800.21. This revision of subsection 11.3(b)(1)(B) is hereby approved.

- (4) West Virginia proposes to delete subsection 11.4(a)(2), which requires the regulatory authority to value collateral at its current market value, not at face value. West Virginia's Code and regulations consistently refer to market value in relation to collateral bond. The State's Code at  $\S 22-3-11(c)(1)$  requires the market value of collateral bond to be equal to or greater than the sum of the bond. This is consistent with 30 CFR 800.21(e)(2), which requires that at no time can the bond value of collateral exceed the market value. Also, West Virginia's regulations at CSR § 38-2-11.3(b)(8) require that bond value be evaluated relative to market value for all collateral posted. For these reasons, the Director finds that this deletion does not render West Virginia's collateral bond provisions at CSR § 38-2-11.3(b) less effective than the Federal provisions at 30 CFR 800.21.
- (5) West Virginia proposes to revise  $CSR \S 38-2-11.3(b)(1)(G)(ii)$  by changing the phrase "if not replaced by other suitable evidence of financial responsibility" with the phrase "if not replaced by other suitable bond or letter of credit." This revised language is substantively identical to 30 CFR 800.21(b)(2) which requires that letters of credit utilized as securities in areas requiring continuous bond coverage shall be forfeited and collected, if not replaced by other suitable bonds or letters of credit. Therefore, the Director finds West Virginia's revised regulation is no less effective than the Federal regulation and is hereby approved.
- (6) At subsection 11.3(b)(4), the State is requiring the maximum insurable amount for individual certificates to be determined only by the Federal Deposit Insurance Corporation (FDIC) by removing its reference to the Federal Savings and Loan Insurance Corporation (FSLIC). Because the functions of the FSLIC were transferred to FDIC in 1989, the Director finds West Virginia's revised regulation at CSR § 38-2-11.3(b)(4) is no less effective than the Federal regulation at 30 CFR  $800.21(a)(\bar{4})$  and is hereby approved.
- (7) West Virginia proposes to delete 11.4(a)(7) which required the applicant to deposit sufficient amounts of certificates of deposit to assure that the WVDEP could liquidate them prior to maturity, upon forfeiture, for the amount of the bond required. Neither SMCRA nor the Federal regulations at 30 CFR 800.21 include a similar provision. Therefore, the Director finds the deletion of this provision does not render the West Virginia program less

effective than SMCRA or the Federal regulations.

- (8) West Virginia proposed to amend subsection 11.3(b)(8) by rewording the requirement that "in no case shall the bond value exceed the market value" to "in no case shall the market value be less than the required bond value.' Although the Federal regulation at 30 CFR 800.21(e)(2) retains the replaced language, West Virginia's rewording does not change the meaning of the requirement. Both require that the market value of collateral be equal to or greater than the required bond value. Therefore, the Director finds the revision at CSR § 38-2-11.3(b)(8) does not render it less effective than 30 CFR 800.21(e) and is hereby approved.
- (9) The State is proposing to add a new provision at subsection 11.3(b)(9) which allows certain collateral bonds for permits issued prior to January 1, 1993, to remain in effect unless the bond is determined to be insufficient or otherwise invalid. The West Virginia program at subsection 2.26 specifically identifies the types of collateral that could be used as a collateral bond prior to January 1, 1993. Therefore, the Director finds that the new provision at subsection 11.3(b)(9) does not render West Virginia's collateral bond provisions at CSR § 38-2-11.3(b) less effective than the Federal collateral bond provisions at 30 CFR 800.21. Subsection 11.3(b)(9) is hereby approved.

## c. Subsection 11.3(c): Escrow Bonding

At subsection 11.3(c)(2), West Virginia is removing the FSLIC as an example of a Federal insurance program. This subsection still requires that escrow funds in Federally insured accounts are not to exceed the maximum insured amount under applicable Federal insurance programs such as FDIC. The revised Federal regulations no longer contain separate provisions governing escrow bonds, as they are now considered to be cash accounts. Since the FSLIC no longer exists, the Director finds this deletion does not render CSR 38-2-11.3(c)(2) less effective than 30 CFR 800.21(d)(4) for cash accounts.

## d. Subsection 11.3(d): Self-Bonding

(1) West Virginia proposes to revise subsection 11.3(d)(5)(E) by deleting the phrase "if permitted under State law." The deletion would clarify that indemnity agreements may operate as judgments under forfeiture conditions. Since revised subsection 11.3(d)(5)(E) contains self-bonding provisions which are substantively the same as that of the Federal counterpart regulation, the

Director finds the State's regulation is no less effective than the Federal regulation at 30 CFR 800.23(e)(4). Subsection 11.3(d)(5)(E) is hereby approved.

(2) The State proposes to delete existing CSR § 38–2–11.6(h) which requires the issuance of a notice of violation for failure to have adequate bond coverage. This provision is duplicative of a provision in subsection 11.2(d) under the general requirements for all bonds. Therefore, the Director finds this proposed deletion does not render West Virginia's regulations at new CSR 38-2-11.3(d) less effective than the Federal regulations at 30 CFR 800.23.

## 3. CSR § 38-2-11.4: Incremental Bonding

a. West Virginia proposed to revise subsection 11.4(a)(1) to require a bond in the appropriate amount be filed for the initial increment and each succeeding increment of land to be mined within the permit area prior to any land disturbance. Also, existing subsection 11.8(a)(3) was deleted as its substantive requirements are contained in subsection 11.4(a)(1). The incremental bonding provisions at subsection 11.4(a)(1) are substantively the same as those in the counterpart Federal regulations at 30 CFR 800.11 (b) and (c). The Federal regulations at 30 CFR 800.11(b)(1) require that a bond be filed for the initial increment, at 30 CFR 800.11(b)(2) that additional bond be filed for succeeding increments as surface coal mining and reclamation operations are initiated, and at 30 CFR 800.11(c) that an operator not disturb any surface areas or succeeding increments prior to acceptance of the bond. Therefore, the Director finds West Virginia's proposed incremental bonding provisions at CSR § 38-2-11.4(a)(1) are no less effective than the counterpart Federal provisions at 30 CFR 800.11 (b) and (c). Subsection 11.4(a)(1) is hereby approved.

b. The State also proposes to revise subsection 11.4(a)(2) to require that an operator who has chosen to bond either the entire permit area or in increments must continue the same manner of bonding during the term of the permit. The minimum amount of bond is

While section 509(a) of SMCRA and 30 CFR Part 800 of the Federal regulations require that the minimum amount of bond for the entire area under one permit be \$10,000, they do not specifically require that the operator's manner of binding, entire permit area or increments of the permit area, be continued for the term of the permit.