

owner and the coal company voluntarily enter into an agreement relating to the purchase and sale of the property. W. Va. Code 5B-2A-2 specifies that the provisions of W. Va. Code 5B-2A are not applicable to either underground coal mining operations (surface operations or the surface impacts of underground mining) or operations that qualify for assistance under the small operator assistance program (SOAP).

We understand that the proposed revisions to W. Va. Code 5B-2A do not supersede any provisions of the approved program and, therefore, we find that the proposed amendments do not need to be approved under the Federal regulations at 30 CFR 732.17(b) as a part of the State program. If, in future reviews, we should determine that the State is applying these provisions inconsistent with this finding, a further amendment may be required.

We note that there are several instances in which cross-references to provisions within the approved West Virginia program appear in W. Va. Code 5B-2A. Although most of these cross-references appear to not affect the implementation or effectiveness of the approved program, it appears that others may. For example, W. Va. Code 5B-2A-6(a)(1) incorporates by reference the notice of violation (NOV) provisions at W. Va. Code 22-3-17. It is not clear whether this cross-reference merely incorporates the provisions at W. Va. Code 22-3-17 for the purposes of W. Va. Code 5B-2A and does not otherwise affect the approved program. However, since this provision was not part of this proposed amendment, but rather is part of existing West Virginia law, we cannot decide its effect on the West Virginia program as a part of this rulemaking. Therefore, at a future date, we will discuss the implications of these cross-references with the WVDEP and the Office of Coalfield Community Development to determine their effect on the approved West Virginia program.

3. CSR 145-8. Community Development Assessment and Real Property Valuation Procedures for Office of Coalfield Community Development

The CSR 145-8 has never been approved by OSM and is not currently part of the West Virginia program. We will first decide whether CSR 145-8 affects the implementation or effectiveness of the West Virginia program and, therefore, must be reviewed and approved as a part of the West Virginia program.

The CSR 145-8-1 clarifies the scope of the rules, and provides that CSR 145-8 establishes the procedures for the

creation of community impact statements by operators, and the process to develop coalfield community development procedures which include asset development goals and infrastructure needs. The CSR 145-8 also establishes the criteria for the development of a master land use plan by local and county regional development or redevelopment authorities, and the procedure for establishing the value of property to assist property owners who desire to voluntarily sell their property to an operator.

Section CSR 145-8-6 concerns 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 that 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 145-8-6.7 provides that the master land use plan must be approved by the department (WVDEP) as part of the operator's reclamation plan before the master land use plan may be implemented. This provision helps to clarify the intended relationship of master land use plans with the reclamation plan required by W. Va. Code 22-3-10. That is, a master land use plan must first be approved by WVDEP as part of the operator's proposed reclamation plan, before the master land use plan can be implemented. As we discussed above at Finding 1, master land use plans must also be consistent with the reclamation plan requirements at W. Va. Code 22-3-10(a), otherwise the WVDEP could not approve the master land use plan as part of the reclamation plan.

There are several instances in which citations to provisions within the approved West Virginia program appear in these rules. And there are several references to aspects of the approved program, such as to postmining land use, the intended blasting plan, and surface mining operations. However, such citations and references do not affect the implementation or effectiveness of the approved program. For example, CSR 145-8-2.15 provides for a definition of "surface mining operations" that applies only to CSR 145-8. Subsection CSR 145-8-2.15 provides that the definition of surface mining operations does not include (at subdivision 2.15.b) coal extraction authorized as an incidental part of development of land for commercial,

residential, industrial or civic use. This provision has no effect on the approved program, because it only means that coal extraction authorized as an incidental part of development of land for commercial, residential, industrial or civic use would not be subject to the requirements of CSR 145-8. However, these activities would still be subject to the requirements of the State's Surface Coal Mining and Reclamation Act at W. Va. Code 22-3-1 *et seq.* and its implementing regulations. To help avoid any possible confusion, we note that State rules at CSR 38-2-23 concerning special authorization for coal extraction as an incidental part of development of land for commercial, residential, industrial or civic use have not been approved by OSM and are not, therefore, part of the approved West Virginia program. See the May 5, 2000, **Federal Register** (65 FR 26130), for information concerning our decision not to approve the provisions at CSR 38-2-23.

Nevertheless, we find that none of the proposed provisions of CSR 145-8 supersede or affect the implementation or effectiveness of the West Virginia program and, therefore, do not need to be approved as a part of that program.

IV. Summary and Disposition of Comments

Public Comments

No public comments were received in response to our requests for comments from the public on the proposed amendments.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on July 3, 2001, and October 4, 2002, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record Numbers WV-1221 and WV-1337). On May 21, 2001, and October 30, 2002, the U.S. Department of Labor, Mine Safety and Health Administration (MSHA), responded and stated that the amendments have no impact on MSHA's enforcement activities or do not conflict with MSHA's regulations and policies (Administrative Record Numbers WV-1229 and WV-1342).

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