which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

**Related Information**

(n) French airworthiness directives F–2003–291 R1, dated July 6, 2005, and F–2005–109, dated July 6, 2005, also address the subject of this AD.

**Material Incorporated by Reference**

(o) You must use the service information in Table 1 of this AD to do the actions that are required by this AD, unless the AD specifies otherwise. If the optional replacement is done, you must use the service information in Table 2 of this AD to do the replacement. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE FOR REQUIRED ACTIONS

| Service information | Revision/issue level | Date |
|---|---|---|
| (1) Airbus A300 Temporary Revision 22–001 to Chapter 22–23–00 of the Airbus A300 Fault Isolation Manual. | Original | April 11, 2003. |
| (2) Airbus A300 Temporary Revision 4.03.00/04 to Airbus 300 Flight Manual | Issue 02 | November 18, 2003. |
| (3) Airbus Service Bulletin A300–22–0120, excluding Appendix 01 | Original | May 13, 2005. |

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE FOR OPTIONAL ACTIONS

| Service information | Revision level | Date |
|---|---|---|
| Airbus Service Bulletin A300–22–0119 | Original | May 13, 2005. |

Issued in Renton, Washington, on December 21, 2006.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–399 Filed 1–16–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 948

**[WV–111–FOR]**

## West Virginia Abandoned Mine Lands Reclamation Plan

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We (OSM) are announcing the approval of an amendment to the West Virginia Abandoned Mine Lands Reclamation (AMLR) Plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment makes numerous revisions throughout the State's AMLR Plan, and it is intended to update and improve the effectiveness of the West Virginia AMLR Plan.

**DATES:** *Effective date:* January 17, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**



### I. Background on the Abandoned Mine Lands Reclamation Program

The West Virginia AMLR Program was established by Title IV of SMCRA (*30 U.S.C. 1201 et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mined lands. The West Virginia AMLR Plan was approved by OSM effective February 23, 1981. You can find additional information about the West Virginia AMLR Plan at 30 CFR 948.20, 948.25, and 948.26.

### II. Submission of the Amendment

By letter dated June 27, 2006 (Administrative Record Number WV–1469), the West Virginia Department of Environmental Protection (WVDEP), Office of Abandoned Mine Lands and Reclamation submitted an amendment to its AMLR Plan under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment consists of numerous changes throughout the AMLR Plan, some of which concern the AML Enhancement Rule. In its submittal of the amendment, the WVDEP stated that the revision incorporates the AML Enhancement Rule at 30 CFR Parts 707 and 874, as published by OSM in the **Federal Register** on Friday, February 12, 1999 (64 FR 7470–7483).

In its submittal letter, the State noted that the amendment also contains minor organizational and operational changes. Minor changes, such as organizational changes, re-numbering of sections, updating the name of departments or agencies, deletion of historical narrative, and the correction of typographical and grammatical errors, are non-substantive changes that do not affect the basis of the original approval of the West Virginia AMLR Plan. Therefore, we did not identify such non-substantive changes in our published proposed rule notice.

We announced receipt of the proposed amendment in the September 18, 2006, **Federal Register** (71 FR

54601), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 18, 2006. We did not hold a hearing or meeting, because no one requested one. We received comments from three Federal agencies and one State agency.

**III. OSM's Findings**

Following are the findings we made concerning the amendment. OSM's standard for comparison of State AMLR amendments with SMCRA and the Federal regulations is found in Directive STP–1, Appendix 11. This policy provides that ''in accordance with 30 CFR 884.14(a), the proposed plan must meet all applicable requirements of the Federal statute and rules. That is, a State's statutes, rules, policy statements, procedures, and similar materials must compare, altogether, with applicable requirements of the Federal statute and rules, to ensure that the State's plan, as a whole, meets all Federal requirements.'' In addition, any amendments to AMLR plans must be approved in accordance with the procedures set out in 30 CFR 884.14.

*A. Minor Revisions to West Virginia's AMLR Plan Provisions*

West Virginia proposed numerous minor organizational and operational changes, re-numbering of sections, updating the name of departments or agencies, and the correction of typographical and grammatical errors. Because the changes to these previously approved plan provisions are minor, we find that they meet the requirements of the Federal regulations and the Act and are hereby approved.

*B. Revisions to West Virginia's AMLR Plan Provisions That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations and the Act*

West Virginia proposed revisions to the following plan provisions. The State AMLR Plan revisions contain language that is the same as, or similar to, the corresponding sections of the Federal regulations and are hereby approved.

B.1. Introduction B; 30 CFR 884.13(d); description of the organization.

B.2. Section I; 30 CFR 884.13(a); designation by the Governor.

B.3. Section I; 30 CFR 884.13(b); legal opinion by State Attorney General.

B.4. Section III A; 30 CFR 884.13(c)(2); description of procedures for identifying projects.

B.5. Section III B; 30 U.S.C. 1233(a) and 30 CFR 884.13(c)(2); factors considered for prioritizing reclamation projects.

B.6. Section III B item 6(e); 30 CFR 707.5; Abandoned Mine Lands Reclamation Enhancement Rule, definitions.

B.7. Section III item 6(e)(i); 30 CFR 874.17(a); consultation with Title V regulatory authority, with the noted exceptions that the Code of State Regulations (CSR) 38–2–3.31.a and 3.31.c have not been fully approved by OSM.

B.8. Section III B item 6(e)(i)(I); 30 CFR 707.5; definition of government financed construction.

B.9. Section III B item 6(e)(i)(II); 30 CFR 707.5 and 874.17(a); agency procedures for less than 50 percent government funding.

B.10. Section III B item 6(e)(i)(III); 30 CFR 874.17(b); concurrence with Title V regulatory authority.

B.11. Section III B item 6(e)(i)(IV); 30 CFR 874.17(c); documentation.

B.12. Section III B item 6(e)(i)(V); 30 CFR 874.17(d); special requirements.

B.13. Section III B item 6(e)(i)(VI); 30 CFR 874.17(e); limitation.

B.14. Section III B item 8; 30 CFR 884.13(c)(2); project tracking system.

B.15. Section IV item 3; 30 CFR 884.13(c)(3); coordination of reclamation among abandoned mine lands programs.

B.16. Section VIII; 30 CFR 884.13(c)(7); public participation and involvement.

B.17. Section IX A; 30 CFR 884.13(d)(1); organization of the designated agency.

B.18. Section IX B; 30 CFR 705 and 884.13(d)(2); personnel staffing policies, including restrictions on financial interests by State employees.

B.19. Section IX C; 30 CFR 884.13(d)(3); purchasing and procurement systems.

B.20. Section IX D; 30 CFR 884.13(d)(4); accounting system.

*C. Revisions to West Virginia's AMLR Plan Provisions That Are Not the Same as the Corresponding Provisions of the Federal Regulations and the Act*

C.1. Section II. Purposes of the State Reclamation Program. Language is deleted and added to clarify that expenditures from the AMLR reclamation fund are selected on the basis of the priorities identified at W. Va. Code 22–2–4. The priorities identified at W. Va. Code 22–2–4(b)(1)(A) through (F) are substantively identical to the priorities identified in SMCRA at section 403(a)(1) through (a)(5) with one exception. The priority identified at W. Va. Code 22–2–4(b)(1)(D), concerning expenditures for research and demonstration projects relating to the development of surface-mining reclamation and water quality control program methods and techniques, is not authorized by SMCRA as a priority for expenditures from the AMLR fund. This provision was formerly codified at section 403(4) of SMCRA, but it was deleted on October 24, 1992.

However, we note that the State has also amended the AMLR Plan at Section III. B. concerning the prioritization of problems. Amendments to section III B and B(4) also address the AMLR Fund priority requirements. The first paragraph at section III B that is being amended references the priority requirements at W. Va. Code 22–2–4. Section III B is amended by deleting item III B.(4) concerning funding priority for research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques. Therefore, it appears that expenditures for research and demonstration projects will not be considered as priority for which AMLR expenditures can be made. Taken as a whole, therefore, we understand that the West Virginia AMLR Plan will not provide expenditures from the AMLR Fund for research and development projects and, therefore, is consistent with the priorities identified in SMCRA at section 403(a). We are approving the amendments to sections II and III B. and III B. 4 with that understanding.

C.2. Section III B. Item 6.(e). The existing language is deleted concerning waiving any requirement that a reclamation contractor obtain a reclamation permit to extract or remove coal if the waiver will facilitate removal of coal and the mining is incidental to the project. The deleted language was not consistent with section 528 of SMCRA concerning surface mining operations not subject to the Act, nor consistent with the definition of surface coal mining operations at 30 CFR 700.5. Section 528 provides that the following activities are not subject to the Act: (1) The extraction of coal by a landowner for his/her own noncommercial use from land owned or leased by him/her; and (2) the extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction under regulations established by the regulatory authority. The definition of surface coal mining operations at section 701(28)(A) of SMCRA and 30 CFR 700.5 also exclude from the definition of surface coal mining operations activities that include the extraction of other minerals, where coal does not exceed 16⅔ percent of the

tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to section 512 of SMCRA. Because the deleted language excluded reclamation projects from the definition of ''surface coal mining operations'' even though those projects should not have been excluded, we are approving the deletion.

C.3. Section III B Item 6(g). The existing language concerning the recovery of coal from refuse piles, impoundments, or abandoned mine workings containing coal is deleted. The deleted language allowed coal removal incidental to a proposed reclamation project. The Federal regulations at 30 CFR part 707 and 30 CFR 874.17 exempt the extraction of coal which is incidental only to government-financed construction from the requirements of SMCRA and the Federal regulations, if that extraction meets specified criteria which ensure that the construction is government-financed and that the extraction of coal is incidental to it. We find that the deletion removes language that is not consistent with applicable requirements of SMCRA and the Federal regulations, and it can be approved. We must note that the removal of existing abandoned coal refuse piles within the State is also regulated pursuant to CSR 38–2–3.14.

C.4. Section VI H, contractor's responsibilities regarding waste and borrow areas outside the construction limits. The State deleted four items at the end of paragraph H. concerning waste sites on private land that are used in conjunction with an abandoned mine land project. Contractor responsibilities regarding waste and borrow areas outside of construction limits continued to be specified at paragraph H (1) through (5). We find that the deletion does not render the West Virginia AMLR Plan less effective than 30 CFR 884.13(c) concerning policies and procedures for conducting a reclamation program, or 30 CFR 884.13(c)(6) concerning policies and procedures for rights of entry and can be approved.

C.5. Section IX C. Purchasing and Procurement. The existing language concerning the procedures concerning design consultant services and construction contracts is deleted and replaced with language detailing the procedures to be followed for projects greater than $250,000, projects less than $250,000, and definitions. The Plan also includes a reference to the State of West Virginia Purchasing Handbook: W. Va. Code 5G–1, 59–3–1, and 5A–3, and Legislative Rule 148 CSR 1.

The Federal regulations at 43 CFR 12.76 concerning procurement, provide, at subsection 12.76(a), that when procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. Further, the State shall ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Subsection 12.76(b) also provides that grantees and sub-grantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and standards identified in this section. Furthermore, 30 CFR 886.20 requires the State to follow administrative procedures governing accounting, payment, property and related requirements contained in 43 CFR Part 12, subpart C. The State procedures described above are from the State of West Virginia Purchasing Handbook, which, in conjunction with WVDEP's own administrative procedures have been determined to comply with Federal procurement requirements and 30 CFR Part 886. Therefore, because the State's AMLR Plan provisions remain consistent with the Federal purchasing and procurement requirements at 30 CFR 884.13(d)(3), we are approving these amendments.

C.6. State Emergency Program

B. Legal Opinion from State Attorney General Regarding Emergency Program Administration. In the second sentence, the citation ''WV Code Section 22–3'' is deleted. This citation is deleted because the West Virginia AMLR Act provisions are located at W. Va. Code 22–2. Accordingly, in the third sentence, the citation ''Chapter 22–3–4(b)(1)(A)'' is changed to ''Chapter 22–2–4(b)(1)(A).'' In the language that follows, a reference to Title ''38'' is deleted and a reference to Title ''59'' is added in its place because Title 59–1 is the State's AMLR Rule. We find that with these revisions to the West Virginia AMLR Plan, the Plan remains consistent with the Federal regulations at 30 CFR 884.13(b) concerning legal authority under State law to conduct the AMLR program. Therefore, we are approving these revisions.

C.7. C. Policies and Procedures Regarding the Emergency Reclamation Program. Existing Item 6, which concerns a public meeting for a previous amendment to the AMLR Plan, is being deleted. Because the deleted language only concerns a public meeting for a previous amendment to the AMLR Plan, that language is no longer necessary. Public participation concerning the current amendment and any future revisions to the State's AMLR Plan is discussed in Section VIII. We find that the public participation provisions of the West Virginia AMLR Plan remain consistent with the Federal requirements at 30 CFR 884.13(c)(7). Therefore, we are approving this deletion.

C.8. D. Item 2. Administrative and Managerial Structure. The following language is being deleted at the beginning of Item 2:

> Six of the positions assigned to the Emergency Group of the Abandoned Mine Lands and Reclamation Section consist of technical personnel. These positions include 5 inspectors and 2 engineers.

The deleted language quoted above was inconsistent and unnecessary. The inaccuracy stems from the reference to six positions consisting of 5 inspectors and two engineers. Subsequent paragraphs continue to clarify that engineers and inspectors for the Emergency Program are located at each field office in the northern and southern part of the State. However, the exact number of these positions is not specified to provide WVDEP added flexibility to satisfy future program demands. The engineers must be mining and/or civil engineers with the technical expertise to render plans and specifications for correction of abandoned mine problems. The inspectors will monitor all day-to-day construction activities on emergency projects. These provisions are consistent with the Federal regulations at 30 CFR 884.13(d)(2) concerning personnel staffing policies. Therefore, the deletion of the quoted language is approved.

C.9. The last sentence of the existing second paragraph is also being deleted. That sentence stated that ''[t]hese are all newly created positions.'' This deleted language is unnecessary and no longer accurate. Therefore, the deletion of that language can be approved. Additionally, the last two sentences in the existing third paragraph (the second sentence contains a reference to page 75) are being deleted. In their place, a new sentence is added which states that ''This procedures (*sic*) is in compliance to [with] the Department of Administration, Division of Purchasing.'' As discussed above under Finding C.5, the Federal regulations at 43 CFR 12.76 concerning procurement provide that when procuring property and services under a grant, a State will follow the same policies and procedures it used for procurements from its non-Federal funds. Therefore, because we find both the deletion and the new language to be consistent with the Federal requirements at 30 CFR

884.13(d)(3) regarding purchasing and procurements systems, they can be approved.

C.10. Item 3. Under paragraph (c) Immediate Follow-up, at (ii), the phrase ''[a]n engineer, realty specialist, and other'' is deleted and replaced with the term ''[a]ppropriate personnel.'' Also, language is being deleted which provides that ''[t]his visit will be coordinated with the Federal Office of Surface Mining Reclamation and Enforcement.'' As amended, subparagraph (ii) reads as follows:

> (ii) Appropriate personnel will be dispatched to the site as soon as possible if a valid emergency situation exists.

The language concerning the requirement to coordinate the site visit with OSM is being deleted because that requirement already exists at Item 3(a)(i). Specifically, Item 3(a) provides that the investigator's tasks for investigations of potential emergency situations are as follows: at (i), ''Coordinate Site visit with Office of Surface Mining as needed.'' More importantly, Item 3(c)(i) requires the OSM Field Office Director to make the final determination that an emergency exists or does not exist. Therefore, we are approving the deletion.

C.11. At paragraph (iv), the words ''color'' and ''slides'' are being deleted as a form of documentation of damage by realty personnel to show abandoned mine land problems and impacts, including structural damage. As revised, ''photos'' are required for such documentation. We find that this revision is acceptable, because it acknowledges that digital photography has largely replaced slide photography as a means of documentation. Therefore, we are approving the deletion.

C.12. F. Emergency Purchases, Item 6. This item is being deleted. The deleted language reads as follows:

> 6. In addition to the above stated procedure, at the time of this writing an open end or bilateral contract for construction services is being assembled which may be utilized for emergency services.
>
> The following page shows the technical evaluation sheet used to assist in selecting consultants. The factors may be revised in the future to reflect different needs.

The State has chosen not to implement the open end or bilateral contract for construction services and, therefore, the deleted language is not needed. We are approving the deletion, because the State's regular purchasing and procurement systems for emergency projects are consistent with 30 CFR 884.13(d)(3).

C.13. G. Emergency Reclamation Activities

Language is being deleted that relates to the number of emergency projects completed between 1979 and 1986. The deleted information is historical information that was useful in making decisions regarding a previous amendment to the West Virginia AMLR Plan. The revised AMLR Plan continues to provide information concerning the probable number and types of emergencies that are likely to occur in the State on an annual basis. This information is used in the development of the West Virginia Abandoned Mine Land Performance Agreement, which is negotiated between OSM and the State approximately every two years and determines which State AML activities are evaluated by OSM on an annual basis. Therefore, we are approving the deletion of the historical information, because it is no longer relevant.

C.14. Water Supply Amendment; Target areas for AML assistance. Item (3). In the second paragraph, the words ''and submitted to the Federal Office of Surface Mining for funding approval'' are deleted from the end of the first sentence. As revised, the sentence reads as follows: ''After a pool of eligible projects is determined, potential projects are selected.'' However, the State Plan continues to seek OSM approval prior to initiating a project. In the last paragraph, the State AMLR Plan states that ''WVDEP will request an ''Authorization to Proceed'' (ATP) from OSM prior to initiating a project.'' In addition, all National Environmental Policy Act (NEPA) compliance documentation is required prior to the initiation on any new water supply project. Therefore, we are approving the deletion.

C.15. Revision to West Virginia's AMLR Plan Reflecting Amendments to Title IV of the SMCRA

A. Expanded Eligibility Criteria. Item (2). In the second paragraph, the citation ''45 FR 14810–14819 March 6, 1980'' is being deleted and replaced by the following citation: ''66 FR 31250–31258, June 11, 2001.'' The June 11, 2001, **Federal Register** notice contains the revised guidelines for abandoned mine land reclamation programs and projects. Therefore, we are approving the citation change.

C.16. B. State Acid Mine Drainage Treatment and Abatement Program

Language is being amended concerning coordination between the State and the Natural Resources Conservation Service (NRCS). The State has deleted references to the Rural Abandoned Mine Program and to the U.S. Bureau of Mines. As amended, the language is as follows:

> After consultation with the NRCS, the State may reclaim certain areas that are severely impacted by acid mine drainage. (This coordination will continue the already present cooperative effort between the State and the NRCS).

The Bureau of Mines no longer exists and, therefore, the reference to the Bureau of Mines can be deleted. Also, consultation and coordination between the State and the NRCS in abating acid mine drainage will continue after these revisions are approved. Therefore, we are approving the amendments.

## IV. Summary and Disposition of Comments

*Public Comments*

We published a **Federal Register** notice on September 18, 2006, and asked for public comments on the proposed amendments to the West Virginia AMLR Plan (Administrative Record Number WV–1474). The public comment period closed on October 18, 2006. No comments were received from the public, but one State agency and three Federal agencies commented on the proposed revisions.

*State Agency Comments*

The West Virginia Division of Culture and History reviewed the West Virginia AMLR Plan to determine its effects on cultural resources, and submitted comments as required by section 106 of the National Historic Preservation Act of 1966, as amended, and its implementing regulations at 36 CFR Part 800 (Administrative Record Number WV–1478).

The Division of Culture and History stated that under Subsection III.B, Prioritization of Problems, the document lists the protection of historic or cultural resources as a benefit that will be considered in reclamation projects. The Division of Culture and History reminded WVDEP that this should be an alternative that is regularly considered during the planning phases of a project.

We must note that this portion of the WVAMLR Plan that the Division of Culture and History has commented on has not been revised by WVDEP. Nevertheless, this part of the Plan does contain some of the planning requirements for AML projects. Therefore, as suggested, the WVDEP is obligated to regularly consider historic or cultural resources in selecting and planning AML projects.

The Division of Culture and History commented that under section VI, Reclamation of Private Land, subsection H, Contractors responsibilities regarding waste and borrow areas outside the construction limits, the document states that the contractor must observe NEPA regulations when selecting and utilizing offsite borrow and/or waste disposal areas. Because NEPA provides for the identification and protection of cultural resources, the Division of Culture and History asked that borrow and waste areas be submitted for their review.

Again, we must point out that this portion of the AMLR Plan has not been revised by WVDEP. However, under the existing State AMLR Plan, contractors that use waste and borrow areas outside the construction limits must get all required clearances, including the protection of cultural resources, prior to creating any offsite disturbances at waste or borrow areas. Waste and borrow areas created by AML reclamation activities must be conducted in accordance with applicable State and Federal reclamation requirements. If possible, waste and borrow areas should be located on the reclamation project site. Offsite waste and borrow areas should be used only when no onsite area is available, and it is necessary to protect public health and safety. In addition, adverse impacts to waste and borrow areas should be minimized by disturbing the smallest possible area, protecting any historic or cultural values that may be present, and reclaiming the site upon completion of the AML project.

In its final comment, the Division of Culture and History stated that it was its understanding that exploratory drilling occurs prior to its review. The Division of Culture and History went on to say, it has been its experience that this can cause damage to cultural resources that may be considered eligible for inclusion in the National Register of Historic Places. The Division of Culture and History concluded that in order to prevent future damages to cultural resources, it request the opportunity to review project plans as they relate to exploratory drilling locations.

We agree that unregulated exploratory drilling can cause damage to historic and cultural resources. State and Federal reclamation requirements prohibit such unauthorized activity. Exploratory drilling can only be authorized when it is part of an approved AML project. Because all AML projects are subject to review by the Division of Culture and History, no exploratory drilling should be conducted as part of an approved State AML project that would result in damage to historic or cultural resources.

*Federal Agency Comments*

Under 30 CFR 884.14(a)(2) and 884.15(a), on September 8, 2006, we requested comments on the amendment from various other Federal agencies with an actual or potential interest in the West Virginia AMLR Plan (Administrative Record Number WV–1473). The U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) responded on September 21, 2006, and stated that it had no comments (Administrative Record Number WV–1475).

The U.S. Department of the Interior, National Park Service (NPS) responded with comments (Administrative Record Number WV–1477). The NPS commented on language in section III B, concerning factors considered for reclamation project consideration. Specifically, the NPS stated that language at section III B. 3, and throughout this section of the revised AMLR Plan, appears to provide the WVDEP with the final decision making authority in the reclamation design without consideration of the landowner or adjacent land owner, whether public or private. In particular, the NPS stated, the various land management agencies may have resource protection mandates that do not coincide with reclamation decisions made by the WVDEP. Therefore, the NPS suggested, wording should be included in the revised AMLR Plan to indicate that where adverse impacts are not being mitigated through reclamation, or where the proposed reclamation appears to be adverse to a land owner or land management agency (State or Federal), a joint approval process should be implemented between the WVDEP and the affected owner or agency.

We must note that section III B. 3 has not been revised by the State. However, under SMCRA at section 405(d), West Virginia was granted exclusive responsibility and authority to implement the provisions of its approved AMLR program. We believe that the West Virginia AMLR Plan appropriately addresses the NPS's concern for participation in the following ways. The AMLR Plan provides for public participation and agency review. In section VIII, the AMLR Plan provides that all proposed AML projects will include a NEPA environmental assessment. State and Federal agencies will have an opportunity to provide input concerning the NEPA document for projects which relate to their areas of expertise. In addition to listing the names of several agencies who may review the environmental assessments, the AMLR Plan provides that other agencies may be asked to comment on the environmental assessments. At section III B. 7, the Plan also requires the WVDEP to consider the acceptability of post-reclamation land uses in terms of compatibility with land uses in the surrounding area, consistent with applicable State, regional, and local use plans and laws, and the needs and desires of the community in which the project is located.

The NPS commented that section III B. 6(c) provides that if the WVDEP determines that the coal or another mineral resource is or may be economical to mine, the WVDEP shall decide whether to approve or proceed with the proposed reclamation project, or to defer reclamation until it can be accomplished during the process of future mining. The NPS stated that it is concerned that this process places coal economics above reclamation needs. The NPS stated that it believes that the ranking of reclamation projects should not include any assumed value of in-place coal.

While section III B. 6(c) has not been revised by the State, we disagree that this provision places coal economics above reclamation needs. Rather, this provision provides the WVDEP with the flexibility to consider, among other factors, whether coal or other mineral resource is economical to mine. The provision does not place the economic consideration above all others. While it is a factor of consideration, it is not the most important factor. For example, consideration of the economic value of the coal would not override specific benefits of reclamation such as protection of human life, health, and safety. In addition, section III.B. 6(d) provides that any decision to defer reclamation until future mining occurs may be reconsidered by the WVDEP whenever the WVDEP determines that reclamation should be accomplished sooner.

The NPS commented that at section III B. 6(f), the provision provides that if the mineral estate under the area to be reclaimed contains other seams that are currently uneconomical to mine, provisions should be made allowing the coal to be mined in the future. The NPS stated that abandoned mine reclamation needs should take precedent over providing access to coal that may or may not be economic to mine at a future date.

Section III B. 6(f) was not revised by the State. However, we note that this provision does not provide that reclamation must be prevented or even

delayed to provide for coal removal at a later date. Rather, this provision essentially directs AMLR Program planners to prepare for that eventuality by establishing provisions to allow for any coal, which is currently uneconomical to mine, to be mined in the future. If the coal is mined in the future, a permit would be required and the site would be reclaimed after mining.

Finally, the NPS stated that the revised AMLR Plan should include a provision for notification of affected land owners or land managers of the anticipated prioritization and scheduling of reclamation to be performed. This could be done, the NPS stated, through private and public announcements as is currently practiced with active mining permits.

The AMLR Plan provides public participation and agency review provisions at section VIII. That section provides that prior to submission of non-emergency construction projects to OSM for the issuance of an Authorization to Proceed (ATP), the WVDEP will conduct at least one public meeting in Charleston, West Virginia, to describe the project submittal's contents. All public meetings will be announced via news releases and legal advertisements. Legal ads will be placed in newspapers with circulations in the locations of the proposed projects. Section VIII also provides that a NEPA environmental assessment document will be included for each project. The AMLR Plan provides that environmental assessments may be reviewed by the agencies listed in section VIII, and other agencies besides those listed may be asked to comment on the environmental assessments. We suggest that NPS contact the WVDEP to discuss the level of participation that NPS seeks or for those specific projects that it may be interested in receiving notification about in the future.

*Environmental Protection Agency (EPA) Comments*

Under 30 CFR 884.14(a)(2) and 884.15(a), we also requested comments on the amendment from EPA (Administrative Record Number WV–1473). EPA responded by letter dated September 27, 2006, and stated that it had not identified any apparent inconsistencies with the Clean Water Act, Clean Air Act, or other statutes and regulations under EPA's jurisdiction (Administrative Record Number WV–1476). EPA stated that it did not have any other comments.

## V. OSM's Decision

Based on the above findings, we are approving the AMLR Plan amendment dated June 16, 2006, as submitted by West Virginia on June 27, 2006 (Administrative Record Number WV–1469).

To implement this decision, we are amending the Federal regulations at 30 CFR 948.20 and 948.25, which codify decisions concerning the West Virginia AMLR Plan amendments. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 405(d) of SMCRA requires that the State have a program that is in compliance with the procedures, guidelines, and requirements established under the Act. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

## VI. Procedural Determinations

*Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that 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 or Tribal abandoned mine land reclamation plans and plan amendments because each program is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and plan amendments submitted by a State or Tribe are based solely on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR part 884 of the Federal regulations.

*Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of abandoned mine land reclamation programs. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 405(d) of SMCRA requires State abandoned mine land reclamation programs to be in compliance with the procedures, guidelines, and requirements established under SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The rule does not involve or affect Indian Tribes in any way.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

No environmental impact statement is required for this rule because agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

*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 certifies 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 counterpart 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. 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 counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 948**

Abandoned mine reclamation programs, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 1, 2006.

**H. Vann Weaver,**

*Acting Regional Director, Appalachian Region.*

■ For the reasons set out in the preamble, 30 CFR part 948 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 948.20 is amended by revising the heading and paragraph (b) as follows:

**§ 948.20 Approval of State abandoned mine lands reclamation plan.**

* * * * *

(b) West Virginia Department of Environmental Protection, Office of Abandoned Mine Lands and Reclamation, 601 57th Street SE., Charleston, West Virginia 25304–2345, Telephone (304) 926–0485.

■ 3. Section 948.25 is amended by revising the heading, and adding in the table a new entry in chronological order by ''Date of final publication'' to read as follows:

**§ 948.25 Approval of West Virginia abandoned mine lands reclamation plan amendments.**

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|---|---|---|
| * | * | * * * * * * * |
| June 27, 2006 | January 17, 2007 | Amendment includes AML enhancement requirements and other revisions to West Virginia's AMLR Plan dated June 16, 2006. |

[FR Doc. E7–455 Filed 1–16–07; 8:45 am]

**BILLING CODE 4310–05–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 60, 61, and 63

**[FRL–8269–6]**

### Delegation of Authority to the States of Iowa, Missouri and Nebraska for New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP); and Maximum Achievable Control Technology (MACT) Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of delegation of authority.

**SUMMARY:** The states of Iowa, Missouri and Nebraska have submitted updated regulations for delegation of EPA authority for implementation and enforcement of NSPS, NESHAP, and MACT. The submissions cover new EPA standards and, in some instances, revisions to standards previously delegated. EPA's review of the pertinent regulations shows that they contain adequate and effective procedures for the implementation and enforcement of these Federal standards. This action informs the public of delegations to the above-mentioned agencies.

**DATES:** This document is effective on January 17, 2007. The dates of delegation can be found in the **SUPPLEMENTARY INFORMATION** section of this document.

**ADDRESSES:** Copies of documents relative to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

Effective immediately, all notifications, applications, reports, and other correspondence required pursuant to the newly delegated standards and revisions identified in this document must be submitted with respect to sources located in the jurisdictions identified in this document, to the following addresses:

Iowa Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Urbandale, Iowa 50322

Missouri Department of Natural Resources, Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102–0176

Nebraska Department of Environmental Quality, Air Quality Division, 1200 ''N'' Street, Suite 400, PO Box 98922, Lincoln, NE 68509

Duplicates of required documents must also continue to be submitted to