

the Governor of West Virginia on June 21, 2002; it authorized WVDEP to promulgate revisions to its Surface Mining and Reclamation Regulations.

We announced receipt of the proposed amendments in the August 16, 2002, **Federal Register** (67 FR 53542) (Administrative Record Number WV-1322). In that notice, we also identified proposed amendments that we inadvertently omitted identifying in the June 6, 2002, **Federal Register** notice, including the new Coal Related Dam Safety Rules at CSR 38-4. The comment period closed on September 16, 2002. We received comments from the U.S. Department of Labor's Mine Safety and Health Administration, the U.S. Department of the Interior's Fish and Wildlife Service, and the U.S. Environmental Protection Agency.

These two submissions include amendments to CSR 38-2 that are intended to address required program amendments codified in the Federal regulations at 30 CFR 948.16 (rrrr), (ssss), (tttt), (uuuu), (vvvv), (xxxx), (yyyy), (zzzz), (bbbbb), (ccccc), (ddddd), (eeee), (ggggg), (hhhhh), (mmmmm), (nnnnn), and (qqqqq).

Revisions to the State's contemporaneous reclamation requirements are contained in the two amendment submittals discussed above. In order to expedite our review of the State's amendments to its contemporaneous reclamation provisions, we separated those amendments from the two amendment submittals discussed above. We published our findings and decision on the State's contemporaneous reclamation amendments in the December 3, 2002, **Federal Register** (67 FR 71832) (Administrative Record Number WV-1344).

The proposed new Coal Related Dam Safety Rules at CSR 38-4 are intended to address, in part, a letter we sent to the State on July 22, 1997 (Administrative Record Number WV-1071), in accordance with the Federal regulations at 30 CFR 732.17(d). The Federal regulation 30 CFR 732.17(d) provides that OSM must notify the State of all changes in SMCRA and the Federal regulations that will require an amendment to the State program. Such letters sent by us are often referred to as "732 letters." We separated the State's new Coal Related Dam Safety Rules at CSR 38-4 from the amendment submittals discussed above. We will render a final decision on those new rules at a later date as part of a program amendment that addresses the State's responses to 732 letters. For more information on the State's responses to 732 letters, see the proposed rule notice

in the January 12, 2001, **Federal Register** (66 FR 2866).

We also removed from these amendments the State's proposed rules at CSR 38-2-25 concerning the exemption for coal extraction incidental to extraction of other minerals. The proposed rules at CSR 38-2-25 were submitted in response to a 732 letter dated February 7, 1990 (Administrative Record Number WV-827), concerning exemption for coal extraction incidental to the extraction of other minerals removed for purposes of commercial sale (30 CFR part 702). We separated the proposed rules at CSR 38-2-25 from the amendment submittals discussed above, and we will publish our findings at a later date as part of the program amendment that addresses the State's responses to 732 letters. For more information on the State's responses to 732 letters, see the proposed rule notice in the January 12, 2001, **Federal Register** (66 FR 2866).

In addition, the proposed rules at CSR 38-2-3.12.a.1-2 regarding Subsidence Control Plans; 38-2-5.4.b.8 regarding Excavated Sediment Control Structures; 38-2-5.4.d.3 regarding Coal Processing Waste Dams; and 38-2-16.2.c.4 regarding Bonding for Subsidence Damage are identical to what we previously considered from the submitted West Virginia House Bill 2663. Each of those amendments was approved in our decision on WV-088, which was published in the **Federal Register** on May 1, 2002 (67 FR 21904) (Administrative Record Number WV-1300). Therefore, we will not reconsider those provisions here.

III. OSM's Findings

As discussed under "Submission of the Amendment," the State's submittal includes proposed amendments that would address required program amendments codified at 30 CFR 948.16. For the reasons discussed below, we are approving the proposed amendments as submitted on April 9, 2002, and June 19, 2002. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes and are approved here without discussion.

CSR 38-2 Surface Mining Reclamation Regulations

1. 38-2-2.31.b.1. Definition of Forestry

The definition of "forestry" has been amended by adding the words "for the production of wood or wood products." In its submittal of this amendment, WVDEP stated that it is intended to satisfy the required program amendment identified in the August 18, 2000,

Federal Register (65 FR 50409, 50411-12). The required program amendment codified at 30 CFR 948.16(rrrr) provides that CSR 38-2-2.31.b must be amended to define forestry to mean a postmining land use used or managed for the long term production of wood or wood products in accordance with the Federal definition of forestry under the definition of land use at 30 CFR 701.5. We find this change to be consistent with and no less effective than the Federal definition of "forestry" at paragraph (d) under the definition of "land use" at 30 CFR 701.5 and it can be approved. Therefore, the required program amendment codified at 30 CFR 948.16(rrrr) is satisfied and can be removed.

2. 38-2-2.43. Definition of Director

This definition was deleted. The definition was rendered obsolete due to the State's changing the Division of Environmental Protection to the Department of Environmental Protection and changing the title to secretary as defined at subsection 2.108. We find that the deletion does not render the West Virginia program less effective than the Federal regulations and can be approved.

3. 38-2-2.108. Definition of Secretary

This definition is new, and defines "Secretary" to mean the Secretary of the Department of Environmental Protection or the Secretary's authorized agent. We find that the definition does not render the West Virginia program less effective than the Federal regulations and can be approved.

4. 38-2-3.1.i.2. Permit Application Requirements and Contents

This provision is amended by deleting the word "performance" before the word "bond." As amended, the provision requires an applicant to identify whether it has "[f]orfeited a bond or similar security in lieu of bond." In its submittal of this amendment, WVDEP stated that the deletion of the word "performance" was intended to render the definition consistent with the Code of West Virginia (W. Va. Code). W. Va. Code 22-3-11(a), concerning bonding requirements, provides that a "penal bond" shall be furnished by the applicant and conditioned upon the operator faithfully performing all of the requirements of W. Va. Code 22-3 and of the permit. OSM had approved the statutory provision previously on October 4, 1995 (60 FR 51901). We find that the deletion of the term "performance" in its regulations does not render the West Virginia program