Dated: September 3, 1999.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1334.

2. In § 250.203, paragraph (f) is revised to read as follows:

§ 250.203 Exploration Plan.

* * * * *

(f) Within 2 working days after we deem the Exploration Plan submitted, the Regional Supervisor will send by receipted mail a copy of the plan (except those portions exempt from disclosure under the Freedom of Information Act and 43 CFR part 2) to the Governor or the Governor's designated representative and the CZM agency of each affected State. Consistency review begins when the State's CZM agency receives a copy of the deemed submitted plan, consistency certification, and required necessary data and information as directed by 15 CFR 930.78.

* * * * *

3. In § 250.204, paragraphs (i) and (j) are revised to read as follows:

§ 250.204 Development and Production Plan.

* * * * *

(i) We will process the plan according to this section and 15 CFR part 930. Accordingly, consistency review begins when the State's CZM agency receives a copy of the deemed submitted plan, consistency certification, and required necessary data and information as directed by 15 CFR 930.78.

(j) The Regional Supervisor will evaluate the environmental impact of the activities described in the Development and Production Plan (DPP) and prepare the appropriate environmental documentation required by the National Environmental Policy Act of 1969. At least once in each planning area (other than the western and central Gulf of Mexico planning areas), we will prepare an environmental impact statement (EIS) and send copies of the draft EIS to the Governor of each affected State and the executive of each affected local government that requests a copy. Additionally, when we prepare a DPP EIS and when the State's federally approved coastal management program requires a DPP NEPA document for use in determining consistency, we will forward a copy of the draft EIS to the State's CZM Agency. We will also make copies of the draft EIS available to any appropriate Federal Agency, interstate entity, and the public.

* * * * *

[FR Doc. 99–25499 Filed 9–30–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–082–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing its approval of amendments and its decision concerning the State's request that we reconsider certain decisions on a previous program amendment to the West Virginia permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises the West Virginia surface mining regulations concerning definitions of ''area mining operations'' and ''mountaintop mining operations;'' variances from approximate original contour in steep slope areas; subsidence control plans; permit issuance; construction tolerance; surface owner protection; and primary and emergency spillway designs. The previous amendment being reconsidered concerns subsidence regulations. The amendment is intended to improve the operational efficiency of the State program, and to make the regulations consistent with the counterpart Federal regulations.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Submission of the Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval in the January 21, 1981, **Federal Register** (46 FR 5915–5956). You can find later actions concerning the West Virginia program and previous amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

By letter dated May 5, 1999 (Administrative Record Number WV–1127), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to the West Virginia permanent regulatory program pursuant to 30 CFR 732.17. The amendment concerns changes to the West Virginia regulations made by the State Legislature in House Bill 2533 which was enacted on April 2, 1999. In addition, the WVDEP requested that OSM reconsider its disapproval of parts of CSR 38–2–3.12 (concerning subsidence control plan) and 38–2–16.2 (concerning surface owner protection) and remove the corresponding required regulatory program amendments specified in the February 9, 1999, **Federal Register** (64 FR 6201–6218) in light of the April 27, 1999, United States Court of Appeals decision on Case No. 98–5320.

We announced receipt of the proposed amendment in the May 27, 1999, **Federal Register** (64 FR 28771), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on June 28, 1999. No one requested an opportunity to speak at a public hearing, so none was held.

III. Director's Findings

Following, according to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the proposed amendment. Any revisions that we do not specifically discuss below concern nonsubstantive wording changes or revised paragraph notations to reflect organizational changes that result from this amendment.

1. *CSR 38–2–2.11 Definition of ''Area Mining Operation*.'' In this new definition, ''Area Mining Operation'' is defined to mean a mining operation where all disturbed areas are restored to approximate original contour (AOC) unless the operation is located in steep

slope areas and a steep slope AOC variance in accordance with subsection 14.12 of this rule has been approved. An area mining operation may remove all or part of coal seam(s) in the upper fraction of a mountain, ridge, or hill. However, it is not classified as a mountaintop operation for one or more of the following reasons:

2.11.a. The site may be restored to AOC; or

2.11.b. The entire coal seam may not be removed.

There is no Federal definition of the term ''area mining operation.'' However, we find that the term ''area mining operation'' does not include ''mountaintop-removal mining'' and is analogous with the Federal requirements relating to ''steep slope mining.'' Because the definition is not inconsistent with SMCRA or the Federal regulations it can be approved.

2. *CSR 38–2–2.78 Definition of ''Mountaintop Mining Operation.''* In this new definition, ''Mountaintop Mining Operation'' is defined to mean a mining operation that removes an entire coal seam or seam(s) in an upper fraction of a mountain, ridge, or hill and creating a level plateau or a gently rolling contour with no highwalls. The approved postmining land use must be in accordance with § 22–3–13(c)(3) of the West Virginia Code. We find the definition of ''mountaintop mining operation'' to be substantively identical to the Federal regulations governing ''mountaintop removal mining'' at 30 CFR 824.11(a)(2) and it is, therefore, approved.

3. *CSR 38–2–3.12 Subsidence control plan.* Subdivision 3.12.a.2. is amended to change the words ''could contaminate, diminish or * * *'' to read ''could be contaminated, diminish or * * *'' We find that this change helps to clarify the meaning of this provision and can be approved. However, the proposed change has not satisfied the required amendment at 30 CFR 948.16(aaaa). The second paragraph of subdivision 3.12.a.2. is amended by adding the word ''building'' to read as follows: ''A survey of the condition of all non-commercial building or residential * * *'' We find that the addition of the word ''building'' at Subdivision 3.12.a.2 is no less effective than 30 CFR 784.20(a)(3) and can be approved.

Subdivision 3.12.a.2.B. is amended to change the words ''Non-commercial building as used in this section means, other than * * *'' to read ''Non-commercial building as used in this section means any building, other than * * *'' We find that this change clarifies the meaning of this provision and can be approved. However, the required amendment at 30 CFR 948.16(cccc) still remains unsatisfied because the definition of ''non-commercial building'' does not include such buildings used on a temporary basis as provided by 30 CFR 701.5.

4. *CSR 38–2–3.32.b. Findings—permit issuance.* In the third paragraph, the name of the database ''Surface Mining Information System'' is deleted and replaced by ''Environmental Resources Information Network.'' We find that this name change more accurately describes the WVDEP's surface mine database management system. The proposed revision does not render the West Virginia program less effective than the Federal requirements and, therefore, can be approved.

5. *CSR 38–2–3.35 Construction tolerance.* This subsection is amended by adding the title ''Construction Tolerance.'' We find that this change clarifies the purpose of the provisions at subdivision 3.35 and can be approved.

6. *CSR 38–2–14.12.a.1. Variance from approximate original contour requirements.* This provision is amended by adding the following language: ''and the land after reclamation is suitable for industrial, commercial, residential or public use (including recreational facilities).'' As amended the provision reads as follows. ''The permit area is located on steep slopes as defined in subdivision 14.8.a. of this rule and the land after reclamation is suitable for industrial, commercial, residential or public use (including recreational facilities).'' We find that the new language is substantively identical to the Federal regulations at 30 CFR 785.16(a)(1), pertaining to variance from the approximate original contour (AOC) requirement for steep slope mining operations, and can be approved. This revision satisfies the required amendment at 30 CFR 948.16(mmm) which can be removed.

7. *CSR 38–2–16.2. Surface owner protection.* Subdivision 38–2–16.2.c. is amended by adding the word ''damage'' after the word ''Material'' at the beginning of the first sentence. In addition, the words ''or facility'' are added after the word ''structure'' and before the word ''from'' near the end of the first sentence. We find that these changes, which are no less effective than 30 CFR 701.5, clarify the meaning of the term ''material damage'' and, therefore, can be approved.

Subdivision 38–2–16.2.c.3. is amended to delete the word ''occurs'' after the words ''subsidence damage'' and before the words ''to any.'' We find that this change eliminates a redundant word and clarifies the meaning of this provision and can be approved.

8. *CSR 38–2–22.4.g. Primary and emergency spillway design.* This subdivision is amended by changing the probable maximum precipitation (PMP) event for impoundments meeting the size or other criteria of 30 CFR 77.216(a) from a 24-hour storm event to a ''six (6)'' hour storm event. This change has been submitted in response to a required program amendment codified at 30 CFR 948.16(uuu). On February 21, 1996 (61 FR 6528) the Director determined that the State's PMP 24-hour storm event standard would be impossible to implement because the U.S. Weather Service's document ''Rainfall Frequency Atlas'' does not have data charts concerning PMP for a 24-hour storm event. The ''Rainfall Frequency Atlas'' does, however, contain data charts for PMP 6-hour storm events. We find that with this change, the provision is substantively identical to the Federal regulations at 30 CFR 816/817.84(b)(2) and which specify the PMP 6-hour storm event. We also find that this amendment satisfies the required program amendment codified at 30 CFR 948.16 (uuu) which can be removed.

9. *WVDEP request that OSM reconsider certain decisions and required amendments published in the February 9, 1999,* **Federal Register** *(64 FR 6201–6218).*

Along with its submittal of this amendment, the WVDEP also requested that we reconsider our disapproval of amendments and the related required amendments to the West Virginia program in the February 9, 1999, **Federal Register** (64 FR 6201–6218). In that notice, we disapproved parts of CSR 38–2–3.12 (concerning subsidence control plan) and 38–2–16.2 (concerning surface owner protection) and added related required regulatory program amendments. The WVDEP cited the United States Court of Appeals decision in *National Mining Ass'n.* v. *Babbitt,* 172 F.3d 906 (D.C. Cir. 1999), as the basis for its request.

In the above referenced decision, the Court struck down two OSM regulations on coal mine subsidence. First, the Court of Appeals vacated 30 CFR 817.121(c)(4)(i), which established a rebuttable presumption that damage to any noncommercial building or occupied residential dwelling or structure related thereto, resulting from earth movement occurring within the ''angle of draw'' of an underground mining operation, was caused by subsidence from that mining operation. 172 F.3d at 913. The Court also struck down a portion of 30 CFR 784.20(a)(3) that required coal operators to conduct

presubsidence structural condition surveys. The Court vacated this provision because the area in which the survey was required was defined by reference to the angle of draw, which the Court found to be an arbitrary and capricious basis for the establishment of a rebuttable presumption. *Id.* at 915. The two regulations that were struck down were among those issued on March 31, 1995, at 60 FR 16722–51, pursuant to SMCRA and section 2504 of the Energy Policy Act of 1992. The Energy Policy Act of 1992 added a new section 720 to SMCRA. Section 720 requires underground mine operators to repair or to compensate for material damage to residential structures and noncommercial buildings, and to replace residential water supplies adversely affected by underground mining.

As the WVDEP requested, we reviewed the findings that we made in the February 9, 1999, **Federal Register** notice in the light of the Court of Appeals decision cited above. Based on our review, we have determined that some of our decisions and required amendments are affected by the Court's decisions. Therefore, in a future **Federal Register** notice, we will identify the specific findings, decisions and required amendments that are affected by the Court's decision. We will open a public comment period and will ask for public comment on the decisions that we propose to amend and the required amendments that we propose to delete.

IV. Summary and Disposition of Comments

Federal Agency Comments

As required by 30 CFR 732.17(h)(11)(i), we solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the West Virginia program on May 21, 1999. The U.S. Department of Labor, Mine Safety and Health Administration responded and stated that it had no comments.

Public Comments

We solicited public comments on the amendment. No comments were received.

U.S. Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). We determined that none of the amendments required EPA concurrence.

Pursuant to 30 CFR 732.17(h)(11)(i), we solicited comments on the proposed amendment from EPA. The EPA responded and stated that it had no objections to the proposed revisions. The EPA recommended, however, that the definition of ''mountaintop mining operation'' at CSR 38–2–2.78 be clarified. The EPA stated that the definition gives the impression that approval of an AOC variance is not necessary to create the level area as long as an approved postmining land use plan is approved. The EPA recommended that the definition be amended to clarify that W.Va Code 22–3–13(c)(3) includes a requirement of an AOC variance. In response, we agree that amending the definition as recommended by EPA would add to its clarity. However, since the proposed definition already requires compliance with W.Va Code 22–3–13(c)(3), which requires that an operator be granted a variance in order to be exempt from the AOC requirement for a mountaintop-removal operation, we conclude that the additional clarification to the definition is not necessary.

V. Director's Decision

Based on the findings above, we are approving the proposed amendments. In a future **Federal Register** notice, we will identify the specific findings decisions and required amendments published in our February 9, 1999, **Federal Register** notice that are affected by the United States Court of Appeals decision in *National Mining Ass'n.* v. *Babbitt,* 172 F.3d 906 (D.C. Cir. 1999). We will open a public comment period and will ask for public comment on the decisions that we propose to amend and the required amendments that we propose to delete.

The Federal regulations at 30 CFR 948 codifying decisions concerning the West Virginia program are being amended to implement this decision. The required regulatory program amendments codified at 30 CFR 948.16(mmm) and CFR 948.16(uuu) are being removed. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that

existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 7, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 948—WEST VIRGINIA

1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 948.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
May 5, 1999	10–1–99	CSR 38–2–2.11; 2.78; 3.12.a.2, and .2.B; 3.32.b; 3.35; 14.12.a.1; 16.2.c, and .c.3; and 22.4.g.

§ 948.16 [Amended]

3. Section 948.16 is amended by removing and reserving paragraphs (mmm) and (uuu).

[FR Doc. 99–25551 Filed 9–30–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SPATS No. WY–028–FOR]

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Wyoming regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Wyoming proposed revisions to and additions of rules for fish and wildlife habitat and resource information, shrub density, certification of maps by a registered professional engineer, geologic descriptions, topsoil substitutes, special bituminous coal mines, archaeological and historic resources, permit transfers, civil penalties, and miscellaneous changes to Appendix A of Wyoming's rules, which concern vegetations sampling methods and reclamation success standards for surface coal mining operations.

Wyoming intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307–261–6550; Internet address: GPadgett@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the November 26,1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, 950.16 and 950.20.

II. Submission of the Proposed Amendment

By letter dated July 13, 1998, (Administrative Record No. WY–33–1), Wyoming sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming's amendment was in response to a December 23, 1985 letter that we sent to Wyoming in accordance with 30 CFR 723.17(c) and in response to the required program amendments at 30 CFR 950.16(b), (c), (g), (v), (x), (ii)(1), and (kk), and on its own initiative. The provisions of its ''Coal Rules and Regulations'' that Wyoming proposed to revise and add are: (1) Chapter 1, Section 2(ac), revises the definition of ''eligible land''; (2) Chapter 1, Section 2(v) revising the definition of critical habitat, (3) Chapter 2, Section 1(e), revises the section delineating the contents of permit applications; (4) Chapter 2, Section 2(a)(vi)(G)(II), for notification of the U.S. Fish and Wildlife Service; (5) Chapter 2, Section 1(a)(vi)(H), geology description; (6) Chapter 2, Section 2(a)(vi)(J), corrects incorrect references to the Wyoming Statutes; (7) Chapter 2, Section 2(a)(vi)(J)(II), for maps submitted in a permit application; (8) Chapter 2, Section 2(b)(iv)(C), the subsection on revegetation; (9) Chapter 2, Section 2(b)(vi)(C), for the submission of resource information; (10) Chapter 4, Section 2(c)(ix), for the use of selected spoil material; (11) Chapter 4, Section 2(d)(x)(E)(I), the rule on shrub density; (12) Chapter 4, Section 2(d)(x)(E)(III), the rule for revegetation standards on crucial habitat; (13) Chapter 8, Sections 3–4–5, the rules for special bituminous coal mines; (14) Chapter 12, Section 1(a)(iv)(B), rules for properties on the National Register of Historic Places; (15) Chapter 12, Section 1(a)(v)(C), the rule on permitting procedures for properties listed or eligible for listing on the National Register of Historic Places; (16) Chapter 12, Section 1(b)(ii), the rule on procedures for permit transfers; (17) Chapter 16, Section 3(c) and (f), rules concerning civil penalties; (18) Appendix A, Appendix IV, rules for Threatened and Endangered Species in Wyoming; (19) Appendix A, Options I–IV, for minor changes to the shrub density option tables; (20) Appendix A, Section II.C.2.c, corrects the cross-reference to the rule on cropland, hayland or pastureland; (21) Appendix A, Section II.C.3, removes the language referring to the approval of the shrub density rule and replaces it with the August 6, 1996 date of the rule's