (202) 732-1286.

**SUPPLEMENTARY INFORMATION:** Grants for the Rehabilitation Training Program are authorized by Title III, Section 304 of the Rehabilitation Act of 1973, as amended. Program regulations for the Rehabilitation Long-Term Training Program are established at 34 CFR Part 386. The purpose of the Rehabilitation Long-Term Training Program is to support projects designed for training

personnel to be available for employment in public and private agencies involved in the rehabilitation of physically and mentally handicapped individuals, especially those who are the most severely handicapped. Applicants are notified that the Secretary will be collecting data to enable him, in accordance with the Rehabilitation Amendments of 1984 (Pub. L. 98-221), to target more closely awards made in future years to areas of personnel shortages.

**Summary of Comments and Responses**

No comments were received in response to the Notice of Proposed Funding Priority published in the *Federal Register* on April 30, 1985 at 50 FR 18388, and no changes to the proposed priority have been made.

**Eligible Applicants**

Awards are made under this program to State vocational rehabilitation agencies and other public or nonprofit agencies or organizations, including institutions of higher education.

**Final Priority**

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3)(i), the Secretary will give an absolute preference to applications submitted in the field of rehabilitation counseling in Fiscal Year 1985 in response to the designated priority. An absolute priority is one which permits the Secretary to select only those applications that address the priority.

Applications submitted in the field of rehabilitation counseling must address the master's degree level training of rehabilitation counseling personnel. The proposed training curriculum must include placement content that will expose students to the direct involvement of business and industry in providing rehabilitation services to severely physically and mentally disabled individuals. The placement component should include coursework to enable the student's acquisition of skills and knowledge in the areas of: job development/job analysis/job modification/job restructuring; workmen's compensation; forecasting labor market trends; the applicability of sections 503 and 504 of the Rehabilitation Act and their implications for placement of disabled individuals; and effective consultation with employers and potential employers to identify employment opportunities for disabled individuals, to assist in the removal of barriers to the employment of disabled individuals, and to educate or train about various disabilities and any vocational implications of those disabilities. Practicum training must include placement activities that involve students directly in business and industry settings.

(29 U.S.C. 774)

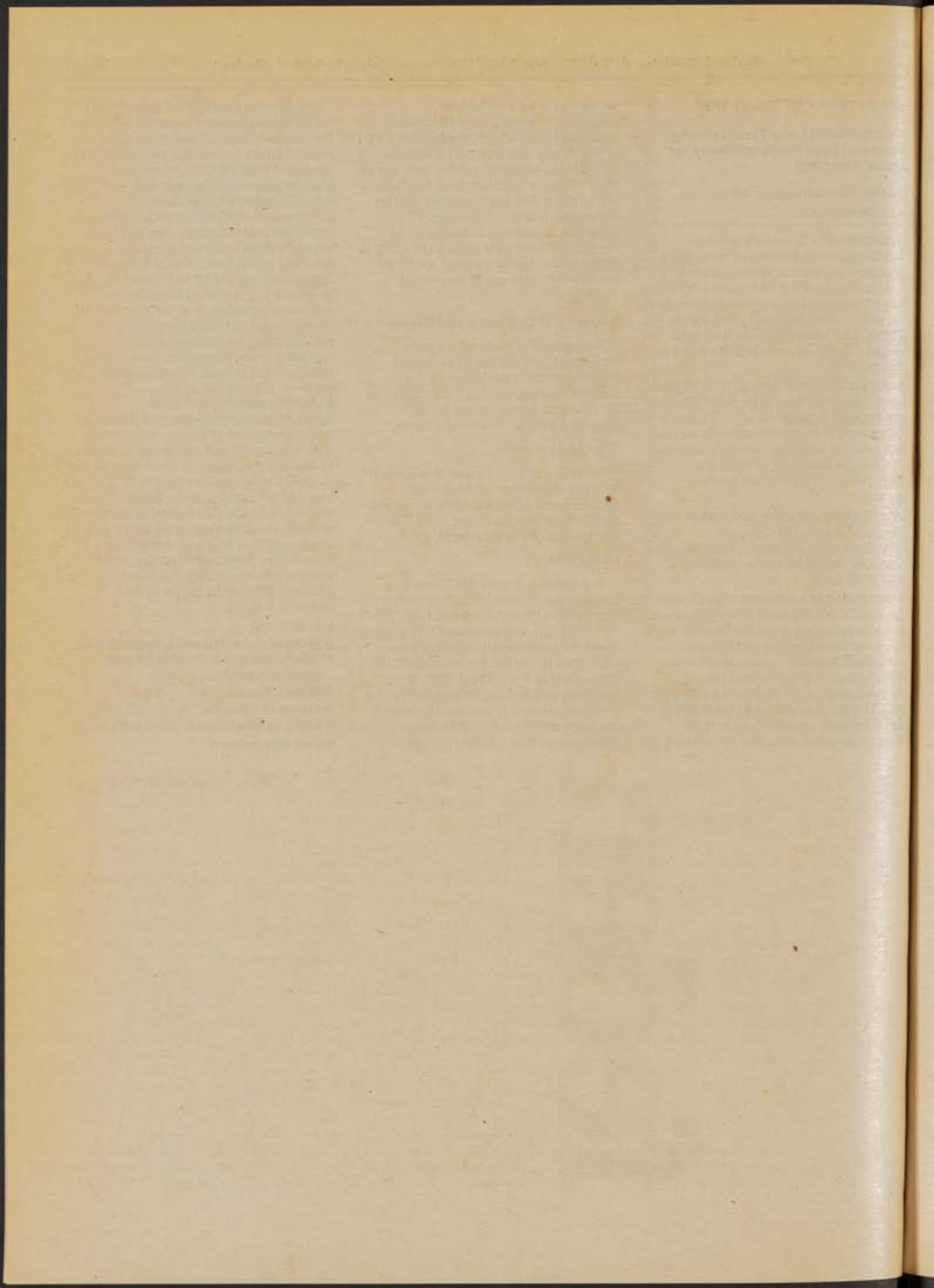
(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training Program)

Dated: July 8, 1985.

**William J. Bennett,***Secretary of Education.*

[FR Doc. 85-16492 Filed 7-10-85; 8:45 am]

BILLING CODE 4000-01-M



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Thursday  
July 11, 1985

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**Part IV**

**Department of the  
Interior**

**Office of Surface Mining Reclamation and  
Enforcement**

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**30 CFR Part 948**

**West Virginia Permanent Regulatory and  
Abandoned Mine Land Reclamation  
Programs; Final and Proposed Rules**

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 948

## Amendment to the West Virginia Permanent Regulatory and Abandoned Mine Land Reclamation Programs Under the Surface Mining Control and Reclamation Act of 1977

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

**ACTION:** Final rule.

**SUMMARY:** OSM is announcing the approval, with certain exceptions, of a proposed amendment submitted by the State of West Virginia as a modification to its permanent regulatory program, hereinafter referred to as the West Virginia program, which the Secretary of the Interior conditionally approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), and its abandoned mine land reclamation program, which the Secretary also approved under SMCRA. The amendment consists of legislation which reconstitutes the Reclamation Division of the Department of Natural Resources as part of the Division of Mines and Minerals in the newly created Department of Energy, and which recodifies Article Six of Chapter 20 of the Code of West Virginia, known as the West Virginia Surface Coal Mining and Reclamation Act (WV SCMRA), as Article Three of Chapter 22A and Article Four of Chapter 22 of the West Virginia Energy Act (WVEA). The legislation also recodifies Article 6C of Chapter 20, known as the Abandoned Mine Lands and Reclamation Act, as Article Three of Chapter 22 of the WVEA.

In addition, the legislation establishes special permitting requirements and reclamation standards for surface mines two acres or smaller in size, requires coordination with the Commissioner of Labor in permit issuance, establishes a pilot program for the cultivation of grapes on reclaimed mine lands, and raises the base salaries of reclamation inspectors and supervisors.

After the Governor of West Virginia submitted the amendment materials on May 20, 1985, OSM published a notice in the May 29, 1985 *Federal Register* announcing receipt of the proposed amendment and inviting public comment on its adequacy (50 FR 21861-21862).

After considering all comments received during the public comment period ending June 28, 1985, and the testimony received at the public hearing

held in June 18, 1985, and after conducting a thorough review of the proposed amendment, the Director has determined that, with certain exceptions, the submission meets the requirements of SMCRA and the Federal regulations, and is approving it subject to certain reservations. The Federal rules at 30 CFR Part 948 codifying decisions concerning the West Virginia program are being amended to implement this action.

This final rule is being made effective July 11, 1985, to correspond with the effective date of the WVEA, to expedite the State program amendment process and to encourage States to conform their programs to Federal standards in accordance with SMCRA without undue delay.

**EFFECTIVE DATE:** July 11, 1985.

**FOR FURTHER INFORMATION CONTACT:** Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301. Telephone: (304) 347-7158.

**SUPPLEMENTARY INFORMATION:****I. Background**

On March 3, 1980, West Virginia submitted its proposed permanent regulatory program, which the Secretary of the Interior approved in part and disapproved in part on October 22, 1980, following a review in accordance with 30 CFR Part 732 (45 FR 69249-69271). On December 19, 1980, West Virginia resubmitted its proposed program, which the Secretary conditionally approved on January 21, 1981. Information concerning the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and an explanation of the initial conditions of approval of the West Virginia program, can be found in the January 21, 1981 *Federal Register* (46 FR 5915-5956).

**II. Submission of Amendment**

On April 12, 1985, the West Virginia Legislature adopted the Enrolled Committee Substitute for House Bill 1850, known as the West Virginia Energy Act, which provides for the creation of a State Department of Energy. This Act contains three chapters: 22, 22A and 22B. Of the six articles in Chapter 22, Article One (general provisions concerning the Department of Energy), Article Three (the abandoned mine land reclamation program), and Article Four (the Reclamation Board of Review) concern aspects of the West Virginia programs

approved under SMCRA. Chapter 22A establishes safety and reclamation standards and other regulations governing mines and the exploration for and extraction of minerals other than oil and gas. Article Three of this chapter incorporates most provisions of the now-repealed WV SCMRA; the other articles affect the West Virginia programs only in an ancillary fashion. Chapter 22B governs the oil and gas industry and does not impact the West Virginia programs.

On April 24, 1985, the Governor notified the Secretary of the proposed reorganization, the basic purpose of which is to consolidate into one department all the administrative, regulatory and other governmental functions relating to exploration for and the extraction, use and conservation of mineral resources within the State. The Reclamation Division of the Department of Natural Resources, the current regulatory authority for the West Virginia programs governing coal exploration, surface coal mining and reclamation operations and abandoned mine land reclamation, will be incorporated into the newly created Department of Energy, which the Act designates as the new regulatory authority. Although the Reclamation Division will become part of the Division of Mines and Minerals and some administrative changes will occur, the Governor has assured the Secretary that the West Virginia program approved on January 21, 1981, will remain functionally unaltered (Administrative Record Nos. WV 640 and WV 641).

On May 3, 1985, the Governor signed the West Virginia Energy Act into law. On May 10, 1985, he informed the Secretary of that action, and requested that the Secretary approve the transfer of the permanent program authority currently vested in the Department of Natural Resources to the Department of Energy as of July 11, 1985. The Governor's letter stated that he would then require the preparation of additional amendments which, if approved by OSM, would change other portions of the West Virginia program as necessary to conform operations under the Department of Energy to Federal requirements (Administrative Record No. WV 641).

On May 20, 1985, the Governor provided OSM with a copy of the West Virginia Energy Act, an indexed listing of the statute sections, a comparison of existing and revised statutory provisions, and a letter stating that the West Virginia Energy Act contains no substantive changes from the WV

SCMRA which would significantly alter the procedures and performance of the approved regulatory program, and that the functions and responsibilities of the reclamation program would remain intact (Administrative Record No. WV 642). On May 28, 1985, West Virginia submitted a letter from the Governor's Legal Counsel to clarify certain provisions of the WVEA (Administrative Record No. WV 643).

The May 29, 1985 Federal Register (50 FR 21861-21862) announced receipt of these materials and requested public comment on their adequacy. In response to several requests, OSM held a public hearing on June 18, 1985, and prepared a transcript (Administrative Record No. WV 665). The public comment period closed on June 28, 1985.

### III. Director's Findings

In accordance with SMCRA and 30 CFR 732.17, the Director finds that, with certain exceptions, the proposed amendment, as submitted by West Virginia on May 20, 1985, and as clarified by other materials, meets the requirements of SMCRA and 30 CFR Chapter VII, as discussed below. The Federal regulations at 30 CFR 732.17(h)(9) provide that the applicable criteria for approval or disapproval of State programs set forth in 30 CFR 732.15 shall be utilized by the Director in approving or disapproving State program amendments. The Federal regulations at 30 CFR 732.15(a) provide that the State's laws and regulations must be in accordance with the provisions of SMCRA and consistent with the requirements of the Secretary's regulations. The Federal regulations at 30 CFR 730.5 define "consistent with" and "in accordance with" to mean, with regard to SMCRA, that the State laws and regulations are no less stringent than, meet the minimum requirements of and include all applicable provisions of SMCRA. With regard to the Secretary's regulations, State laws and regulations must be no less effective than the Federal regulations in meeting the requirements of SMCRA.

The Director's review of the proposed amendment concentrated on those provisions of the WVEA which were substantively modified from the WV SCMRA or which were the subject of prior conditions of program approval or court decisions. The Director may require further changes in the future as a result of his ongoing review of the West Virginia program in light of Federal regulatory changes, court decisions and oversight evaluations.

#### 1. General—Permanent Regulatory Program

After reviewing the WVEA and additional amendment materials, the Director has determined that the reorganization required by the WVEA complies with the requirements of SMCRA and the Federal regulations. The WVEA transfers the Reclamation Division from the Department of Natural Resources to the Department of Energy, abolishes the Reclamation Commission, and assigns the powers, duties, functions and responsibilities formerly vested in the Commission and the Director of the Department of Natural Resources to the Commissioner of the Department of Energy. Section 22-1-16 designates the Department of Energy as the lead regulatory agency for all purposes of Federal legislation. Except as discussed under other findings in this section, the WVEA incorporates all provisions of the current law (WV SCMRA) unchanged, except for certain nonsubstantive wording changes and the nomenclature and codification alterations necessitated by the reorganization. In addition, section 22-1-15 provides that all rules and regulations in effect on the effective date of the WVEA which pertain to provisions of the WVEA will remain in effect until changed or superseded by the Commissioner of the Department of Energy.

WVEA section 22-1-14 provides that all appropriations, funds, supplies, equipment, records and other materials pertaining to duties and functions transferred to the Department of Energy shall also be transferred. Also, section 22-1-21 requires that all Department of Natural Resources and Department of Mines employees whose functions and duties are transferred to the Department of Energy be employed in comparable positions within that department. In addition, the Governor has assured the Secretary that the staffing and funding levels of the West Virginia program will be maintained (Administrative Record Nos. WV 640 and 641). Although the WVEA does not specifically provide that all memoranda of understanding with other agencies involved in the West Virginia program will be transferred, the Director interprets the Governor's statement that all program functions and duties will remain unaltered to mean that all such memoranda will continue in force until renegotiated by the Commissioner and approved by OSM.

Therefore, the Director finds that, except as discussed below, the newly designated regulatory authority has the capability to implement, administer and

enforce the approved program as required by the Federal regulations at 30 CFR 732.15(b) and section 503(a) of SMCRA.

#### 2. General—Abandoned Mine Land Reclamation Program

Article Three of Chapter 22 of the WVEA makes no substantive changes in the West Virginia abandoned mine land reclamation program. WVEA section 22-3-2 authorizes the Commissioner to maintain program approval and to receive funds from the U.S. Department of the Interior; section 22-3-9(e) requires that all departments, boards, commissions and agencies of the State cooperate with the Commissioner to implement and administer the program. WVEA section 22-1-14 provides that all appropriations, funds, supplies, equipment, records and other materials pertaining to duties and functions transferred to the Department of Energy shall also be transferred. Also, section 22-1-21 requires that all Department of Natural Resources employees whose functions and duties are transferred to the Department of Energy be employed in comparable positions within that department. The Governor has committed the State to maintain staffing levels and to retain all program functions and duties unaltered except for administrative changes related to the reorganization (Administrative Record Nos. WV 640, 641 and 642).

Therefore, the Director finds that the Department of Energy has the capability and authority to implement the approved abandoned mine land reclamation program as required by section 405(b) of SMCRA and the Federal regulations at 30 CFR 884.13(a).

#### 3. Definition of "Commissioner"/Delegation of Authority

Sections 517 and 521 of SMCRA provide inspection and enforcement authority to both the Secretary and his authorized representatives, but the WVEA is unclear as to whether the Commissioner's representatives have similar authority.

Both WVEA sections 22-1-3(a)(1) and 22A-3-3(i) define "Commissioner" as "the Commissioner of the Department of Energy," in contrast to the corresponding definition of "Director" in WV SCMRA, which includes authorized inspectors and other personnel in the line of command, and the definition of "Commissioner" in the other minerals section at WVEA sections 22A-4-2(c), which includes authorized agents. Sections 22A-3-16 (a) and (c) of WVEA authorize reclamation inspectors to issue and release imminent harm

cessation orders, but the language of sections 22A-3-16(b) appears to reserve the abatement, modification and vacation of such orders, as well as the imposition of affirmative obligations in such orders, to the Commissioner. Section 22A-3-17(a) provides that the Commissioner "may cause" a notice of violation to be issued, but that he "shall order" the cessation of operations which fail to abate violations, thus indicating some authority to delegate the issuance of notices, but not the issuance of failure-to-abate cessation orders. In addition, section 22A-3-23(b) provides that the Commissioner shall conduct bond release inspections. Also, the language of section 22A-3-17(b) appears to limit the applicability of that subsection to the Commissioner.

On May 28, 1985, West Virginia submitted a legal opinion from the Governor's Legal Counsel stating that WVEA section 22-1-5 grants the Commissioner broad power of substitution and delegation of authority, including the powers to delegate authority granted to him by the WVEA to department personnel who must have such authority. The term "Commissioner" would thus include any agent named by him to act in his place (Administrative Record No. WV 643).

To be no less stringent than sections 517 and 521 of SMCRA, which provide inspection and enforcement authority to both the Secretary and his authorized representatives, the State's inspectors must have similar authority. The WVEA provides that all regulations promulgated under WV SCMRA (which provided inspectors with the requisite authority) remain in effect, and the Governor has assured the Secretary that the program will continue functionally unaltered. The Director interprets the legal opinion, the Governor's letters and the existing regulations as a commitment by the State to fully and immediately delegate all necessary authority, and is approving this amendment on that basis.

#### 4. Definition of "Surface-Mining Operations"

The definition of "surface-mining operations" in WVEA section 22A-3-3(w) is the counterpart to the definition of "surface coal mining operations" in section 701(28) of SMCRA. The definition of "surface-mining operations" reads, in part:

Such activities include excavation for the purpose of obtaining coal, including, but not limited to, such common methods as contour, strip, auger, mountaintop removal, boxcut, openpit and area mining; the uses of explosives and blasting; reclamation in situ distillation or retorting, leaching or other

chemical or physical processing; and the cleaning, concentrating, or other processing or preparation, and loading of coal for commercial purposes at or near the mine site. . . .

The definition apparently omits a semicolon needed between the words "reclamation" and "in situ", and a comma needed between the words "cleaning" and "concentrating". According to the legal opinion submitted by West Virginia on May 28, 1985, the two clerical errors were not present in the bill presented to the West Virginia Legislature, but appeared later when the bill was printed. The Governor's Legal Counsel has stated that, because the meaning was so clear in the prior legislation (WV SCMRA) and in the legislative history, the punctuation marks would, without question, be implied by the courts for a clear reading of the subsection. Therefore, the Director finds that the portion of the definition found at WVEA section 22A-3-3(w)(1) is no less stringent than that portion of the definition of "surface coal mining operations" at section 701(28)(A) of SMCRA.

The definition of "surface-mining operations" in WVEA section 22A-3-3(w)(2) provides that permanent facilities not within the area being mined and not directly involved in the excavation, loading, storage or processing of coal shall not be subject to the West Virginia surface mining statute. The definition provides that "such facilities include, but are not limited to, offices, garages, bathhouses, parking areas, and maintenance and supply areas." In *re: Permanent Surface Mining Regulation Litigation II* (Civil Action No. 79-1144), the U.S. District Court for the District of Columbia ruled on July 6, 1984, that, under the definition of "surface coal mining operations" in section 701(28) of SMCRA, all "support" facilities resulting from or incident to surface coal mining activities, such as offices or storage areas, must be regulated regardless of their proximity to the mine.

Therefore, the Director finds that the proviso of WVEA section 22A-3-3(w)(2) which exempts certain support facilities from regulation is inconsistent with section 701(28)(B) of SMCRA, and, under a separate notice appearing in today's Federal Register, he is proposing to preempt and supersede this portion of the statute.

#### 5. Special Requirements for Mines Not Exceeding Two Acres

WVEA Section 22A-3-26 provides that certain operations are not subject to the WVEA, including "the extraction of coal for commercial purposes where the

surface mining operation affects two acres or less: Provided, That the entity conducting or planning to conduct said operation complies with the provisions of section ten-a [sic] of this article." The exemption of operations two acres or smaller in size is similar to the exemption found in Section 528(2) of SMCRA, although West Virginia establishes separate requirements for such operations in accordance with the provisions of Section 22A-3-9a rather than exempting them altogether. Under the previously approved State program, including the regulations still in effect, West Virginia did not exempt or provide special treatment for such mines.

The Federal rule of 30 CFR 700.11(b) further defines the exemption provided by SMCRA as applying "where the surface coal mining and reclamation operation, together with any related operations, has or will have an affected area of two acres or less." The Federal rule also prescribes criteria for determining when access or haul roads are to be included in the affected area, and criteria for determining when operations shall be deemed to be "related" for purposes of the exemption. WVEA Section 22A-3-9a(e) contains criteria for determining when operations are to be considered related for purposes of the two-acre provisions. These criteria are similar to those in the Federal regulations at 30 CFR 700.11(b)(2), but the WVEA does not specify if, how or when these criteria are to be used. The West Virginia statute also does not specify that segments of access and haul roads used by more than one operation must be included in the affected area of each operation for purposes of determining the affected area, as is required by 30 CFR 700.11(b)(1). Nor does the State define or explain the phrase "under common ownership or control, directly or indirectly" in a manner no less effective than 30 CFR 700.11(b)(2) (ii) and (iii).

Moreover, since WVEA Section 22-1-15 provides that all rules and regulations in effect on the effective date of the WVEA will continue in effect until changed by the Commissioner, and since these rules contain no provisions exempting or separately regulating such operations, the Director finds that the provisions of WVEA Sections 22A-3-9a and 22A-3-26(d) cannot take effect until the Commissioner develops, obtains OSM approval of, and promulgates regulations which establish an eligibility test and criteria no less effective than the Federal regulations at 30 CFR 700.11(b).

In addition, WVEA Section 22A-3-9a(a)(6) requires a minimum bond of \$5,000 per acre to assure regrading and revegetation of all disturbed areas. The bond provision is not, in itself, inconsistent with SMCRA and the Federal regulations. However, this portion of the WVEA specifies that the bond shall be posted for a maximum of two acres, *exclusive of roadways and temporary spoil placement*. To the extent that the language of WVEA Section 22A-3-9a(8) could be interpreted as allowing operations affecting in excess of two acres to qualify for the special requirements, the Director finds that this provision is inconsistent with Section 520(2) of SMCRA and is less effective than 30 CFR 700.11(b) and the definition of "affected area" at 30 CFR 701.5. Under a separate notice appearing in today's Federal Register, he is proposing to preempt and supersede this portion of the statute.

#### 6. Final Bond Release Requirements

Section 519(c)(3) of SMCRA prohibits final release of an operator's performance bond until the period for operator responsibility has expired and all reclamation requirements of SMCRA, including revegetation, are fully met. WVEA Section 22A-3-23(c)(3) similarly provides that the final portion of the bond may be released when the operator has successfully completed all surface mining and reclamation activities and the period of operator responsibility has expired, provided that revegetation has been established on the regraded mined lands in accordance with the approved plan. However, WVEA Section 22A-3-23(c)(3) contains an additional proviso which would authorize final bond release even if revegetation has not been established in accordance with the reclamation plan, if the quality of the untreated postmining water discharges equals or exceeds that of the premining discharges.

Therefore, the Director finds WVEA Section 22A-3-23(c)(3) inconsistent with Section 519(c)(3) of SMCRA. Under a separate notice appearing in today's Federal Register, he is proposing to preempt and supersede the proviso that final bond release may be made where the quality of untreated postmining water discharged is better than or equal to that of the premining discharges.

#### 7. Variance from Performance Standards

WVEA Section 22A-3-12 sets forth the general environmental protection performance standards for surface-mining operations. WVEA Section 22A-3-12(e) authorizes the Commissioner to

allow variances from the general performance standards. Section 515(e) of SMCRA authorizes the regulatory authority to grant variances from approximate original contour (AOC) requirements for alternative postmining land uses, provided certain conditions are met. Further, SMCRA requires that the regulatory authority promulgate specific regulations and establish procedures to govern the granting of such variances. However, the variance provision in WVEA Section 22A-3-12(e) is a general variance applicable to all performance standards and is not limited to variances from AOC for the purposes set forth in Section 515(e) of SMCRA, nor does it require that the Commissioner promulgate regulations and establish procedures governing the granting of such variances, in accordance with Sections 515 (e)(1) and (e)(5) of SMCRA.

Therefore, the Director finds that WVEA Section 22A-3-12(e) is inconsistent with Section 515(e) of SMCRA, and, under a separate notice in today's Federal Register, he is proposing to preempt and supersede this subsection.

#### 8. Operator Liability Limits

Section 521(a)(1) of SMCRA provides that a citizen shall be allowed to accompany an inspector during any inspection resulting from a complaint which the citizen filed. On January 12, 1984, the Director set aside that portion of the West Virginia statute which provided that neither the permittee nor his authorized agents or employees could be held civilly liable for any injury sustained by a citizen accompanying an inspector onto the mine site, except for willful and deliberate acts (49 FR 1489-1490). As discussed in Finding 27 of the November 16, 1983 Federal Register notice (48 FR 52042-52043) this provision is not in accordance with Section 521(a)(1) of SMCRA in that it could act as a constraint on citizens desiring to exercise their right to enter the mine site. Ordinary tort law principles are sufficient to determine whether a citizen injured on the mine site may hold the operator liable for such injury.

WVEA Section 22A-3-15(g) incorporates language identical to that previously set aside. Accordingly, the Director finds WVEA Section 22A-3-15(g) to be less stringent than Section 521(a)(1) of SMCRA. By a separate notice appearing in today's Federal Register, he is proposing to preempt and supersede the language limiting operator liability.

#### 9. Conflict of Interest Requirements

Section 517(g) of SMCRA prohibits any employee of the State regulatory

authority performing any function or duty under SMCRA from having a direct or indirect financial interest in any coal mining operation. The Federal regulations at 30 CFR Part 705 implement the financial interest restrictions of Section 517(g) of SMCRA and apply directly to all covered State employees. WVEA Section 22A-3-37(a) prohibits employees of the Reclamation Board of Review and the Division of Mines and Minerals who perform any function or duty under Article Three of Chapter 22A from having a direct or indirect financial interest in any surface-mining operation. This prohibition does not apply to the Commissioner, Deputy Commissioner or other employees of the Department of Energy who perform functions or duties under Article Three, nor would it apply to any employee performing a function or duty under SMCRA not included in Article Three. The conflict-of-interest provisions of the WVEA would thus not apply to employees performing duties exclusively associated with the abandoned mine land reclamation program under Article Three of Chapter 22.

However, because SMCRA Section 517(g) and 30 CFR Part 705 apply directly to employees of the State regulatory authority, the Director finds that these officials and other employees of the Department of Energy not expressly included in the conflict-of-interest provisions of WVEA section 22A-3-37(a) are directly covered by the Federal law and regulations. Furthermore, employees of the Division of Mines and Minerals and the Reclamation Board of Review who perform functions or duties under SMCRA other than those under Article Three of Chapter 22A of the WVEA are also directly covered by the Federal law and regulations. Therefore, the Director finds that the West Virginia statute is not inconsistent with SMCRA. Upon identification of the Department of Energy employees performing functions or duties under SMCRA, the Director will require submission of conflict-of-interest statements from all employees not covered by the State law.

#### 10. Permit Issuance to Persons in Violation of Federal Laws or Environmental Laws in Other States

Section 510(c) of SMCRA prohibits issuance of a permit where the violation schedule submitted by the applicant or other information available to the regulator authority indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of SMCRA or any other Federal or State law or regulation

pertaining to air or water environmental protection, until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority, department or agency which has jurisdiction over the violation. Furthermore, Section 510(c) of SMCRA prohibits issuance of a permit to an applicant after a finding by the regulatory authority that the applicant, or the operator, controls or has controlled mining operations with a demonstrated pattern of willful violations of SMCRA of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of SMCRA.

WVEA section 22A-3-18(c) prohibits the issuance of a permit where information available to the Department indicates that any surface-mining operation located in West Virginia, owned or controlled by the applicant, is in violation of Article Three of Chapter 22A of the WVEA or other environmental laws or regulations. Furthermore, under certain conditions, this section prohibits permit issuance to any applicant after a finding by the Commissioner that the applicant or operator controls or has controlled mining operations with a demonstrated pattern of willful violations of Article Three. Section 510(c) of SMCRA does not limit these conditions to violations or patterns of violations of State law, nor does it limit the violations and patterns of violations considered to those occurring at operations located within the State. Therefore, the Director finds that WVEA section 22A-3-18(c) is inconsistent with SMCRA Section 510(c), and he is proposing, under a separate notice appearing in today's *Federal Register*, to preempt and supersede the limiting language.

#### 11. Demonstration Vineyards, Coordination with Commissioner of Labor in Permit Issuance, and Base Salary Increases

WVEA section 22A-3-13 establishes a pilot program for the growing of grapes on reclaimed areas, sections 22A-3-8(g) and 22A-3-20(a) require the Commissioner to coordinate with the Commissioner of Labor in issuing permits, and section 22A-3-5 increases the base salaries of surface-mining reclamation inspectors and supervisors.

These provisions have no Federal counterparts and the Director finds that they are not inconsistent with SMCRA or less effective than the Federal regulations, provided no Federal funds are spent for activities related to the pilot grape-growing program and the

Commissioner of Labor coordination process.

#### 12. Technical Amendments Needed

The WVEA contains a number of apparent typographical errors, most of which do not create any ambiguity in meaning. However, the Director finds that, to clarify meanings and avoid misinterpretation, West Virginia must amend its statute to correct the following errors:

- a. WVEA section 22A-1-1: The Division of Mines and Minerals is created under §22-1-7, not §22-1-6.
- b. WVEA section 22A-3-9a: This section uses the term "director" when "commissioner" is apparently intended.
- c. WVEA section 22A-3-9a(a)(6): The reclamation plan requirements are contained in Section 10, not 11.
- d. WVEA section 22A-3-9a(7): The insurance requirements are contained in Section 9, not 10.
- e. WVEA Section 22A-3-9a(d): This subsection is unclear and must be reworded to clarify its meaning and to be consistent with section 22-1-15, which reserves the authority to promulgate rules and regulations to the Commissioner.
- f. WVEA Section 22A-3-26(d): The requirements for operations two acres or smaller in size are contained in Section 9a, not 10a.
- g. WVEA Section 22A-3-3(w)(1): The punctuation omissions in the definition of "surface-mining operations," as discussed in Finding 4, need to be corrected.
- h. WVEA Section 22A-3-17(d) deals primarily with civil penalty assessment and collection procedures. To avoid confusion and to clarify that the appeal rights and procedures of Section 22A-3-17 (d)(3) apply to all orders of the Commissioner, and that the temporary relief provisions of Section 22A-3-17(d)(4) apply to all enforcement actions but not to civil penalty assessments, West Virginia must recodify both Section 22A-3-17 (d)(3) and (d)(4) as separate subsections.

#### 13. Alternative Bonding System

WVEA Section 22A-3-11(c)(2) provides that the Commissioner may approve an alternative bonding system under certain conditions. Section 509(c) of SMCRA and 30 CFR 800.11(e) provide that the Secretary, acting through OSM, may approve, as part of a State or Federal program, an alternative bonding system if it will achieve certain objectives and purposes. The Secretary has already approved an alternative bonding system as part of the West Virginia program (Finding 18.1, 46 FR 5926, January 21, 1981). Therefore, the

Director finds that the Commissioner may not implement any other alternative bonding system or amend the existing system until the proposal has been reviewed and approved by the Director.

WVEA Section 22A-3-11(g) provides that all special reclamation taxes collected as part of West Virginia's alternative bonding system shall be deposited in the special reclamation fund for use in reclaiming bond forfeiture sites where the site-specific bond proves insufficient. However, it also authorizes the Commissioner to "expend such amounts as are reasonably necessary to implement and administer the provisions of this chapter and chapters twenty-two-a and twenty-two-b of this code". This provision would allow expenditures from the fund for general administrative purposes not related to reclamation on forfeited sites, and for expenses associated with noncoal programs. The Secretary originally approved West Virginia's alternative bonding system on the condition that it obtain an actuarial study showing that the bond fund will always contain sufficient money to meet all anticipated needs. On October 29, 1982, West Virginia submitted the required study (Administrative Record No. WV 456), and, after reviewing the study, the Secretary removed this condition of approval on March 1, 1983.

However, this study did not consider the impact on the fund of authorizing expenditures for general administrative purposes or for non-coal programs.

Since WVEA Section 22-3-11(g) expands the range of allowable administrative expenditures, the Director, in accordance with Section 509(c) of SMCRA and 30 CFR 800.11(e), is requiring that West Virginia submit a new analysis demonstrating that the special reclamation fund can withstand all authorized administrative cost withdrawals without hampering the State's ability to reclaim all bond forfeiture sites in accordance with their approved reclamation plans in a timely manner.

#### 14. NPDES Program

WVEA Section 22A-3-40 transfers all permitting, enforcement and rulemaking authority for surface-mining operations under the National Pollutant Discharge Elimination System (NPDES) from the Division of Water Resources within the Department of Natural Resources to the Department of Energy. Approval of this transfer can be granted only by the Administrator of the U.S. Environmental Protection Agency. The Director's approval of the WVEA shall not be

construed as approving the transfer of any NPDES authority or functions.

#### IV. Public Comment

The Director solicited public comment on the proposed amendment in the May 29, 1985 Federal Register. [50 FR 21661-21662]. The Director received eleven written comments prior to the close of the comment period on June 28, 1985. In addition, eleven statements were presented at the public hearing held on June 18, 1985, in Charleston, West Virginia. A complete list of the commenters and a copy of the transcript of the hearing can be found in the West Virginia Administrative Record (Administrative Record Nos. WV 665 and WV 666).

Pursuant to Section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were also solicited from various Federal agencies, with comments received from the Advisory Council on Historic Preservation, the Soil Conservation Service of the U.S. Department of Agriculture, the Corps of Engineers of the U.S. Department of the Army, and the Mine Safety and Health Administration of the U.S. Department of Labor.

The following is a summary of all comments received on the proposed program amendment and the Director's response to those comments.

#### Federal Agency Comments

1. The Advisory Council on Historic Preservation stated that the likelihood exists that implementation of the State program will result in adverse effects upon properties included in or eligible for the National Register of Historic Places. However, since the Council did not identify any specific provisions of the State program which could create these adverse effects, the Director is unable to address the Council's concerns. The WVEA does not alter any of the previously approved provisions concerning historic and cultural resources.

2. The Soil Conservation Service commented on several provisions pertaining to requirements for oil and gas operations. Since OSM does not regulate the oil and gas industry and is not reviewing or approving those portions of the WVEA concerning oil and gas, the Director cannot address these concerns.

3. The Mine Safety and Health Administration (MSHA) stated that SMCRA section 515(b)(12) requires that all mining activities within 500 feet of an active or abandoned underground mine be "jointly approved by the regulatory authorities concerned with surface mine regulations and the health and safety of

mining" and that previous interpretations of this statement included MSHA. However, MSHA noted that WVEA § 22A-3-12(b)(13) requires only that the Commissioner approve such activities.

Although the WVEA requires only the approval of the Commissioner, the State's regulations (§ 6B.07(f)) also require MSHA's approval of surface activities conducted within 500 feet of an underground mine not totally abandoned. This provision is no less stringent than SMCRA § 515(b)(12) and is no less effective than 30 CFR 816.79(b) since the Federal regulations require MSHA approval only of activities conducted within 500 feet of active underground mines.

4. MSHA also expressed concern that, contrary to the cited Federal regulations, the WVEA does not require MSHA approval of (a) blasting [30 CFR 780.13(c)], (b) diversion of water into underground mine workings, within 500 feet of active or abandoned underground mines [30 CFR 816.41(i) and 817.41(h)] and (c) disposal of coal mine waste in underground mine workings [30 CFR 816.71(j), 817.71(j), 816.81(f) and 817.81(f)].

All of the required provisions are contained in the approved State regulations in the following sections: (a) 4C.05(f); (b) 6B.04(a)(5), 7B.04(f)(5) and 8B.04(d)(5); and (c) D.05.i. However, the Federal regulations at 30 CFR 780.13(c) do not require MSHA approval blasting within 500 feet of an abandoned underground mine.

#### Public Comments

1. Several commenters expressed concern that the Commissioner and other individuals who perform functions and duties under SMCRA, would not be subject to the restrictions on financial interests contained in the Federal law and regulations. The Director has determined that all employees of the State regulatory authority performing any function or duty under SMCRA will be subject to the financial interest restrictions of SMCRA section 517(g) and 30 CFR Part 705, as discussed in Finding 9 above.

2. Several commenters addressed the lack of civil service protection for certain employees of the Department. In addition, several commenters stated concern over the removal of the Reclamation Division from the Department of Natural Resources (DNR). They felt that the purpose of DNR traditionally has been the exploration, conservation, development, protection, enjoyment and use of the natural resources of the State. The commenters stated that a program charged with the

protection and regulation of these areas was now being placed in an agency charged with the promotion of economic development. Other commenters felt that the transfer of the Reclamation Division to the Department of Energy would weaken protection of environmental resources and fish and wildlife, since the Reclamation Division would no longer be able to obtain comments from the Water Resources and Fish and Wildlife divisions of DNR.

While the Director has reviewed the concerns expressed by the various commenters, the Federal law contains no requirement that civil service protection be provided to employees of the State regulatory authority or that a particular agency be designated as the regulatory authority. Moreover, the West Virginia program does provide for notification of various appropriate Federal and State agencies of an applicant's intent to mine a particular tract of land [WVEA section 22A-3-20]. All interested agencies, including the Water Resources and the Fish and Wildlife divisions of DNR, will thus have the opportunity to comment on all mining permit applications.

3. Several commenters stated that provisions of WVEA section 22A-3-9a, establishing special standards for operations two acres or smaller in size, were inconsistent with the requirements of Federal law. Specifically, they expressed concern that the provisions excluded haul roads and spoil storage sites from the calculation of the area of the operation, that they allowed lesser permitting and bonding standards, and that they do not address the potential for several two-acre sites to be mined by the same operator in the same area. The Director has addressed these concerns in Finding 5 above.

4. Several commenters stated that the definition of surface-mining operations as contained in WVEA section 22A-3-3-(w) is inconsistent with Federal law and recent court decisions concerning the phrase "at or near the mine site". The Director has addressed these concerns in Finding 4 above.

5. One commenter stated that the exemption of existing structures and facilities from design criteria if such structures meet the performance standards is contrary to the Federal regulations which provide this exemption only for structures existing on the date of approval of the State program. The commenter suggested that the language of WVEA section 22A-3-29(b) seems to exempt structures constructed between the date of approval of the State program (January 21, 1981) and the effective date of the

WVEA (July 11, 1985). The Director finds that this situation will not exist, since section 2.44 of the West Virginia regulations defines "existing structure" as "a structure or facility . . . for which construction began prior to January 18, 1981," a definition which the Secretary has found to be no less effective than the corresponding Federal definition.

6. One commenter stated that under the WV SCMR, the Director, as head of the DNR, had powers delegated to him by provisions of State law other than those contained in the surface mining law. The Director was thus empowered to take certain actions which the Commissioner could not require under the authority provided him by the WVEA.

While it may be true that the Director of DNR has broader powers than those provided to the Commissioner by the WVEA, the approval of the West Virginia program was not based upon the authority to require actions which are over and above those required by SMCRA. The approval of the West Virginia program on January 21, 1981, was based upon the authority provided by WV SCMR, which authority was found to be no less stringent than that required by SMCRA. Similarly, the WVEA provides the Commissioner with the authority needed to implement and enforce the provisions of the West Virginia program.

7. Several commenters stated that, if the Director conditionally approved the amendment, he should require correction of all deficiencies prior to July 11, 1985, the effective date of the WVEA. The commenters stated that the West Virginia Legislature can be called into special session on three days notice and that this would allow sufficient time for correction of all deficiencies prior to the effective WVEA's date. The commenters also requested that, if the Director does not require that all corrections be made prior to the effective date, he should do so as soon after that date as possible.

As discussed in the "Director's Findings" section above, the Director is proposing to preempt and supersede certain provisions found inconsistent with the Federal law and less effective than the Federal regulations, and he is requiring additional amendments to other issues.

8. Several commenters expressed concern with WVEA section 22-1-19, which, in effect, repeals existing law effective July 11, 1985, and section 22-1-20 which provides that the reorganization shall take effect upon issuance of a proclamation by the Governor that the necessary Federal approvals have been received. The commenters stated that OSM may not

grant approval of the amendment prior to July 11, and that a period of time would thus exist during which the State would not have a legally effective surface mining law. The Director's approval of this amendment will prevent this situation from occurring.

9. One commenter expressed concern with the number of typographical, technical and clerical errors and inconsistencies contained in the WVEA. The commenter provided only one specific example of these errors, dealing with provisions concerning the salary levels of reclamation inspectors and supervisors. The Director has attempted to identify all such errors in his review, requiring correction of those which appear to create ambiguities in meaning, as discussed in Finding 12 above.

10. One commenter objected to the concentration of authority in the Commissioner, a concern relating to the difference between the definition of "Commissioner" contained in the WVEA and the corresponding definition of "Director" contained in the now repealed WV SCMR. The Director has addressed this concern in Finding 3 above.

11. One commenter stated that WVEA section 22A-1A-6 provides that the Director of the Division of Mines and Minerals shall take an oath of office prescribed by Section Five, Article Twelve of the West Virginia Constitution, although the correct citation is Section Five, Article Four. The Director's review found that WVEA section 22-1-9 contains a similar requirement with the correct citation.

#### V. Director's Decision

The Director, based on the above findings, is approving the May 20, 1985 amendment to the West Virginia program, with the exception of those provisions which he has determined to be inconsistent with SMCRA or the Federal regulations. In addition, as indicated in the findings, a number of program amendments will be required. The Director has notified West Virginia, pursuant to 30 CFR 732.17, that certain required program amendments will be necessary. The Federal rules at 30 CFR Part 948 are being amended to implement this decision. The Director is also reorganizing 30 CFR Part 948 for purposes of clarity and administrative convenience.

Further, for those provisions which the Director has determined to be inconsistent with SMCRA or the Federal regulations, OSM is giving notice, under Section 505 to SMCRA and 30 CFR 730.11(a), of that determination and is proposing to preempt and supersede those specific provisions. A separate

notice to that effect is being published in the *Federal Register* today; it provides a 30-day period for public comment.

#### Effect of Director's Decision

Section 503 of SMCRA establishes that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, the Secretary's regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSM as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) clearly prohibit any unilateral changes to approved State programs. In his oversight of the State program, the Director will recognize only the statutes and regulations approved by him, and will require the enforcement by the State of only such provisions. Therefore, the provisions that the Director is approving today will take effect on the specified date for purposes of the West Virginia program. Those provisions the Director has not approved today may not be implemented in any manner until such time as the Director approves them.

#### VI. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* The rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

**List of Subjects in 30 CFR Part 948**

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: July 8, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

**PART 948—WEST VIRGINIA**

30 CFR Part 948 is amended as follows:

1. The authority citation for Part 948 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 948.10 is revised to read as follows:

**§ 948.10 State regulatory program approval.**

The West Virginia State program, as submitted on March 3, 1980, as clarified on July 16, 1980, and as resubmitted on December 19, 1980, is conditionally approved, effective January 21, 1981. Beginning on that date and continuing until July 11, 1985, the Department of Natural Resources was deemed the regulatory authority in West Virginia for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Beginning on July 11, 1985, the Department of Energy shall be deemed the regulatory authority, pursuant to the program transfer provisions of the Enrolled Committee Substitute for House Bill 1850 as signed by the Governor of West Virginia on May 3, 1985.

Copies of the conditionally approved program, as amended, are available at:

(a) Office of Surface Mining, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301. Telephone: (304) 347-7158.

(b) Office of Surface Mining, 1100 "L" Street NW., Room 5124, Washington, D.C. 20240. Telephone: (202) 343-4855.

(c) West Virginia Department of Energy, Division of Mines and Minerals, 1615 Washington Street, East Charleston, West Virginia 25305. Telephone: (304) 348-3267.

3. 30 CFR 948.12 is amended by revising the section heading and paragraph (a) and by adding paragraphs (c), (d), (e), (f) and (g) to read as follows:

**§ 948.12 State program provisions found inconsistent with Federal law and less effective than Federal regulations.**

(a) Section 22A-3-15(g) of the Code of West Virginia is found inconsistent with Section 521(a)(1) of SMCRA to the extent that it states: "Provided, That

except for deliberate and willful acts, the permittee, his authorized agent or employees, and the inspector whom such person is accompanying, shall not be held civilly liable for any injury to such person during the inspection trip."

(c) Section 22A-3-3(w)(2) of the Code of West Virginia is found inconsistent with Section 701(28) of SMCRA to the extent that it states: "Provided, however, That permanent facilities not within the area being mined and not directly involved in the excavation, loading, storage, or processing of the coal shall not be subject to the provisions of this article. Such facilities include, but are not limited to, offices, garages, bathhouses, parking areas, and maintenance and supply areas."

(d) Section 22A-3-9a(a)(8) of the Code of West Virginia is found less effective than 30 CFR 700.11(b) and the definition of "affected area" at 30 CFR 701.5 to the extent that the phrase "exclusive of roadways and temporary spoil placement" could be interpreted as excluding such areas when determining the size of the affected area.

(e) Section 22A-3-23(c)(3) of the Code of West Virginia is found inconsistent with Section 519(c)(3) of SMCRA to the extent that it states: "Provided, however, That such a release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site."

(f) Section 22A-3-12(e) of the Code of West Virginia is found inconsistent with Section 515(e) of SMCRA.

(g) Section 22A-3-18(c) is found inconsistent with Section 510(c) of SMCRA to the extent that it limits its applicability to surface-mining operations "located in the State of West Virginia" and to patterns of willful violations "of this article."

4. 30 CFR 948.15 is amended by redesignating existing paragraphs (a) and (b) as (e) and (f), respectively, adding paragraphs (a) through (d), which were previously summarized in 30 CFR 948.10, and adding paragraph (g) to read as follows:

**§ 948.15 Approval of regulatory program amendments.**

(a) West Virginia's coal refuse disposal regulations, as submitted to OSM on October 29, 1981, are approved effective May 11, 1982, subject to the conditions set forth in § 948.11. The revised regulations replace Section 10 of West Virginia's surface mining reclamation regulations contained in the State's conditionally approved program of January 21, 1981.

(b) The amendment to Section E.03 of the State's coal refuse disposal regulations, which was submitted to OSM on June 17, 1982, is approved effective September 10, 1982.

(c) The following amendments, as submitted to OSM on September 14, 1982, and October 29, 1982, are approved in part effective March 1, 1983: West Virginia's revised surface mining reclamation regulations promulgated on October 28, 1982, and an actuarial study regarding West Virginia's alternative bonding system.

(d) The following regulatory and statutory amendments submitted to OSM on February 16, April 29, June 15 and September 13, 1983, which were intended to satisfy the remaining conditions of approval on the West Virginia program, are approved effective July 15, 1983, to coincide with the date of expiration of the State's emergency regulations and are subject to the conditions set forth in § 948.11: West Virginia's revised surface mining reclamation regulations as filed with the West Virginia Secretary of State on February 3, 1983, and submitted on February 14, 1983, along with the notice that the Department of Natural Resources Technical Handbook of Mining Operations will now serve as a technical guideline, rather than regulation; amendments to the West Virginia Surface Coal Mining and Reclamation Act as submitted on April 29, 1983; revisions to the West Virginia surface mining reclamation regulations as submitted on June 13, 1983; and further revisions to the State's surface mining reclamation regulations dated July 15, 1983, and submitted on September 13, 1983, concerning applicability, the inclusion of new bond release procedures for interim program permits, the deletion of the incidental mining requirements at Section 9 of its regulations and the correction of typographical and punctuation errors in its regulations.

(e) The following amendment submitted to OSM on January 12, 1984, as modified on June 18, 1984, is approved effective September 20, 1984: West Virginia's blaster certification program, as contained in the proposed West Virginia Administrative Regulations, Department of Mines, Chapter 22-4 Series —, submitted to OSM on June 18, 1984, and all other items as submitted by West Virginia on January 12, 1984, and modified on June 18, 1984. This approval is contingent on promulgation of the above referenced proposed regulations.

(f) The following amendment submitted to OSM on November 20, 1984, is approved effective April 23, 1985: Amendments to West Virginia's blaster certification program, as contained in the proposed West Virginia Administrative Regulations, Department of Mines, Chapter 22-4 Series —, Section 6.01(B) and Section 9, submitted to OSM on November 20, 1984. This approval is contingent upon the State's promulgation of the proposed regulations in the identical form submitted for OSM's review and approval.

(g) The following amendment, as submitted to OSM on May 20, 1985, and clarified on April 24, May 10, May 20, and May 28, 1985, is approved, with the exceptions listed in 30 CFR 948.12 (a), (c), (d), (e), (f), and (g), effective July 11, 1985: The Enrolled Committee Substitute for House Bill 1850, which revises the Code of West Virginia to provide for creation of a Department of Energy and the transfer of program authority from the Department of Natural Resources to the Department of Energy.

5. 30 CFR 948.16 is amended by adding paragraphs (b) and (c) to read as follows:

**§ 948.16 Required program amendments.**

(b) By October 11, 1985, West Virginia must submit an actuarial study or other comprehensive analysis demonstrating that sufficient money will be available in the special reclamation fund both to complete the approved reclamation plans for any areas which may be in default at any time and to cover all administrative costs allowed under section 22A-3-11(g) of the Code of West Virginia.

(c) By March 15, 1986, West Virginia must submit copies of statutory revisions to correct or otherwise eliminate certain errors in Chapter 22A of the Code of West Virginia as follows:

(1) Section 22A-1-1 must be revised to state that the Division of Mines and Minerals is created under section 22-1-7, not section 22-1-6.

(2) Section 22A-3-3(w)(1) must be revised to insert a semicolon between "reclamation" and "in situ" and a comma between "cleaning" and "concentrating".

(3) Section 22A-3-9a must be revised throughout to replace "director" with "commissioner" to maintain consistency with the West Virginia Energy Act as a whole and section 22-1-15 in particular.

(4) Section 22A-3-9a(a)(6) must be revised to state that the reclamation plan requirements are contained in Section 10, not Section 11.

(5) Section 22A-3-9a(a)(7) must be revised to state that the insurance requirements are contained in Section 9, not Section 10.

(6) Section 22A-3-9a(d) must be reworded to clarify its meaning.

(7) Section 22A-3-26(d) must be revised to state that the requirements for operations two acres or smaller in size are contained in Section 9a, not 10a.

(8) Section 22A-3-17(d)(3) must be recodified as a separate subsection to clarify that appeal rights and procedures apply to all notices, orders and decisions of the Commissioner, not just those relating to civil penalty assessments.

(9) Section 22A-3-17(d)(4) must be recodified as a separate subsection to clarify that temporary relief provisions apply to all enforcement actions and orders, but not to civil penalty assessments.

6. 30 CFR 948.20 is revised to read as follows:

**§ 948.20 Approval of State abandoned mine land reclamation plan.**

The West Virginia Abandoned Mine Reclamation Plan as submitted on October 29, 1980, and as amended December 12, 1980, is approved effective February 23, 1981. Copies of the approved plan are available at the following locations:

(a) West Virginia Department of Energy, Division of Mines and Minerals, 1615 Washington Street, East, Charleston, West Virginia 25305. Telephone (304) 348-3267.

(b) Office of Surface Mining, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301. Telephone: (304) 347-7158.

(c) Office of Surface Mining, 1100 L Street, NW., Room 5124, Washington, D.C. 20240. Telephone: (202) 343-4855.

7. 30 CFR 948.25 is added as follows:

**§ 948.25 Approval of abandoned mine land reclamation plan amendments.**

(a) The following amendment as submitted to OSM on May 20, 1985, and clarified on April 24, May 10, and May 20 and May 28, 1985, is approved: The Enrolled Committee Substitute for House Bill 1850, which revised the Code of West Virginia to provide for the creation of a Department of Energy and the transfer of program authority from the Department of Natural Resources to the Department of Energy.

[FR Doc. 85-16510 filed 7-10-85; 8:45 am]

BILLING CODE 4310-05-M

**30 CFR Part 948**

**Approval of Amendments and Removal of Conditions; West Virginia Permanent Regulatory Program**

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

**ACTION:** Final rule.

**SUMMARY:** The Secretary is announcing the approval in part and disapproval in part of certain amendments to the West Virginia permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the removal or modification of some of the conditions placed on his approval of the State's program. On March 30, 1984, October 30, 1984, and June 14, 1985, West Virginia submitted modifications to its surface mining reclamation and coal refuse disposal regulations. The amendments are intended to satisfy the remaining fifteen conditions of approval concerning auger mining, coal refuse disposal, blasting, transfer of wells, permit approval, revegetation, suspension or revocation of permits, stabilization of rills and gullies, subsidence, Mine Safety and Health Administration (MSHA) approval of permit applications and the exemption for coal extraction incident to government-financed highway or other construction. Also, the October 30th amendment contains revised civil penalty assessment procedures developed by the State to identify assessable and non-assessable violations and to satisfy concerns raised by OSM regarding the State's implementation of its approved civil penalty system.

After providing opportunity for public comment and conducting a thorough review of the program amendments in accordance with 30 CFR 732.17, the Secretary has decided to approve certain modifications contained in the amendments and to remove some of the conditions of approval. This decision is being made retroactive to August 27, 1984, to coincide with the promulgation of the State's surface mining reclamation and coal refuse disposal regulations.

**EFFECTIVE DATE:** August 27, 1984.

**ADDRESSES:** Copies of the amendments to the West Virginia program and all written comments received on the proposed amendments are available for public review and copying at the OSM Headquarters Office, the OSM Charleston Field Office and the office of the State regulatory authority at the