been enforcing there can be no claim of detrimental reliance on any contrary West Virginia statutes or regulations in this instance.

Making portions of the approval retroactive does not require reopening of the comment period under section 553(b)(3) of the Administrative Procedure Act (APA), 5 U.S.C. § 553(b)(3). The public, in general, and the coal industry in West Virginia in particular have had sufficient notice of these revised statutory and regulatory revisions to support retroactive OSM approval. Retroactive approval constitutes an acknowledgement of statutory and regulatory revisions which West Virginia has been implementing since the respective approval dates of these revisions at the State level, and would have been expected as a natural outgrowth of the proposal. The retroactive approval does not apply to earlier versions of these provisions to the extent that such provisions were

inconsistent with Federal requirements. Furthermore, "good cause" exists both under section 553(b)(3)(B) of the APA, 5 U.S.C. § 553(b)(3)(B), for retroactive approval (if notice were not sufficient) and under section 553(d)(3) of the APA, 5 U.S.C. § 553(d)(3), for not delaying the effective date of the approval for 30 days after the publication of this Federal Register decision document. As noted in the findings above, most of these bonding revisions are needed to improve the efficacy and financial status of West Virginia's bonding program in general, and its alternative bonding system in particular. See, for example, findings A.1.a. (penal bonding), A.1.b.(4)(a) (increase in the special reclamation tax), and B.5 (site-specific bonding). Failure to make OSM approval of these salutary provisions retroactive could cause significant disruption to the orderly enforcement and administration by West Virginia of its bonding program, particularly if the funding of the alternative bond system was affected. The Director believes that the desire to avoid such unfortunate consequences, coupled with the lack of any prejudice to the public or to the regulated community, are sufficient bases to constitute "good cause."

# Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State submits and obtains the Secretary's approval of a regulatory program. Similarly, 30 CFR 732.17(a) requires that the State submit any alteration of an approved State program to OSM for review as a program amendment. Thus, any changes to the

State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In oversight of the West Virginia program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by West Virginia of only such provisions. The provisions that the Director is approving today will take effect on the specified dates for purposes of the West Virginia program.

#### 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 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (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 504 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.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 27, 1995.

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 by adding paragraph (o) to read:

#### § 948.15 Approval of regulatory program amendments.

(o)(1) General description and effective dates. Except as noted in paragraph (o)(3) of this section, the amendment submitted by West Virginia to OSM by letter dated June 28, 1993, as revised by submittals dated July 30, 1993; August 18, 1994; September 1, 1994; and May 16, 1995, is approved to the extent set forth in paragraph (o)(2) of this section. These portions of the amendment pertain to bonding requirements; the Director will announce a decision on the other provisions of the amendment at a later time. The effective dates of the Director's approval of the provisions identified in paragraph (o)(2) of this

section are set forth below: (i) March 10, 1990, for the statutory changes submitted to OSM by letter