While both SMCRA and the WVSCMRA require operators to avoid production of acid mine drainage, they both also specifically recognize water treatment as one avoidance technique. *See* 30 U.S.C. §§ 1265(b)(10)(A)(ii); W. Va. Code §§ 22–3–13(b)(10)(A)(ii) &– 14(b)(9)(A)(ii)."

Response: West Virginia included this provision in paragraph (h), which reads 'nothing in this subsection shall authorize in any way the issuance of a permit in which acid mine drainage is anticipated, and which would violate applicable effluent limitations or water quality standards without treatment." The Federal Register notice stated that this language was part of the proposed State rule. Paragraph (h) of CSR § 38-2-11.7 clarifies the intent of the West Virginia State legislature when it authorized the Director of WVDEP to study the desirability of establishing an environmental security account and in promulgating rules to implement such an account. OSM has not mischaracterized the State's proposed rule since the exact language used by the West Virginia State legislature was repeated in the Federal Register

2. *Comment:* WVHC expressed concern that the language in subsection 11.7(f) would allow statutory changes to become effective without the approval of OSM. WVHC commented that "while the Supreme Court of W.V. has reiterated the legal requirement of OSM approval of all statutes and regulations pertaining to the approved program in footnote 23 of the Mandamus decision of July 1994 (*WVHC v. WVDEP*, No. 22233, July 20, 1994), there are frequent debates and sometimes heated discussions of this matter in Legislative Committee meetings."

Response: As discussed in finding B.6., any regulations proposed to implement the environmental security account as a bonding mechanism for water quality or to otherwise incorporate it into the coal regulatory program must be approved by OSM. Also, 30 CFR 732.17(g) prohibits the implementation of any statutory or regulatory changes to a State program without prior OSM approval.

CSR § 38–2–12.2 *Requirement to Release Performance Bonds*

1. Comment: Subsection 12.2(a)(1) AWV commented that "subsection 11.5(a)(1) of these proposed rules states that a general bond in the amount of seven hundred fifty dollars (\$750) per acre will serve as sufficient financial assurance that the revegetation requirements of Section 9 of the regulations will be satisfied. Consistent with this statement, AWV believes that 38 W.V.A. C.S.R. § 12.2(c)(1) should be modified as that upon meeting the requirements for a Phase I bond release, a site-specified reassessment should be conducted. Assuming these requirements are met, the bond amount should be reduced to \$750 per acre, as specified in Subsection 11.5(a)(1), instead of the minimum 60 percent bond release now in effect."

Response: Subsection 11.5(e) provides that the operator will apply for bond release in accordance with section 23 of the Act and subsection 12.2 only after completion of all mining and reclamation on the permit area. In accordance with the State's open-acre limit bonding requirements at subsection 11.5, the State does not plan to release the open-acre bond at the completion of the backfilling and grading of each open-acre unit. This bond will be rolled over to the next increment.

2. Comment: Subsection 12.2(e) WVMRA commented that OSM does not have any water quality or chemical treatment requirements for bond releases. BCC and WVMRA both commented that this provision is more stringent than the OSM requirement since bond cannot be reduced or released if chemical treatment is required.

Response: The Director disagrees that the Federal regulations do not have any water quality or chemical treatment requirements for bond releases. Section 519(b) of SMCRA and the implementing Federal regulations at 30 CFR $800.40(b)(\bar{1})$ require the regulatory authority, when evaluating bond release requests, to consider whether pollution of surface and ground water is occurring, the probability of any continuing pollution, and the estimated cost of abating such pollution. Furthermore, section 519(c)(3) of SMCRA and the implementing Federal regulations at 30 CFR 800.40(c)(3) provide that no bond shall be fully released until all the reclamation requirements of SMCRA and the permit are fully met. These requirements include abatement of surface and ground water pollution resulting from the operation. Both SMCRA and the Federal regulations effectively require that discharges from the site be in compliance with all applicable effluent limitations as a prerequisite for bond release. Therefore, as discussed in finding B.7., the revised bond release provisions either remain substantively the same as the Federal regulations at 30 CFR 800.40 or do not conflict with any Federal requirements or adversely impact other aspects of the West Virginia program.

CSR § 38–2–12.3 Bond Adjustments

Comment: WVHC commented that the State's proposed amendment satisfies 30 CFR 800.15(d) by providing for bond adjustment in the case of increased area being added to the permit. However, the amendment should also include language to more adequately reflect compliance with 30 CFR 800.15(a) as well. "The state must be able to adjust the bond 'from time to time' not only as the area is increased or decreased, but also 'where the cost of future reclamation changes', e.g., at renewal time, or at any time during the life of a permit that some unforeseen or unanticipated complication arises that would cause the cost of reclamation to increase.'

Response: As discussed in finding B.8.b., mandatory review for bond adequacy is limited to the States with conventional bonding programs since those States have no other source of funds other then the bond for completion of the reclamation in the event of forfeiture. Therefore, since West Virginia has an alternative bonding system with mandatory participation, which includes other sources of moneys for reclaiming bond forfeiture sites, the requirement to review bonds for adequacy is not mandatory. However, bond adjustment would be advisable so as to ensure the long-term financial soundness of an alternative bonding system.

CSR § 38–2–12.4 Forfeiture of Bonds

1. Comments: Subsection 12.4(a)

a. GAI stated its opposition to the requirements that all bond amounts be forfeited rather than an amount based on the estimated total cost of achieving the reclamation plan requirements. GAI commented that all bonds not required to reclaim should be returned, since subsection 12.4(e) allows WVDEP to sue for all costs in excess of the amount forfeited.

Response: As discussed in finding A.1.a., West Virginia's proposed requirement that the total bond by forfeited, rather than an amount based on the estimated cost of reclamation, is not inconsistent with any Federal requirements.

b. WVCA commented that OSM should find the provision at subsection 12.4(a), which would require WVDEP to forfeit the entire amount of reclamation bonds irrespective of the actual cost to reclaim mine sites, both unauthorized by the WVSCMRA and inconsistent with SMCRA. WVCA further stated that this regulation was intended to dovetail with a statutory amendment which the WVDEP proposed, but which was