

render the West Virginia program less effective than the Federal regulations and can be approved. It is our understanding that this exception acknowledges the provision at CSR 38–2–7.4.b.1.G.1, concerning ground cover vegetation. CSR 38–2–7.4.b.1.G.1 authorizes the Secretary of the WVDEP to allow lesser or no vegetative cover under specified circumstances when mulch or other stabilizing practices have been used to protect all disturbed areas, unless it is demonstrated that the reduced vegetative cover is sufficient to control erosion and air pollution attendant to erosion regardless of slope (see Finding 9 above). Our determination that the addition of the language quoted above does not render the West Virginia program less effective than the Federal regulations is based upon our understanding that, where lesser vegetative cover is allowed, the vegetative cover must be sufficient to control erosion and air pollution attendant to erosion.

13. 38–2–7.4.b.1.I.3. Commercial Forestry and Forestry—Phase III Bond Release

This provision is amended by deleting the first word in the third sentence, and adding in its place the phrase “[a]bove and beyond all other standards in effect.” We find that this amendment clarifies that this provision is in addition to all other program requirements and does not render the West Virginia program less effective than the Federal regulations at 30 CFR 800.40 and can be approved.

14. 38–2–7.5.i.1.B. Homestead Roads

This provision is amended by adding, in the third sentence, the phrase “meet the primary road requirements of section 2.4 of this rule” immediately following the words “Highway standards.” It appears that the term “section 2.4” contains a typographical error, and should read “section 4.” Section “2.4” is actually the definition of “acid producing coal seam,” whereas section CSR 38–2–4 concerns “haulage-ways, roads or access roads.”

This proposed amendment is intended to address the required program amendment codified at 30 CFR 948.16(ggggg). The Federal requirement at 30 CFR 948.16(ggggg) provides that CSR 38–2–7.5.i.1.B be amended, or that the West Virginia program otherwise be amended, to clarify that roads which meet the definition of road at CSR 38–2–2.59 and 4.1 and that are to be retained as part of the postmining land use must be designated and constructed to meet the primary road requirements of CSR 38–2–4. The State has complied

with this requirement by requiring that “main roads” of homesteads shall meet the primary road requirements of section CSR 38–2–4. In addition, the county or State road authorities will accept responsibility for maintaining these homestead roads after mining. We are approving this amendment with the understanding that the apparent typographical error (“section 2.4”) is actually intended to be “section 4.” In addition, we are removing the required amendment at 30 CFR 948.16(ggggg) because it has been satisfied.

15. 38–2–7.5.i.3.Q. Homestead Water Reservoir

This provision is amended by adding a sentence to the end of this provision. The new sentence provides as follows: “The reservoir is subject to requirements under subsection 5.5 of this rule.” This amendment is intended to satisfy the required program amendment at 30 CFR 948.16(hhhhh).

The Federal requirement at 30 CFR 948.16(hhhhh) requires that CSR 38–2–7.5.i.3.Q be amended, or that the West Virginia program otherwise be amended, to require that all permanent impoundments approved for Homestead postmining land use must comply with CSR 38–2–3.6.b.1 and 5.5. We find that the proposed amendment satisfies the requirement to comply with CSR 38–2–5.5 and can be approved.

CSR 38–2–5.5 provides as follows:

5.5. Permanent impoundments. Those sediment control or other water retention structures or impounding structures to be left in place after final bond release shall be considered permanent and, if authorized by the Secretary as part of the permit application or a revision to a permit, may be left in accordance with the following requirements:

We understand CSR 38–2–5.5 to mean that a permanent impoundment may be left in place if approved by the Secretary of WVDEP as part of the permit application or a revision to a permit. Compliance with the permit requirements would, of course, include compliance with the requirement at CSR 38–2–3.6.b.1 for a narrative explaining the construction, modification, use, and maintenance of permanent impoundments. Therefore, we find that the required program amendment at 30 CFR 948.16(hhhhh) is fully satisfied and can be removed.

16. 38–2–7.5.i.10. Wetlands for Homesteads

This provision is amended by adding a sentence to the end of this provision. The new sentence provides as follows: “Any pond or impoundment left in place is subject to requirements under

subsection 5.5 of this rule.” We are approving the amendment because it does not render the West Virginia program less effective than the Federal regulations at 30 CFR 816.49(b).

17. 38–2–7.5.j.3.A. Soil for Homesteads

This provision is amended by adding the following definitions of O horizon and Cr horizon:

O horizon means the top-most horizon or layer of soil dominated by organic material derived from dead plants and animals at various stages of decomposition; it is sometimes referred to as the duff or litter layer or the forest floor. Cr horizon means the horizon or layer below the C horizon, consisting of weathered or soft bedrock including saprolite or partly consolidated soft sandstone, siltstone, or shale.

There are no Federal counterparts to the proposed definitions of “O” and “Cr” soil horizons. However, we find that the proposed definitions are not inconsistent with the Federal definition of “soil horizons” at 30 CFR 701.5 and can be approved.

18. 38–2–7.5.j.6.A. Ground Cover Vegetation for Homesteads

This provision is amended by deleting the word “excessive” in the fourth sentence, immediately prior to the word “erosion.” This amendment is intended to satisfy the required program amendment codified at 30 CFR 948.16(mmmmm). The Federal requirement at 30 CFR 948.16(mmmmm) provides that CSR 38–2–7.5.j.6.A should be amended by deleting the word “excessive.” We find that the proposed amendment satisfies the required program amendment codified at 30 CFR 948.16(mmmmm) and can be approved. In addition, 30 CFR 948.16(mmmmm) can be removed.

19. 38–2–7.5.j.6.B. Rills and Gullies Associated With Homesteads

This provision is being amended by adding the following language to the end of the existing provision:

And/or disrupt the approved postmining land use or the establishment of vegetative cover or cause or contribute to a violation of the water quality standards for the receiving stream.

As amended, this provision provides as follows:

7.5.j.6.B. The permittee may regrade and reseed only those rills and gullies that are unstable and/or disrupt the approved postmining land use or the establishment of vegetative cover or cause or contribute to a violation of the water quality standards for the receiving stream.

The Federal regulations at 30 CFR 816.95(b) require that rills and gullies that either (1) disrupt the postmining