

1258), West Virginia sent us another proposed amendment to its blasting provisions. The proposed amendment consists of several changes to blasting provisions in the W. Va. Code as contained in Enrolled Senate Bill 689, and changes to the Surface Mining Blasting Rule at CSR 199-1. Senate Bill 689 amends preblast survey requirements, site-specific blasting design requirements, and provisions concerning liability and civil penalties in the event of property damage. We note that the State submitted two versions of CSR 199-1. One version contained underlines of most of the proposed additions and strikethroughs of most of the language proposed for deletion. The second version of CSR 199-1 submitted by the State was a "clean" version with no underlines or strikethroughs of the proposed changes. It was this "clean" version, with sixteen additional revisions, that was adopted by the State Legislature. We announced receipt of the proposed amendment that the State sent us on November 28, 2001, including both versions of CSR 199-1, in the January 31, 2002, **Federal Register** (67 FR 4689) (Administrative Record Number WV-1267). 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 proposed amendment. The public comment period ended on March 4, 2002. We did not hold a hearing or meeting because no one requested one. We received comments from four Federal agencies.

The statutory revisions in Senate Bill 689 were also intended to address the required program amendments codified at 30 CFR 948.16(kkkk) and (llll) concerning preblast survey requirements, and (mmmm) concerning blasting requirements. To expedite our review of the State's responses to those required amendments, we separated those proposed changes from the submittal and published our approval of those provisions (W.Va. Code sections 22-3-13a(g) and 13a(j)(2), and 22-3-30a(a)) in the May 1, 2002, **Federal Register** (67 FR 21904, 21920) (Administrative Record Number WV-1300).

III. OSM's Findings

Following are findings we made concerning the amendments under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendments with one exception noted below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes, or recodification

changes resulting from these amendments and are approved here without discussion.

A. Revisions to the West Virginia Program That Are Substantively Identical to the Corresponding Provisions of SMCRA and the Federal Regulations, or That Were Previously Approved by OSM and Merely Copied to CSR 199-1, and Do Not Require Specific Findings

Code of West Virginia (W. Va. Code)

22-3-13a(a)(3) Preblast survey requirements (30 CFR 817.62(a))

Code of State Regulations (CSR)

199-1-1 General (30 CFR 816/817.61(a) and 850.1)

199-1-2.9 Definition of "blaster," in conjunction with CSR 38-2-3.1 (30 CFR 850.5)

199-1-2.25 Definition of "explosives," previously approved (30 CFR 816/817.61)

199-1-3.1 Blasting; General requirements (30 CFR 816/817.61(a) and (c)(1))

199-1-3.5 Blast record; previously approved (30 CFR 816/817.68)

199-1-3.6.a Blasting procedures (30 CFR 816/817.64(a),(2),(3); 816/817.67(a))

199-1-3.6.b Safety precautions (30 CFR 816/817.66(b),(c); 816/817.61(c)(3))

199-1-3.6.c Airblast limits (30 CFR 816/817.67(b))

199-1-3.6.d Flyrock (30 CFR 816/817.67(c))

199-1-3.6.e Access to blast area (30 CFR 816/817.66(c))

199-1-3.6.f Blast design (30 CFR 816/817.61(d))

199-1-3.6.g Underground mine (30 CFR 780.13(c))

199-1-3.6.h Scaled distance formulas (30 CFR 816/817.67(d)(2)(i), (d)(3))

199-1-3.6.j Seismograph recording; previously approved (30 CFR 816/817.67(d)(6))

199-1-3.6.k Maximum allowable ground vibration; previously approved (30 CFR 816/817.67(d)(5))

199-1-3.6.l Maximum airblast and ground vibration standards; previously approved (30 CFR 816/817.67(e))

199-1-3.7.b Blasting control for other structures; previously approved (30 CFR 816/817.67(d)(1))

199-1-4.11 Blasting crew; previously approved (30 CFR 850.13(a)(2))

Because these State provisions have been approved previously or contain language that is substantively identical to the corresponding Federal requirements, we find that they are no

less effective than those corresponding Federal requirements and can be approved without further discussion.

B. Revisions to West Virginia's Code and Regulations That Require Specific Findings

Code of West Virginia (W. Va. Code)

1. 22-3-13a(g) Preblast survey requirements. This provision provides that pre-blast surveys shall be submitted to the Office of Explosives and Blasting (Office) at least 15 days prior to the start of any "production blasting." The provision is amended by adding the following sentence: "Provided, That once all required surveys have been reviewed and accepted by the Office of Explosives and Blasting, blasting may commence sooner than fifteen days after submittal." We find that the amendment does not render the provision less effective than the Federal regulations at 30 CFR 816/817.62(d), which require that such surveys be promptly submitted to the regulatory authority, and can be approved.

We note that in our November 12, 1999, approval of this provision (64 FR 61507, 61510-61511) we approved W. Va. Code 22-3-13a(g) with the understanding that, as explained by the West Virginia Department of Environmental Protection (WVDEP) at that time, the time limits for submittal of pre-blast surveys at CSR 38-2-6.8.a.4. continue to apply to all blasting other than "production blasting." The State's submittal of the Surface Mining Blasting Rule at CSR 199-1-3.8.a, concerning pre-blast survey, provides that surveys, waivers or affidavits for each dwelling or structure within the pre-blast survey area shall be completed and submitted to the Office of Explosives and Blasting at least 15 days before any blasting may occur. The Federal regulations at 30 CFR 816/817.62(e) provide that surveys requested more than 10 days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting. In Finding B.10 below, on CSR 199-1-3.8, we conclude that the State's 15-day requirement does not render the State provision less effective than 30 CFR 816/817.62(e). Likewise, W.Va. Code 22-3-13a(g) does not conflict with the requirement that surveys requested more than 10 days before the planned initiation of blasting be completed by the operator before the initiation of blasting. Therefore, we find that the provisions are not inconsistent with the Federal preblast survey requirements, and we are approving the amendments to W. Va. Code 22-3-13a(g).