forfeiture. Therefore, the Director finds this provision is not inconsistent with the requirements of section 509(c) of SMCRA and 30 CFR 800.11(e) of the Federal regulations. Subsection 12 is hereby approved.

B. Proposed Revisions to the West Virginia Surface Mining Reclamation Regulations

1. CSR § 38-2-11.2: All Bonds

a. The State proposes to delete old subsection 11.2(c), which required a written notification to a permittee who is without bond coverage and required the cessation of mining until bond replacement. The State proposes to revise subsection 11.2(d), which requires the Director of the WVDEP to issue a notice of violation against any operator who is without bond coverage. The notice of violation now must provide that bond coverage be replaced within 15 days instead of 90 days. Mining cannot resume until an acceptable form of bond has been posted.

The Federal regulation at 30 CFR 800.16(e)(2) has provisions which require the regulatory authority, upon notification that an operator is without bond coverage, to notify the operator, in writing, to replace bond coverage within a reasonable period, not to exceed 90 days. Section 800.16(e)(2) does not specify the form of written notification and only specifies the maximum period for bond replacement. The Director considers West Virginia's proposed requirement for replacement of bond coverage within 15 days of a notice of violation to be a reasonable period of time as required by 30 CFR 800.16(e)(2). Section 800.16(e)(2) also requires that mining operations shall not resume until the regulatory authority has determined that an acceptable bond has been posted. Therefore, the Director finds the deletion of old subsection 11.2(c) and the resultant revision of CSR $\S 38-2-11.2(d)$ do not render the revised provisions less effective than 30 CFR 800.16(e)(2).

However, the Director notes that new subsection 11.3(b)(1)(G)(vii)(III), in its provision for issuance of a notice of violation against any operator who is without bond coverage, still retains the requirement that a notice of violation specify a reasonable period to replace bond coverage, not to exceed 90 days. The Director suggests that retention of the 90 day period for replacement of bond coverage in this provision was probably an oversight by the State, and it, therefore, should be removed.

b. The State also proposes to add subsection 11.2(e) to allow the Director

of WVDEP to require a showing that the bond is sufficient or the assignee has the capability or financial resources to assume the liability for bonds and permits which are transferred, assigned, or sold and which have significant longterm environmental liability. Although there is no direct Federal counterpart to this provision in 30 CFR Part 800, the Federal regulations at 30 CFR 774.17(b)(3) require that an applicant for transfer, assignment, or sale of permit rights obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations. Therefore, the Director finds that CSR § 38–2–11.2(e) is not inconsistent with the Federal bonding requirements at 30 CFR Part 800 or the Federal permitting requirements at 30 CFR 774.17(b)(3) Subsection 11.2(e) is hereby approved.

c. The Director notes that West Virginia needs to amend its regulations at CSR § 38–2–11.2(b) to delete the word "performance" in order to remain consistent with its new penal bond requirements.

2. CSR § 39-2-11.3: Bond Instruments

The State proposes to revise and reorganize its surety bonding, collateral bonding, escrow bonding, self-bonding, and combined surety/escrow bonding requirements into new subsection 11.3, entitled "Bond Instruments." The provisions for surety bonds at old subsection 11.3 are now located at subsection 11.3(a); the provisions for collateral bond at old subsection 11.4 were reorganized at subsection 11.3(b); the provisions for escrow bonding at old subsection 11.5 were relocated to subsection 11.3(c); the provisions for self-bonding at old subsection 11.6 are now at subsection 11.3(d); and the provisions for combined surety/escrow bonding at old subsection 11.7 were reorganized at subsection 11.3(e). The substantive revisions proposed for the various types of bonding instruments are discussed below.

a. Subsection 11.3(a): Surety Bonds

(1) At subsection 11.3(a)(1), West Virginia added the requirement that a surety bond be approved by the Director of WVDEP. Although the Federal counterpart regulation at 30 CFR 800.20(a) does not contain this provision, the Federal regulations at 30 CFR 800.11 do require that before a permit is issued the operator file a bond which is acceptable to the regulatory authority. Therefore, the Director finds that CSR § 38–2–11.3(a)(1) is consistent with 30 CFR 800.20(a) and is hereby approved.

(2) At subsection 11.3(a)(2), the State proposes to delete the requirement that

the surety be notified within 30 days after receipt of a request for bond adjustment. This provision is duplicative of a provision for notification to the surety in the State's regulations at subsection 12.3. Therefore, since subsection 12.3 is referenced in subsection 11.3(a)(2), the Director finds this deletion does not render the surety bond regulation at CSR § 38–2–11.3(a)(2) less effective than the Federal counterpart at 30 CFR 800.20(b), and he is, therefore, approving it.

b. Subsection 11.3(b): Collateral Bonds

- (1) West Virginia proposed a revision to subsection 11.3(b) to clarify that collateral bonds "will be negotiable and guaranteed." Although the Federal regulations at 30 CFR 800.21 do not contain this clarifying language, the collateral bond definition at § 800.5(b) does require all forms of collateral bond to be negotiable and guaranteed. Therefore, the Director finds that subsection 11.3(b) does not render the collateral bond provisions of CSR § 38-2-11.3 less effective than the counterpart provisions of 30 CFR 800.21. Subsection 11.3(b) is hereby approved.
- (2) West Virginia proposes to revise subsection 11.3(b)(1)(A) by requiring that bonds used as collateral shall be bonds of the United States or its possessions. These forms of bond satisfy the definition of "collateral bond" at 30 CFR 800.5. The Director therefore finds the revision of CSR § 38–2–11.3(b)(1)(A) is no less effective than 30 CFR 800.5 and is hereby approved.

The Director notes, however, that § 22–3–11(c)(1) of WVSCMRA still allows bonds of the Federal Land Bank or of the homeowners' loan corporation to be used as collateral bond. He is advising West Virginia that this provision should be removed to eliminate the inconsistency between the State's statute and regulations. Furthermore, it is the Director's understanding that such financial institutions no longer exist in the State.

(3) West Virginia is proposing to add full faith and credit general obligation bonds of the State of West Virginia, or other States, and any county, district municipality of the State of West Virginia or other States as acceptable forms of collateral bond. Since the definition of "collateral bond" at 30 CFR 800.5 includes negotiable bonds of a State or a municipality, the Director finds West Virginia's provision for these forms of bond at CSR § 38–2–11.3(b)(1)(B) is no less effective than the collateral bond provisions at 30 CFR