

*et seq.*). The program amendment consists of changes to the W. Va. Code as amended by Senate Bill 603. The amendment concerns reclamation plan requirements at W. Va. Code 22–3–10, and authorizes the submittal and inclusion of master land use plans for postmining land use in reclamation plans. The submittal also contains revisions to provisions concerning the Office of Coalfield Community Development at W. Va. Code 5B–2A. The amendment is intended to improve the effectiveness of the West Virginia program.

We announced receipt of the proposed amendment in the June 20, 2001, **Federal Register** (66 FR 33032). 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 (Administrative Record Number WV–1219). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 20, 2001. We received comments from two Federal agencies.

By letter dated August 12, 2002 (Administrative Record Number WV–1326), the WVDEP sent us additional proposed changes as amended by Senate Bill 698. The submittal consists of changes to the W. Va. Code at section 5B–2A concerning the Office of Coalfield Community Development. The submittal also included an Emergency Rule outlining revisions to State regulations at Code of State Regulations (CSR) 145–8 concerning Community Development Assessment and Real Property Valuation Procedures for Office of Coalfield Community Development.

We announced receipt of the proposed amendment in the November 6, 2002, **Federal Register** (67 FR 67576). 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 (Administrative Record Number WV–1343). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 6, 2002. We did not receive any comments.

### III. OSM's Findings

Following are the findings we made pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 concerning the proposed amendments to the West Virginia program. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

#### 1. W. Va. Code 22–3–10. Reclamation Plan Requirements

New subsection 22–3–10(b) is added, and existing subsection (b) is relettered as (c). New subsection (b) is added to read as follows:

(b) Any surface mining permit application filed after the effective date of this subsection may contain, in addition to the requirements of subsection (a) of this section, a master land use plan, prepared in accordance with article two-a, chapter five-b of this code, as to the post-mining land use. A reclamation plan approved but not implemented or pending approval as of the effective date of this section may be amended to provide for a revised reclamation plan consistent with the provisions of this subsection.

We note that the State inadvertently omitted language from a version of the proposed amendment submitted to us on May 21, 2001. Specifically, the phrase “or pending approval as of the effective date of this section” was not identified in the State’s draft statutory language. Consequently, we did not include the quoted phrase in our proposed rule announcement published in the **Federal Register** on June 20, 2001. The language was, however, identified in Engrossed Committee Substitute for Senate Bill 603 and included in all materials available for public review at OSM’s Charleston Field office. The language was also included in all materials we provided Federal agencies for review and comment. We believe that the omission does not change the basic intention of the proposed amendment at W. Va. Code 22–3–10(b) and, therefore would not affect the basis of our decision on the proposed amendment.

In addition, and related to the above amendment, the State amended the CSR at 145–8 by adding, among other changes, section six concerning master land use plans. Subsection CSR 145–8–6.6 provides that an operator may include, in a surface mining permit application, a master land use plan which addresses postmining land uses in the reclamation plan developed pursuant to W. Va. Code 22–3–10. The provision also provides that an operator may amend a reclamation plan approved but not implemented or a reclamation plan pending approval by including a master land use plan.

Subsection CSR 145–8–6.6.a. further provides that any modification in the postmining land use during mining must be made in accordance with CSR 38–2–7.3.a. and 3.28. These sections contain the criteria for approving alternative postmining land uses and the permit revision requirements of the State’s approved program. The proposed rule clarifies that any modification in

the postmining land use must be done in accordance with the approved State program, even if change is due to the master land use plan.

Subsection CSR 145–8–6.7 provides that master land use plans must be approved by WVDEP as part of the operator’s reclamation plan before the master land use plan may be implemented. This provision clarifies the intended relationship of the reclamation plan required by W. Va. Code 22–3–10 and master land use plans, which are authorized by W. Va. Code 22–3–10(b) to be included in the reclamation plans of permit applications. Specifically, CSR 145–8–6.7 provides that a master land use plan must first be approved by WVDEP as part of the operator’s proposed reclamation plan. We understand this to mean that in order to be approved as part of the reclamation plan, the master land use plans must be consistent with the reclamation plan requirements at W. Va. Code 22–3–10(a). In addition, CSR 145–8–6.6 clarifies that any modifications in the postmining land use that may occur during mining must be approved in accordance with CSR 38–2–7.3.a and 3.28.

We find that the proposed amendment to W. Va. Code 22–3–10(b) does not render the West Virginia program less stringent than SMCRA section 508 concerning reclamation plan requirements. Our finding is based on our understanding that to receive approval by the Secretary of WVDEP as part of a permit application’s reclamation plan, master land use plans must be consistent with the reclamation plan requirements at W. Va. Code 22–3–10(a). If, in future reviews, we should determine that the State is applying this provision inconsistent with this finding, a further amendment may be required.

#### 2. W. Va. Code 5B–2A. Office of Coalfield Community Development

W. Va. Code 5B–2A has never been approved by OSM and is not currently part of the West Virginia program. W. Va. Code 5B–2A–1(g) clarifies that the purpose of W. Va. Code 5B–2A is to authorize the West Virginia development office to take a more active role in the long-term economic development of communities in which surface coal mining operations are prevalent. W. Va. Code 5B–2A–4 establishes the Office of Coalfield Community Development within the West Virginia development office. W. Va. Code 5B–2A–1(g) also authorizes the West Virginia development office to establish a formal process to assist property owners in the determination of the fair market value where the property