miles to the Clallam County line, T32N/ R7W;

(35) Then northeast along the Clallam County line approximately 14 miles to the southwestern tip of San Juan County, T32N/R4W;

(36) Then northeast along the San Juan County line approximately 51 miles to the northern tip of San Juan County, T38N/R3W;

(37) Then northwest along the Whatcom County line approximately 19 miles to the western tip of Whatcom County, T41N/R5W;

(38) Then east along the Whatcom County line approximately 58 miles to the beginning.

Signed: August 29, 1995.

Daniel R. Black,

Acting Director.

Approved: September 14, 1995.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory,

Tariff and Trade Enforcement).

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with exceptions, an amendment to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program). The amendment revises the State's bonding requirements and the acid mine drainage treatment provisions of the Special Reclamation Fund. The amendment will improve operational efficiency, clarify ambiguities, and revise the West Virginia program to be consistent with the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the corresponding Federal regulations. Further amendments will be required to being the West Virginia Program into full compliance with SMCRA.

EFFECTIVE DATE: October 4, 1995. Approval dates of regulatory program amendments are listed in § 948.15(o).

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street East, Charleston, West Virginia 25301, Telephone (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background

- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

I. Background

SMCRA was passed in 1977 to address environmental and safety problems associated with coal mining. Under SMCRA, OSM works with States to ensure that coal mines are operated in a manner that protects citizens and the environment during mining, that the land is restored to beneficial use following mining, and that the effects of past mining at abandoned coal mines are mitigated.

Many coal-producing States, including West Virginia, have sought and obtained approval from the Secretary of the Interior to carry out SMCRA's requirements within their borders. In becoming the primary enforcers of SMCRA, these "primacy" States accept a shared responsibility with OSM to achieve the goals of SMCRA. Such States join with OSM in a shared commitment to the protection of citizens-our primary customersfrom abusive mining practices, to be responsive to their concerns, and to allow them full access to information needed to evaluate the effects of mining on their health, safety, general welfare, and property. This commitment also recognizes the need for clear, fair, and consistently applied policies that are not unnecessarily burdensome to the coal industry-producers of an important source of our Nation's energy.

Under SMCRA, OSM sets minimum regulatory and reclamation standards. Each primacy State ensures that coal mines are operated and reclaimed in accordance with the standards in its approved State program. The States serve as the front-line authorities for implementation and enforcement of SMCRA, while OSM maintains a State performance evaluation role and provides funding and technical assistance to States to carry out their approved programs. OSM also is responsible for taking direct enforcement action in a primacy State, if needed, to protect the public in cases of imminent harm or, following appropriate notice to the State, when a State acts in an arbitrary and capricious manner in not taking needed enforcement actions required under its approved regulatory program.

Currently there are 24 primacy States that administer and enforce regulatory programs under SMCRA. These States may amend their programs, with OSM approval, at any time so long as they remain no less effective than Federal regulatory requirements. In addition, whenever SMCRA or implementing Federal regulations are revised, OSM is required to notify the States of the changes so that they can revise their programs accordingly to remain no less effective than the Federal requirements.

A major goal of SMCRA is to ensure adequate reclamation of all areas disturbed by coal mining. To accomplish this, mining is allowed to proceed only after an operator has filed a performance bond of sufficient amount to ensure completion of reclamation. In the event of bond forfeiture, the regulatory authority uses the performance bond money to contract for the necessary reclamation work. SMCRA also allows for the adoption of an alternative bonding system so long as it achieves the purposes and objectives of the conventional bonding system described above. Under an alternative bonding system, rather than posting full-cost reclamation bonds, an operator is allowed to participate in a bond pool or other financial mechanism that is to provide sufficient revenue at any time to complete reclamation in the event of bond forfeiture.

As part of their approved programs, primacy States have adopted procedures consistent with Federal bonding requirements. The Secretary conditionally approved West Virginia's alternative bonding system on January 21, 1981 (46 FR 5326). After receipt of a required actuarial study, the Secretary fully approved the State's alternative bonding system on March 1, 1983 (48 FR 8448).

Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 21, 1981, Federal Register (46 FR 5915). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Proposed Amendment

On October 1, 1991, OSM notified West Virginia that it needed to amend its alternative bonding system to be in compliance with sections 509(c) and 519(b) and 519(c)(3) of SMCRA (Administrative Record No. WV–878). OSM's annual reviews of the West Virginia program had found that the