



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

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West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; cooperative agreement.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are publishing this final rule to amend the existing Federal Lands Cooperative Agreement between West Virginia and the U.S. Department of the Interior (Department). The Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) and the Federal regulations authorize a State with an approved permanent regulatory program to enter into an agreement for the State regulation of surface coal mining and reclamation operations on Federal lands. West Virginia's existing cooperative agreement with the Department was adopted in February 1984, to allow for the State regulation of SMCRA on Federal lands within West Virginia under its approved permanent regulatory program (the West Virginia program).

DATES: The effective date is [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

- I. Background on the Cooperative Agreement
- II. Submission of the Cooperative Agreement
- III. Summary of the Cooperative Agreement

Cooperative Agreement

Article I: Introduction, Purpose and Responsible Administrative Agency

Article II: Effective Date

Article III: Definitions

Article IV: Applicability

Article V: Requirements for Cooperative Agreement

Article VI: Review of a Permit Application Package

Article VII: Inspections

Article VIII: Enforcement

Article IX: Bonds

Article X: Termination of Cooperative Agreement

Article XI: Reinstatement of Cooperative Agreement

Article XII: Amendment of Cooperative Agreement

Article XIII: Changes in State or Federal Standards

Article XIV: Changes in Personnel and Organization

Article XV: Reservation of Rights

IV. Public Comments

V. Statutory and Executive Order Reviews

I. Background on the Cooperative Agreement

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in

accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of the criteria outlined in Section 503(a) of SMCRA, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval, is found in the January 21, 1981, *Federal Register* (46 FR 5915). Later actions concerning the West Virginia program and program amendments can be found at 30 CFR 948.10 (State regulatory program approval), 948.12 (State statutory, regulatory, and proposed program amendment provisions not approved), 948.13 (State statutory and regulatory provisions set aside), 948.15 (Approval of West Virginia's regulatory program amendments), and 948.16 (Required regulatory program amendments).

Section 523(c) of the Act permits a State with a permanent regulatory program to enter into a cooperative agreement with the Department for the regulation of surface coal mining and reclamation operations on Federal lands within the State. 30 U.S.C. 1273(c). West Virginia sent a request, received by us on August 26, 1981, proposing to enter into a Federal Lands Cooperative Agreement (herein referred to as the existing cooperative agreement) between the Department and the State of West Virginia to grant West Virginia the ability to administer its approved regulatory program on Federal lands within West Virginia. West Virginia's existing cooperative agreement was approved on February 24, 1984, and the final rule notice was published in the March 9, 1984, *Federal Register* (49 FR 8913). Several years have passed since the original agreement was adopted, and West Virginia proposed to amend the existing cooperative agreement to reflect the operative statutes and regulations, and agency responsibilities associated with the regulation of coal mining and reclamation activities on Federal lands covered by the agreement. The revised cooperative agreement will also grant the State the additional authority to regulate all coal exploration activities on Federal lands, except for those

subject to 43 CFR part 3400, and the primary responsibility to review and approve coal mining permits involving leased Federal coal.

II. Submission of the Cooperative Agreement

On August 5, 2014, the West Virginia Department of Environmental Protection (WVDEP) submitted a proposed, revised cooperative agreement (herein referred to as the revised cooperative agreement) to address several changes that have occurred since the existing cooperative agreement was adopted. (Administrative Record No. WV-1599). Before submitting its draft revised cooperative agreement, WVDEP collaborated with OSMRE's Charleston Field Office (CHFO).

The regulatory provision authorizing the amendment of cooperative agreements is found in 30 CFR 745.14. This provision provides that a cooperative agreement, which has been approved pursuant to 30 CFR 745.11, may be amended by mutual agreement of the Secretary and the Governor of a State.

Amendments to a cooperative agreement must be adopted by the Federal rulemaking process in accordance with 30 CFR 745.11. Section 745.11(b)(1) requires information sufficient for OSMRE to make findings in accordance with paragraph (f) that the State has: (1) an approved program; (2) sufficient budget, equipment, and personnel to enforce its program on Federal lands in the state; and (3) legal authority to enter into the cooperative agreement. Section 745.11(b)(2) requires a cooperative agreement, consistent with the requirements of 30 CFR part 745, and § 745.11(b)(3) requires a certification from the State Attorney General or the chief legal officer of the State regulatory authority that no state statutory, regulatory, or legal constraints exist that would preclude the state from fully carrying out the cooperative agreement. The information relating to the budget, staffing, organization, and duties of the State regulatory authority, WVDEP, was submitted when West Virginia requested its existing

cooperative agreement. We have determined that the information provided at that time satisfies the requirements for the proposed amendments to the cooperative agreement, and no additional information is needed. *See* 49 FR 8913.

A written certification from the West Virginia Attorney General was included in the State's request for its existing cooperative agreement. The Attorney General concluded that no State statutory, regulatory, or other legal constraint exists that would limit the capability of the State to fully comply with section 523(c) of the Act, as implemented by 30 CFR part 745. By letter dated July 7, 2014, WVDEP's General Counsel certified the same about the agency's August 5, 2014, proposed, revised cooperative agreement. WVDEP included this letter with its submission.

III. Summary of the Cooperative Agreement

By mutual agreement between the Governor of West Virginia and the Secretary, with the Secretary's understandings and limitations provided herein, the proposed amendments to the cooperative agreement, published in the *Federal Register* on July 20, 2020 (85 FR 43761), are being adopted as final with certain revisions described below and minor non-substantive revisions. A discussion of the terms of the cooperative agreement follows. The full text of the cooperative agreement will be published as an appendix to 30 CFR 948.30.

Preamble or Introduction to the Cooperative Agreement

Sets forth the parties to the Cooperative Agreement.

Article I: Introduction, Purpose, and Responsible Agency

Paragraph *A. Authority* is amended to clarify that surface coal mining and reclamation operations include "surface operations and surface impacts incident to underground mining operations." Paragraph *A* is further amended to provide (1) reference to activities reserved for the Bureau of Land Management (BLM), such as the ability to lease Federal coal subject to 43 CFR parts 3400 through 3480 and activities

reserved for OSMRE through the mining plan approval process at 30 CFR part 746; (2) explains that the State regulation will be conducted in a manner consistent with SMCRA, the Federal lands program pursuant to 30 CFR parts 740, 745, and 746, and the approved West Virginia program; and (3) delegates authority to the State to review and approve coal exploration activities on Federal lands within West Virginia except those activities reserved for BLM under 43 CFR part 3400. We made several minor revisions in this section and throughout the revised cooperative agreement to clarify and emphasize that coal exploration activities subject to BLM's authority under 43 CFR part 3400 are not covered by this agreement.

Paragraph *B. Purposes* is amended for clarity and to account for coal exploration not subject to BLM authority.

Paragraph *C. Responsible Administrative Agencies* indicates that the WVDEP is authorized to regulate coal mining in West Virginia subject to oversight from OSMRE, as provided in SMCRA; WVDEP is authorized to administer this cooperative agreement on behalf of the Governor; and that OSMRE will administer this cooperative agreement on behalf of the Secretary, in accordance with the regulations in 30 CFR chapter VII.

Article II: Effective Date provides that, after the cooperative agreement has been signed by the Secretary and the Governor, it will become effective 30 days after publication in the *Federal Register*. This cooperative agreement will remain in effect until terminated, as provided in Article XI, or superseded by amendment, in accordance with Article XIII, which cites the process under 30 CFR 745.14. We revised this section to clarify that its effective date is 30 days from publication in the *Federal Register*, consistent with section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. 553(d), and that amendment exists as an alternative to termination.

Article III: Definitions expands the list of definition sources, originally listing 30 CFR

parts 700, 701, and 740, and the State program, to incorporate SMCRA, 30 CFR 700.5, 701.5 and 740.5, the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA), the Office of Explosives and Blasting, and the rules and regulations promulgated pursuant to those Acts. Moreover, it resolves instances where a conflict occurs between State and Federal definitions, stating that the definitions used in the approved State program will apply, except for instances where a term conflicts with the Secretary's remaining responsibilities under SMCRA and other laws, and the definition of "valid existing rights," for which WVDEP will use the Federal definition. We revised Article III from the version West Virginia submitted to account for terms that may conflict with the Secretary's remaining responsibilities under SMCRA and other laws, and to emphasize that the term "coal exploration operation(s)" used in this agreement excludes those operations subject to BLM's authority under 43 CFR part 3400.

Article IV: Applicability provides clarity that although the laws, regulations, terms and conditions of the West Virginia program are applicable to Federal lands in the State through the cooperative agreement, certain authority or responsibilities are reserved and cannot be delegated to the State as the regulatory authority. Further, it includes current statutory and regulatory references that are relevant but not presently included. This Article further states that WVDEP would be primarily responsible for regulating coal mine sites that may involve Federal coal, which is discussed further below.

This Article further provides that the State Surface Mine Board is the appropriate entity to receive appeals of orders and decisions issued by WVDEP and that the Department of the Interior's Office of Hearings and Appeals is the appropriate entity to receive appeals of orders and decisions issued by the Secretary or OSMRE.

Article V: General Requirements

Paragraph *A. Authority of State Agency* provides that WVDEP has, and will continue to have, the authority to carry out the terms of this cooperative agreement.

Paragraph *B. Funding* states that WVDEP will be provided with the necessary funds to cover the full cost incurred by the State in carrying out its responsibilities under this cooperative agreement, subject to the availability of appropriations and provided that such cost does not exceed the estimated cost that the Federal government would have expended on such responsibilities in the absence of this cooperative agreement. Further, it includes current references to Federal regulations and guidance that are relevant, but not presently included, and provides that if sufficient funds are not appropriated to OSMRE, OSMRE and WVDEP will meet to decide on appropriate measures to ensure that coal operations subject to regulation under the cooperative agreement remain regulated in accordance with the State program.

Paragraph *C. Reports and Records* requires the State, pursuant to 30 CFR 745.12(d), to report its compliance with the cooperative agreement to us on a regular basis. Further, the provision provides that OSMRE will provide WVDEP a copy of any final evaluation report concerning the State's administration and enforcement of this cooperative agreement and is amended to acknowledge WVDEP's ability to provide comments on such reports.

Paragraph *D. Personnel* requires the State to provide the necessary personnel and access to facilities to implement this cooperative agreement. However, the revised cooperative agreement would make the existing personnel requirements contingent upon adequate appropriations and grant awards.

Paragraph *E. Equipment and Facilities* provides that WVDEP will ensure it has access to equipment, laboratories, and facilities to perform all necessary inspections, investigations, studies, tests, and analyses. However, the revised cooperative agreement would make the existing equipment and facilities requirements contingent upon adequate

appropriations and grant awards.

Paragraph *F. Permit Application Fees and Civil and Criminal Penalties* is amended to incorporate coal exploration application fees. It requires civil and criminal penalties and fines collected by the State from operations on Federal lands to be deposited in the State's Special Reclamation Fund and Special Reclamation Water Trust Fund and allows the State to consider all permit application fees collected as program income to be retained by the State and deposited within WVDEP's Mining and Reclamation Operation Fund. We made a minor revision to specify that civil penalty money collected by the State gets deposited in this way to distinguish from civil penalty money collected by OSMRE in its oversight capacity, which is subject to the uses specified in 30 CFR 845.21. Additionally, a requirement to submit a financial status report pursuant to 30 CFR 735.26 requires that the State report the permit fee, penalty, and fine amounts collected from operations on Federal lands covered by this agreement during the prior grant year. This amendment also deletes a provision from Paragraph *F* that required that the funds "be disposed of in accordance with Federal regulations, and OMB Circular No. A-102, Attachment E." Attachment E (Program Income) of OMB Circular No. A-102, in effect at the time of the original cooperative agreement, has since been replaced by provisions addressing program income in the Office of Management and Budget's Common Rule for Uniform Administration Requirements for Grants and Cooperative Agreements to State and Local Governments (2 CFR part 200). The reference to the Common Rule was moved to Article V, Paragraph B (Funding) above.

Article VI: Review of Permit Application updates the procedures, responsibilities of each agency, and agency coordination associated with permitting on Federal lands covered by this agreement. WVDEP is primarily responsible for reviewing and approving coal mining permits involving Federal and privately owned coal as well as the authority to

regulate all surface coal mining and reclamation operations on Federal lands covered by this agreement. This article provides a more thorough outline of the specific duties assigned to the State or Federal agency for permitting actions, including the agency responsibilities and review procedures for operations involving Federal surface and leased Federal coal.

Paragraph *A. Responsibilities* establishes that WVDEP would continue to hold the primary responsibility for reviewing and approving a permit application package. BLM is the agency responsible for matters concerning Federal coal leases issued under mineral leasing laws, as well as the regulation of exploration operations involving Federal coal, both of which fall under 43 CFR part 3400 of the Federal regulations. In instances where the operation involves leased Federal coal, OSMRE is required to prepare a mining plan decision document and make a recommendation to the Secretary to approve, disapprove, or approve with conditions the mining plan (30 CFR part 746). OSMRE is also required to consult with and seek concurrence from BLM, any Federal land management agency, and other relevant Federal agencies, in order to determine the appropriate mining plan recommendation for the Secretary.

Paragraph *A* sets forth the Secretary's reserved right to carry out certain responsibilities, and act independently of WVDEP, pursuant to laws other than SMCRA. The cooperative agreement provides a clear depiction of the Secretary's responsibilities, outlined in 30 CFR 740.4(a), that cannot be delegated to the State under the Federal lands program, the Mineral Leasing Act of 1920 (MLA), National Environmental Policy Act of 1969 (NEPA), this cooperative agreement, and other applicable Federal laws. However, Paragraph *A* explains that the Secretary's authority to make certain determinations under SMCRA that cannot be delegated to WVDEP may be delegated to OSMRE. Although the Department of the Interior retains responsibilities under NEPA, the Department of the Interior may request the State's assistance in preparing documents for NEPA compliance.

The cooperative agreement enables us and the State, with the concurrence of other Federal agencies involved, to delegate additional responsibilities to WVDEP under other applicable Federal laws by establishing a working cooperative agreement.

Paragraph *B. Submission of Permit Application* continues to set forth similar permit application submission procedures as those provided under Paragraph *A. Contents of Permit Application Package* of the existing cooperative agreement and incorporates coal exploration operations on Federal lands. Paragraph *B* additionally requires applicants to satisfy the 30 CFR 740.13(b) requirements, which set forth the information required for a permit application package, submission procedures, and other permit requirements.

Paragraph *C. Review Procedures* provides a more extensive description of agency responsibilities during permit review. Paragraph *C* requires OSMRE and WVDEP to develop a work plan and permit application review schedule, incorporating the timeframes established by the approved State program. In addition to agency coordination procedures, it provides that OSMRE will provide the State with comments on the application, as well as any requirements for additional data, within 45 days of receiving the administratively complete permit application. In the event that OSMRE is unable to provide comments in that timeframe, we revised the proposed version of this provision to provide WVDEP a mechanism to elevate the matter to the OSMRE Regional Director for prompt resolution. This revision reflects that, while we intend to provide comments or request additional information within 45 days of receiving an application, we cannot through nonaction waive or abrogate any statutory and regulatory obligations set out in the authorities expressly reserved to the Secretary under 30 CFR 745.13. Paragraph *C* also requires OSMRE to send WVDEP copies of all non-privileged external correspondence that may have a bearing on the permit application unless the correspondence is otherwise protected by Federal law. We revised the proposed version

of this provision, which referenced copies of all correspondence, to reflect that some correspondence may be privileged or otherwise protected by law from unnecessary disclosure. *See* 51 FR 45082, 45083 (Dec. 16, 1986) (adding a similar limitation to Wyoming's cooperative agreement and referencing as an example a request for confidentiality by citizen complainant pursuant to 30 CFR 842.12(b)). We will coordinate the resolution of any conflicts between WVDEP and other Federal agencies to assist the State in carrying out its responsibilities. Finally, we revised the proposed agreement by removing two references to a "Federal lands liaison," a term which has no statutory or regulatory origin, using instead simply "primary point of contact."

Paragraph *D. Review Procedures Where There is Federal Surface, but No Leased Federal Coal Involved* clarifies that WVDEP will be responsible for reviewing permit applications for operations on Federal lands that do not involve leased Federal coal and do not require a mining plan.

Paragraph *E. Review Procedures Where Federal Surface and Leased Federal Coal Is Involved* allows us to delegate our obligations under 30 CFR 740.4(c)(1), (2), (3), (4), (6), and (7), thereby authorizing WVDEP to issue permitting decisions for operations on Federal land, review coal exploration operations not subject to 43 CFR part 3400 and assist us in the preparation of NEPA documents. After consulting with the appropriate agency, the revised cooperative agreement would also enable the State to approve and release bonds and determine the postmining land use. Paragraph E provides that BLM will notify WVDEP of its leasing actions and provide a copy of the decision.

Paragraph *F. [WV]DEP, OSMRE, and Other Federal Agency Coordination* reiterates the agency coordination required when Federal leased coal is involved. In addition to discussing WVDEP's responsibility to consult with BLM and any Federal land management agency when the proposed permit application involves leased Federal coal, Paragraph *F* provides that WVDEP is responsible for seeking comments from other

agencies with jurisdiction over Federal lands affected by the proposed operation. Further, the State will request that Federal agencies provide their comments and findings to WVDEP within 45 calendar days after receipt of the permit application. Pursuant to Paragraph F, WVDEP is also responsible for providing us with written findings that each permit application involving lands containing leased Federal coal is in compliance with the State program.

Paragraph *F* sets forth the State, OSMRE, and BLM's responsibility to coordinate with other agencies in instances where the proposed permit area includes leased Federal coal. The State is required to provide OSMRE with written findings demonstrating that each permit application complies with the West Virginia program and to perform a technical analysis of each application. To make the recommendation for the Secretary's decision on the mining plan, OSMRE will be required to consult with and obtain concurrence from BLM, any Federal land management agency, and any other agency with jurisdiction over Federal lands affected by the proposed operations. Lastly, Paragraph *F* of Article VI establishes a five-day timeframe for BLM to notify the State of actions taken pursuant to 43 CFR part 3400 and provide documentation on all leasing decisions.

Paragraph *G. Permit Application Decision and Permit Issuance* authorizes the State to approve, disapprove, or conditionally approve permits for surface coal mining operations and coal exploration activities on Federal lands covered by this agreement. It requires certain terms or conditions to be incorporated into State-issued permits, including but not limited to, lease requirements pursuant to the MLA and postmining land use conditions imposed by any Federal land management agency.

Additionally, Paragraph *G* allows the State to approve a surface mining permit involving leased Federal coal before the Secretary has issued a decision on the mining plan. However, it clarifies that the State will be responsible for informing the operator

that permit issuance is contingent upon the Secretary's approval of the mining plan or surface mining cannot commence unless the mining plan has been approved. Further, Paragraph *G* authorizes the State to reserve the right to withdraw permit approval or modify the permit requirements to conform with any terms or conditions imposed by the Secretary in the approval of the mining plan. We removed references to coal exploration activities from this section because those activities would be subject to BLM's authority under 43 CFR part 3400.

Paragraph *H. Review Procedures for Permit Revisions; Renewals; and Transfer, Assignment or Sale of Permit Rights*, incorporates the procedures for the above-listed permit actions. For applications involving permit revisions or renewals on Federal lands covered by this agreement, WVDEP is responsible, under the revised cooperative agreement, for reviewing and approving the proposed permit revision or renewal. However, the cooperative agreement requires the State to consult with OSMRE beforehand so that we may determine whether the proposed permitting action would require a mining plan modification. Paragraph *H* requires OSMRE to notify the State, within 15 days of receiving a copy, if the proposed permit revision or renewal constitutes a mining plan modification. In the event that OSMRE is unable to provide its determination in that timeframe, we revised the proposed version of this provision to provide WVDEP a mechanism to elevate the matter to the OSMRE Regional Director for prompt resolution. This revision reflects that while we intend to provide our determination within the 15 days, we cannot through inaction waive or abrogate our obligation to make the determination. When a mining plan modification requiring Secretarial approval is necessary, Paragraph *H* directs OSMRE and the State to follow the procedures outlined in Paragraph *E. Review Procedures Where Federal Surface and Leased Federal Coal Is Involved* of the revised cooperative agreement.

We have removed proposed revisions to Paragraph *H* stating that we may

establish criteria, consistent with the mining plan modification criteria set forth in 30 CFR 746.18, to identify those permit revisions or renewals that clearly do not constitute mining plan modifications. We began accepting this provision in various state cooperative agreements beginning in 1985, and most recently in 1999. *See* 50 FR 30916, 30919, 30923 (July 30, 1985) (approving Alabama cooperative agreement) *and* 64 FR 70578, 70582 (Dec. 17, 1999) (approving Indiana cooperative agreement). In the 40 years since we began approving this provision, we have not promulgated any such criteria. As we acknowledged in our approval of the Wyoming cooperative agreement in 1986, “[s]uch permit revisions and renewals also may not affect the non-delegable responsibility of OSMRE and other Federal agencies.” 51 FR 45082, 45087 (Dec. 16, 1986). Because our non-delegable responsibilities under various Federal statutes have not remained static, promulgation of this type of criteria has been and remains imprudent. Should we decide in the future that promulgation of these criteria is warranted, we will assess their impact on our cooperative agreements at that time. If we determine that the renewal or revision does not require a mining plan modification, the cooperative agreement under Paragraph *H* directs the State to review the proposed revision or renewal according to the procedures set forth in the proposed Paragraph *D. Review Procedures Where There is Federal Surface, but No Leased Federal Coal Involved*, the West Virginia Program, and the regulations at 30 CFR 740.13(d), if applicable.

Paragraph *H* also requires transfer, assignment, or sale of permit rights on Federal lands to be processed in accordance with the West Virginia program and the regulations at 30 CFR 740.13(e). Similar to the permit revisions or renewals procedures, applications for transfer, assignment, or sale of permit rights must be evaluated to determine whether the application requires a mining plan modification. Those applications that are determined by us to require a mining plan modification will be processed according to the procedures provided in Paragraph *E*. Otherwise, applications that do not require a mining

plan modification will be evaluated by the State according to the procedures set forth in the proposed Paragraph *D* of the revised cooperative agreement.

Article VII: Inspections continues to require WVDEP to perform inspections on Federal land pursuant to 30 CFR 740.4(c)(5) and provide OSMRE with a copy of the completed State inspection report. However, Article VII requires WVDEP to provide OSMRE with access to a copy of the completed State inspection report after the State conducts an inspection on Federal lands, on a “timely basis”, rather than the 15-day deadline previously required by the cooperative agreement. The cooperative agreement specifically refers to 30 CFR parts 842 and 843 to clarify that the authority for Federal inspection and monitoring and Federal enforcement is retained by OSMRE. We made a minor revision to the proposed provision to clarify that all citizen complaints that do not involve an imminent danger or significant, imminent environmental harm will be handled consistent with OSMRE’s procedures under section 521 of SMCRA, 30 U.S.C. 1271, and the corresponding regulations under 30 CFR part 842. We removed language that the complaint will be “referred” to DEP, language that we first accepted in our approval of Colorado’s cooperative agreement in 1982. *See* 47 FR 44208 (Oct. 6, 1982). In our approval, we provided, “[We] have decided to adopt this comment. However, it should be understood that pursuant to section 521 of [SMCRA], if the State regulatory authority fails within ten days after notification to take appropriate action to cause such violation to be corrected or to show good cause for such failure and transmit notification of its action to the Secretary, the Secretary shall immediately order Federal inspection of the surface coal mining operation at which the alleged violation is occurring.” *Id.* (internal quotations omitted). We make this revision here to simply cite to the established ten-day notice process. Lastly, a provision in the existing cooperative agreement about State and Department of the Interior witness availability is moved to *Article VIII: Enforcement*.

Article VIII: Enforcement clarifies that WVDEP's enforcement actions include the assessment of civil or criminal penalties in addition to issuing orders of cessation or notices of violation. Although the cooperative agreement requires the State to take appropriate enforcement action, it also requires WVDEP to notify us and any Federal land management agency of decisions to suspend or revoke a permit on Federal lands before issuing such decision.

In instances where inspections are conducted solely by us, or during a joint inspection where WVDEP and OSMRE do not agree on a particular enforcement action, *Article VIII* provides that OSMRE may take any enforcement action necessary to comply with 30 CFR parts 843, 845, and 846. The existing cooperative agreement was amended to add 30 CFR part 846, which relates to individual civil penalties.

Article VIII also provides that permits to conduct coal exploration or surface coal mining and reclamation operations covered by this agreement may be suspended or revoked by WVDEP pursuant to the State program, but issuance of any decision to suspend or revoke a permit on Federal land requires that WVDEP must first inform us and the Federal land management agency before its decision is issued. The State will be required to notify BLM of its decision to revoke or suspend a permit that is on lands containing leased Federal coal, so BLM may assess whether cancellation of the Federal lease is necessary. *Article VIII* also now contains the provision from *Article VII* of the existing cooperative agreement that WVDEP and Department of the Interior personnel will be mutually available to serve as litigation witnesses taken by the other agency.

Finally, *Article VIII* specifies that the cooperative agreement does not affect or limit the Secretary's authority to enforce violations of Federal authorities other than SMCRA or the State's authority under other State laws. For reference, a current list of

the most relevant other authorities is found in Appendix A to the cooperative agreement; however, this list is not intended to be exhaustive.

Article IX: Bonds incorporates coal exploration activities covered by this agreement, use of penal bonds, the conversion to a full-cost reclamation bond in the event the cooperative agreement is suspended or terminated, and the agency coordination and procedures associated with bond release and forfeiture. The State and the Secretary will require operators conducting coal exploration or surface coal mining and reclamation activities on Federal lands covered by this agreement to submit a performance and/or penal bond. The Article specifies that these requirements include those established by SMCRA, the State program, other State or Federal laws and regulations, along with any other requirements imposed by the Secretary or any Federal land management agency. In order for the State to release the bond, the State will be required to obtain our concurrence on the bond release, which, in turn, would require us to consult with any Federal land management agency and any other agency with jurisdiction or responsibility over Federal lands affected by the operation. This Article also requires the State to advise us of any annual adjustments to the bonds made pursuant to the West Virginia program.

The Article continues to require bonds to be made payable to the United States in the event the cooperative agreement is terminated. However, it additionally requires the bond to provide that the portion covering Federal lands be converted into a full-cost reclamation bond upon the termination, as well as suspension, of the cooperative agreement. Further, this Article requires WVDEP, before termination of the cooperative agreement, to assist us in obtaining the full-cost reclamation bond from the operator for the areas only covering Federal lands.

Moreover, the list of funds available to the State in the event of bond forfeiture

will be revised to include the Special Reclamation Water Trust Fund. Additional language clarifies that reclamation by the State is to be completed consistent with the West Virginia program, the reclamation plan, and the current mining plan that were in existence before the permit was revoked or modified.

Further, this Article includes additional bonding requirements and would identify the responsible agencies for collection and maintenance of such bonds. The cooperative agreement provides that we or the appropriate Federal agency will be responsible for the collection and maintenance of Federal lease bonds or lessee protection bonds, if such bonds are required. The cooperative agreement provides that the Federal agency that holds a Federal lease bond is responsible for compliance with 43 CFR part 3400 requirements before releasing a Federal lease bond after concurrence with BLM, if necessary.

Article X is newly added; thus, remaining articles are renumbered accordingly.

Article X: Designating Land Areas Unsuitable for all or Certain Types of Surface Mining and Reclamation Operations and Activities and Valid Existing Rights (VER) and Compatibility Determinations provides a more extensive outline of the procedures and agency responsibilities associated with the following determinations.

Paragraph *A. Unsuitability Petitions* sets forth the Secretary's reserved authority to designate Federal lands as unsuitable for mining as provided by 30 CFR 745.13(a). Paragraph *A* discusses OSMRE's responsibilities in processing requests for designating Federal lands as unsuitable for mining and the termination of previous designations in accordance with 30 CFR part 769. The cooperative agreement provides the required procedures for State and Federal agency coordination after a petition to designate lands unsuitable for mining is received. Following comments from WVDEP, we revised the

proposed provision to include a 5 day timeframe for the agency that receives a petition to notify the other agency of its receipt.

Paragraph *B. Valid Existing Rights Determinations* provides the procedures and appropriate actions to be taken by the applicable State or Federal agency when requests for determinations of valid existing rights (VER), pursuant to section 522(e) of SMCRA and the Federal regulations at 30 CFR 761.11, are received. For private in-holdings within areas protected under 30 CFR 761.11(a) and SMCRA section 522(e)(1), WVDEP is to process the VER request in accordance with the State program but use the Federal VER definition at 30 CFR 761.5 when making VER determinations. The framework in this paragraph is outlined in 30 CFR 761.16(a).

Paragraph *C. Compatibility Determinations* outlines the procedures for compatibility determinations and indicates that the Secretary is responsible for issuing findings determining whether there are significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations incident to underground mining on Federal lands within the boundaries of a national forest protected pursuant to section 522(e)(2) of SMCRA and 30 CFR 761.11(b). Paragraph *C* lists OSMRE as the responsible agency to process requests for compatibility determinations in accordance with the procedures outlined in 30 CFR 761.13.

Article XI: Termination of Cooperative Agreement specifies that this Cooperative Agreement may be terminated by the Governor or the Secretary under the provision of 30 CFR 745.15.

Article XII: Reinstatement of Cooperative Agreement provides that if this Cooperative Agreement is terminated in whole or in part, it may be reinstated under the provisions of 30 CFR 745.16.

Article XIII: Amendment of Cooperative Agreement provides that this Cooperative Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Article XIV: Changes in State or Federal Standards, in addition to renumbering, contains non-substantive wording changes.

Article XV: Changes in Personnel and Organization, in addition to renumbering, contains non-substantive wording changes.

Article XVI: Reservation of Rights states that this Cooperative Agreement will not be construed as waiving or preventing the assertion of any rights in this Cooperative Agreement that the State or the Secretary may have under laws other than SMCRA and the State program, including, but not limited to, those listed in Appendix A.

IV. Public Comments

We received only one anonymous comment during the specified comment period, but it was not germane to the amendment, and, therefore, we have not provided a response.

V. Statutory and Executive Order Reviews

Executive Order 12630 – Governmental Actions and Interference with Constitutionally Protected Property Rights

This rule would not result in a taking of private property or otherwise have taking implications that would result in private property being taken for government use without just compensation under the law. This rule revises a cooperative agreement at the request of the State of West Virginia and will result in the delegation of additional authority to

the State that would otherwise be exercised by the Department through OSMRE.

Therefore, a takings implication assessment is not required.

Executive Orders 12866 - Regulatory Planning and Review, 13563 – Improving Regulations and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993 (OMB Memo M-94-3), entering into an amended State-Federal Cooperative Agreement under SMCRA is exempted from OMB review under Executive Order 12866. Executive Order 13563, which affirms and supplements Executive Order 12866, retains this exemption.

Executive Order 12988 - Civil Justice Reform

The Department of the Interior has reviewed this rule, as required by Section 3 of Executive Order 12988. The Department determined that this *Federal Register* document meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this *Federal Register* document and to changes to the Federal regulations. The review under this Executive Order did not extend to any language of the State regulatory program or the Federal lands program, neither of which is affected by this amended State-Federal Cooperative Agreement.

Executive Order 13132 - Federalism

This rule has no potential Federalism implications, as defined under Section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to “grant the States the maximum administrative discretion possible” with respect to Federal statutes and regulations administered by the States. West Virginia, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the state level. This rule approves an amended State-Federal Cooperative Agreement for the regulation of Federal lands under SMCRA and is consistent with the direction to provide maximum administrative discretion to States.

Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department’s consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on the distribution of power and responsibilities between the Federal government and Tribes. The basis for this determination is that this amended State-Federal Cooperative Agreement in this rule is only applicable to Federal lands and not Indian lands, as those terms are defined by SMCRA, or other Tribal lands. Indian lands under SMCRA are regulated independently under the applicable Federal Indian program. The Department’s consultation policy also acknowledges that our rules may have Tribal implications where the Federal lands covered by this Agreement encompass ancestral lands in areas with mineable coal. Moreover, Department agencies responsible for Federal lands subject to this Agreement must still comply with the Department’s consultation policy in fulfilling their responsibilities outlined in this Agreement.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking 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 a significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

Executive Order 14192 – Unleashing Prosperity Through Deregulation

State program and/or plan amendments are not regulatory actions under Executive Order 14192 because they are exempt from review under Executive Order 12866 (OMB Memo M-94-3).

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. We are not required to provide a detailed statement under the National Environmental Policy Act of 1969 (NEPA) because this rule qualifies for categorical exclusion under the U.S. Department of the Interior Departmental Manual, part 516, appendix 2, section 13.5(B)(21).

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

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 amended State-Federal Cooperative Agreement submitted by West Virginia, which is the subject of this rule, does not impose any new substantive requirements on the coal industry. Rather, the amended State-Federal Cooperative Agreement grants West Virginia the additional authority to regulate all coal exploration activities on Federal lands and would delegate the primary responsibility to review and approve coal mining permits involving leased Federal coal, among other updates, that are responsibilities that would otherwise be undertaken by the Department through OSMRE.

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 rule only affects the State of West Virginia. The costs to West Virginia of carrying out the responsibilities under the State-Federal Cooperative Agreement are offset by grants from the Federal government.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private

sector. This rule amends an existing cooperative agreement at the request of the State of West Virginia and will result in additional delegation of federal authority to the State. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Doug Burgum,
Secretary,
Department of the Interior.

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 948.30 is revised to read as follows:

§ 948.30 State-Federal cooperative agreement.

The cooperative agreement in appendix A of this part is effective [INSERT DATE 30 AFTER DATE OF PUBLICATION in the *Federal Register*].

3. Appendix A to part 948 is added to read as follows:

Appendix A to Part 948 – State-Federal Cooperative Agreement

Cooperative Agreement

The Governor of the State of West Virginia (the Governor) and the Secretary of the Department of the Interior (the Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

Article I: Introduction, Purposes, and Responsible Agencies

A. Authority

This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under section 503 of SMCRA, 30 U.S.C. 1253, to elect to enter into an cooperative agreement for the State regulation and control of surface coal mining and reclamation operations (including surface operations and surface impacts incident to underground mining operations) on Federal lands as that term is defined in 30 U.S.C. 1291(4). This Agreement provides for State regulation of coal exploration operations not subject to 43 CFR part 3400, and surface coal mining and reclamation operations on Federal lands within West Virginia, except for

those activities reserved for the Bureau of Land Management (BLM) involving leased Federal coal subject to 43 CFR parts 3400 through 3480, and the Office of Surface Mining, Reclamation and Enforcement (OSMRE) and the Secretary under 30 CFR part 746.

This Agreement provides for State regulation of coal exploration and surface mining activities consistent with SMCRA, the Federal lands program (30 CFR parts 740, 745, and 746), and the approved West Virginia regulatory program (State program). This Agreement does not abridge any rights that West Virginia may have under State law to regulate coal exploration activities on non-Federal, non-Indian lands within the State.

B. Purposes

The purposes of this Agreement are to (a) foster Federal-State cooperation in the regulation of surface coal mining and reclamation operations and coal exploration operations not subject to BLM's authority under 43 CFR parts 3400 through 3480 and OSMRE's and the Secretary's authority under 30 CFR part 746, (b) minimize intergovernmental duplication of effort, and (c) provide for uniform and effective application of the State program on all non-Indian lands within West Virginia in accordance with SMCRA, the State program, and this Agreement.

C. Responsible Administrative Agencies

The West Virginia Department of Environmental Protection (DEP) will be responsible for administering this Agreement on behalf of the Governor under the approved West Virginia Permanent Regulatory Program. OSMRE will administer this Agreement on behalf of the Secretary, in accordance with the regulations in 30 CFR Chapter VII.

Article II: Effective Date

After being signed by the Secretary and the Governor, this Agreement will take effect 30 days after publication in the *Federal Register* as a final rule. This Agreement

will remain in effect until terminated as provided in Article XI or superseded by amendment in accordance with Article XIII of this Agreement.

Article III: Definitions

The terms and phrases used in this Agreement that are defined in SMCRA, 30 CFR 700.5, 701.5, and 740.5, the State program, including the approved West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA) W. Va. Code § 22-3-1, *et seq.*, and The Office of Explosives and Blasting, W. Va. Code § 22-3A-1, *et seq.*, and the rules and regulations promulgated pursuant to those Acts, will be given the meanings set forth in said definitions. Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the approved State program will apply, except for: (1) instances in which a term conflicts with the Secretary's remaining responsibilities under the Act and other laws; and (2) valid existing rights (VER) requests pursuant to 30 CFR 761.16. The Federal VER definition will apply when making VER determinations for those protected areas identified in 30 CFR 761.11(a) and (b). The term "coal exploration operation(s)" used in this Agreement excludes coal exploration operations subject to 43 CFR part 3400 regardless of whether it is so specified.

Article IV: Applicability

In accordance with the Federal lands program, the laws, regulations, terms and conditions of the State program, as conditionally approved effective January 21, 1981, 30 CFR part 948, or hereinafter amended in accordance with 30 CFR 732.17, are applicable to Federal lands in West Virginia, except as otherwise stated in this Agreement, SMCRA, 30 CFR 740.4, 740.11(a), and 745.13, and other applicable laws, Executive Orders, or regulations.

Orders and decisions issued by DEP in accordance with the State program that are appealable must be appealed to the State Surface Mine Board. Orders and decisions

issued by the Secretary or OSMRE that are appealable must be appealed to the Department of the Interior's Office of Hearings and Appeals.

Article V: General Requirements

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement.

A. Authority of State Agency

DEP has and will continue to have the authority under State law to carry out this Agreement.

B. Funding

Upon application by DEP and subject to the availability of appropriations, OSMRE will provide the State with the funds to defray the costs associated with carrying out its responsibilities under this Agreement as provided in section 705(c) of SMCRA, the grant agreement, and 30 CFR 735.16. Such funds will cover the full cost incurred by DEP in carrying out these responsibilities, provided that such cost does not exceed the estimated cost the Federal government would have expended on such responsibilities in the absence of this Agreement.

The amount of the grant will be determined using the procedures specified in applicable Federal guidance documents, such as the Federal Assistance Manual Chapter 3-10 and Appendix III.

If DEP applies for a grant but sufficient funds have not been appropriated to OSMRE, OSMRE and DEP will promptly meet to decide on appropriate measures that will ensure that coal exploration operations and surface coal mining and reclamation operations on Federal lands within West Virginia are regulated in accordance with the State program. If an agreement cannot be reached, either party may terminate this Agreement in accordance with Article XI of this Agreement.

Funds provided to the DEP under this Agreement will be adjusted in accordance with the Office of Management and Budget Common Rule for Uniform Administration Requirements for Grants and Cooperative Agreements to State and Local Governments and must be reduced by the amount of permit application fees collected by the State that are attributable to the Federal lands covered by this Agreement.

C. Reports and Records

DEP will make regular reports to OSMRE containing information with respect to compliance with the terms of this Agreement pursuant to 30 CFR 745.12(d). Upon request, DEP and OSMRE will exchange information developed under this Agreement, except where prohibited by Federal or State law.

OSMRE will provide DEP with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement. DEP comments on the report will be appended before transmission to the Congress, unless necessary to respond to a request by a certain date or to other interested parties.

D. Personnel

Subject to adequate appropriations and grant awards, the DEP will maintain the personnel necessary to fully implement this Agreement in accordance with the provisions of SMCRA, applicable regulations, the Federal lands program, and the approved State program.

E. Equipment and Facilities

Subject to adequate appropriations and grant awards, the DEP will ensure it has access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed that are necessary to carry out the requirements of this Agreement.

F. Permit Application Fees and Civil and Criminal Penalties

The amount of the fee accompanying an application for a coal exploration operation or a surface coal mining and reclamation operation on Federal lands in West Virginia will be determined in accordance with the approved West Virginia State program. All permit application fees collected from operations on Federal lands will be considered program income to be retained by the State and must be deposited within the Department of Environmental Protection's Mining and Reclamation Operations Fund. Civil and criminal penalties and fines collected by DEP from operations on Federal lands must be deposited in State's Special Reclamation Fund and Special Reclamation Water Trust Fund. The financial status report submitted pursuant to 30 CFR 735.26 will include a report on the amount of permit fees, penalties, and fines collected from operations on Federal lands during the State's prior grant year.

Article VI: Review of Permit Application

A. Responsibilities

DEP will assume primary responsibility for the analysis, review, and approval, disapproval, or conditional approval of the permit application component of the permit application package required by 30 CFR 740.13 for surface coal mining and reclamation operations or for coal exploration operations on Federal lands covered by this Agreement in West Virginia.

For proposals to conduct surface coal mining operations involving leased Federal coal, OSMRE is responsible for preparing a mining plan decision document in accordance with 30 CFR 746.13 and obtaining the Secretary's approval, disapproval, or approval with conditions. The mining plan includes: the permit application package; the resource recovery and protection plan reviewed and approved by BLM; information prepared in accordance with the National Environmental Policy Act of 1969 (NEPA); documentation assuring compliance with other Federal laws and regulations; comments from other Federal agencies and the public; findings and recommendations from BLM

with respect to the resource recovery and protection plan; findings and recommendations from DEP with respect to the permit application and the approved State program; and findings and recommendations from OSMRE with respect to the additional requirements of the Federal lands program.

BLM is responsible for matters concerned exclusively with regulations under 43 CFR part 3400.

The Secretary reserves the right to act independently of DEP to carry out responsibilities under laws other than SMCRA or provisions of SMCRA not covered by the State program, and in instances of disagreement over SMCRA and the Federal lands program. The Secretary will, as provided by 30 CFR 740.4(a), make determinations under SMCRA that cannot be delegated to the State, some of which have been delegated to OSMRE.

The Secretary will concurrently carry out the responsibilities under 30 CFR 740.4(a) that cannot be delegated to DEP under the Federal lands program, the Mineral Leasing Act of 1920 (MLA), NEPA, this Agreement, and other applicable Federal laws. The Secretary will carry out these responsibilities in a timely manner and will avoid, to the extent possible, duplication of the responsibilities of the State, as set forth in this Agreement and the State program. The Secretary will consider the information in the permit application and, where appropriate, make decisions required by SMCRA, MLA, NEPA, and other Federal laws.

Where necessary to make the determination to recommend that the Secretary approve, disapprove, or approve with conditions the mining plan, as provided by 30 CFR 740.4(b)(1), OSMRE will consult with and obtain the concurrences of BLM, any Federal land management agency, and other relevant Federal agencies.

DEP may assist OSMRE in the preparation of documentation to comply with the requirements of NEPA under 30 CFR 740.4(c)(7). If requested, DEP may assist with

document preparation, but OSMRE will retain responsibility for preparing NEPA compliance documents, including the exceptions relating to NEPA as set forth in 30 CFR 740.4(c)(7)(i)-(vii).

DEP will be responsible for the approval and release of performance bonds and liability insurance under 30 CFR 740.4(c)(4), in accordance with Article IX of this Agreement, and for the review and approval under 30 CFR 740.4(c)(6) of coal exploration operations not subject to 43 CFR part 3400.

Responsibilities and decisions that can be delegated to DEP under other applicable Federal laws may be specified in working agreements between OSMRE and the State with the concurrence of any Federal agency involved and without amendment to this Agreement.

B. Submission of Permit Application

DEP will require an applicant proposing to conduct surface coal mining and reclamation operations or coal exploration operations on Federal lands covered by this Agreement to submit a permit application in the format as prescribed by DEP. DEP will furnish a copy of the permit application package or make it available to OSMRE, any Federal land management agency, and any other agency with jurisdiction or responsibility over Federal lands affected by operations proposed in the permit application. The permit application will be in the form required by DEP and will include any supplemental information required by OSMRE, any Federal land management agency, and any other agency with jurisdiction or responsibility over Federal lands affected by operations proposed in the permit application.

At a minimum, the permit application will satisfy the requirements of 30 CFR 740.13(b) and include the information necessary for DEP to make a determination of compliance with 30 CFR 740.4(c) and the State program, and for OSMRE, any appropriate Federal land management agencies, and any other agency with jurisdiction or

responsibilities over Federal lands affected by operations proposed in the permit application to make determinations of compliance with applicable requirements of SMCRA, the Federal lands program, other Federal laws, Executive Orders, and regulations for which they are responsible.

For any existing or pending permit applications on Federal lands being regulated or processed by OSMRE prior to the effective date of this Agreement, OSMRE will coordinate with DEP and continue that responsibility, if so requested by the State. At any point during the regulation or processing of those applications, all additional responsibilities may be passed to DEP pursuant to the terms of this Agreement, along with any attendant fees, fines or civil or criminal penalties therefrom.

C. Review Procedures

DEP will be the primary point of contact for applicants regarding the review of the permit application for compliance with the State program and other applicable State laws and regulations. OSMRE will be the point of contact regarding the review of the applicable portions of the permit application for compliance with the non-delegated responsibilities of SMCRA and for compliance with the requirements of the MLA, other Federal laws, Executive Orders, and regulations.

OSMRE and DEP will develop a work plan and schedule for permit application review that complies with the time limitations established by the approved State program, and each agency will designate a primary point of contact between OSMRE and DEP throughout the review process.

OSMRE will furnish DEP with its review comments on administratively complete permit applications and specify any requirements for additional data within 45 calendar days after receipt of each respective application. OSMRE and DEP will coordinate with each other during the review process, as needed. If OSMRE is unable to furnish its comments within that time, DEP may elevate the matter to the OSMRE Regional

Director. DEP will send to OSMRE copies of any correspondence with the applicant and any information received from the applicant regarding the permit application.

Unless otherwise protected by Federal law, OSMRE will send to DEP copies of all non-privileged external OSMRE correspondence that may have a bearing on the permit application. OSMRE will provide technical assistance to DEP when requested and will have access to DEP files concerning coal exploration or surface mining operations on Federal lands. DEP will keep OSMRE informed of findings made during the review process that bear on the responsibilities of OSMRE or other Federal agencies.

OSMRE will assist the State in carrying out DEP's responsibilities by coordinating resolution of conflicts and difficulties between DEP and other Federal agencies in a timely manner; assisting in scheduling joint meetings, upon request, between State and Federal agencies; and exercising its responsibilities in a timely manner, governed to the extent possible by the deadlines established in the State program.

D. Review Procedures Where There is Federal Surface, but No Leased Federal Coal Involved

DEP will assume the responsibility for review of permit applications where there is no leased Federal coal to the extent authorized in 30 CFR 740.4(c)(1), (2), (4), (6), and (7).

DEP will assume responsibility for the analysis, review and approval, disapproval, or conditional approval of the permit application component of the permit application package required by 30 CFR 740.13 for surface coal mining and reclamation operations in West Virginia on Federal lands not requiring a mining plan pursuant to the MLA, as amended, including applications for revisions, renewals and transfer, sale, and assignment of such permits.

E. Review Procedures Where Federal Surface and Leased Federal Coal Is Involved

DEP will assume the responsibility for review of permit applications involving both Federal surface and leased Federal coal to the extent authorized in 30 CFR 740.4(c)(1), (2), (3), (4), (6), and (7).

DEP will, to the extent authorized, consult with any appropriate Federal land management agency and BLM pursuant to 30 CFR 740.4(c)(2) and (3), respectively. On matters concerned exclusively with regulations under 43 CFR parts 3400 through 3480, BLM will be the primary contact with the applicant. BLM will inform DEP of its actions and provide DEP with a copy of documentation on all leasing decisions.

F. DEP, OSMRE, and Other Federal Agency Coordination

DEP will, to the extent authorized, consult with any other Federal land management agency and with BLM when Federal leased coal is involved pursuant to 30 CFR 740.4(c)(2) and (3), respectively. DEP will also be responsible for obtaining the comments and determinations of other agencies with jurisdiction or responsibility over any other Federal lands affected by the operations proposed in the permit application. DEP will request all Federal agencies to furnish their findings or any request for additional information to DEP within 45 calendar days of the date of receipt of the permit application. OSMRE will, upon request, assist DEP in obtaining such information in a timely manner.

In accordance with 30 CFR 745.12(g)(2), where lands containing leased Federal coal are involved, DEP will provide OSMRE, in the form specified by OSMRE in consultation with DEP, with written findings indicating that each permit application is in compliance with the terms of the State program and a technical analysis of each permit application to assist OSMRE in meeting its responsibilities under other applicable Federal laws and regulations.

Where leased Federal coal is involved, OSMRE will consult with and obtain the concurrences of BLM, any Federal land management agency, and any other agency with

jurisdiction or responsibility over the Federal lands affected by the operations proposed in the permit application as required to make its recommendation for the Secretary's decision on the mining plan.

Where BLM contacts the applicant in carrying out its responsibilities under 43 CFR part 3400, BLM will immediately inform DEP of its actions and provide DEP with a copy of documentation of all leasing decisions within 5 calendar days.

G. Permit Application Decision and Permit Issuance

DEP will prepare a State decision package, including written findings and supporting documentation, indicating whether the permit application is in compliance with the State program. DEP will make the decision on approval, disapproval or conditional approval of the surface mining permit or coal exploration approval on Federal lands in accordance with the State program.

Any permit issued by DEP will incorporate, as applicable, any terms or conditions required by the lease issued pursuant to the MLA and by any other applicable Federal laws and regulations, including conditions imposed by any Federal land management agency relating to postmining land use or any special requirements to protect non-mineral resources and those of other affected agencies.

DEP may make a decision on approval, disapproval, or conditional approval of the surface mining permit on Federal lands in accordance with the State program prior to the necessary Secretarial decision on the mining plan when leased Federal coal is involved, provided that DEP advises the operator in the permit that Secretarial approval of the mining plan must be obtained before the operator may conduct surface coal mining operations on the Federal lands and conditions the issuance of the permit or approval on Secretarial approval of the mining plans. DEP will reserve the right to amend or rescind any requirements of the permit or approval to conform with any terms or conditions when imposed by the Secretary in the approval of the mining plan.

After making its decision on the permit application, DEP will send a notice to the applicant, OSMRE, any Federal land management agencies, and any other agency with jurisdiction or responsibility over Federal lands affected by the operations proposed in the permit application. A copy of the permit and written findings will also be submitted to OSMRE.

H. Review Procedures for Permit Revisions; Renewals; and Transfer, Assignment or Sale of Permit Rights

Any permit revision or renewal for a surface coal mining and reclamation operation on Federal lands will be reviewed and approved or disapproved by DEP after consultation with OSMRE on whether such revision or renewal requires a mining plan modification pursuant to 30 CFR 746.18. OSMRE will inform DEP within 15 calendar days of receiving a copy of a proposed permit revision or renewal whether the permit revision or renewal will require a mining plan modification. If OSMRE is unable to furnish its determination within that time, DEP may elevate the matter to the OSMRE Regional Director. Where approval of a mining plan modification is required, OSMRE and DEP will follow the procedures outlined in Section E of this Article.

Permit revisions or renewals on Federal lands that are determined by OSMRE not to require mining plan modifications will be reviewed and approved by following the procedures set forth in Section D of this Article, the State program, and 30 CFR 740.13(d), if applicable.

Transfer, assignment or sale of permit rights on Federal lands will be processed in accordance with the State program and 30 CFR 740.13(e). Those applications that do not require a mining plan modification will be processed according to the procedures set forth in Section D of this Article. Those applications that do require a mining plan modification will be processed according to the procedures set forth in Section E of this Article.

Article VII: Inspections

DEP will conduct inspections on Federal lands in accordance with 30 CFR 740.4(c)(5) and prepare and file inspection reports in accordance with the State program.

DEP will, subsequent to conducting any inspection on Federal lands pursuant to 30 CFR 740.4(c)(5), and on a timely basis, provide OSMRE with access to a copy of the completed State inspection report.

DEP will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described hereinafter. Nothing in this Agreement will prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department of the Interior may conduct any inspections necessary to comply with 30 CFR parts 842 and 843 and its obligations under laws other than SMCRA.

OSMRE will give DEP reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide State inspectors with an opportunity to join in the inspection.

When OSMRE is responding to a citizen complaint of an imminent danger to the public health and safety or of significant, imminent environmental harm to land, air or water resources, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact DEP prior to the Federal inspection, if circumstances and time allow, to facilitate a joint Federal/State inspection. OSMRE will provide DEP with a copy of the inspection report within 15 days of the inspection. The Secretary reserves the right to conduct inspections without prior notice to DEP to carry out their responsibilities under SMCRA or other Federal laws. All citizen complaints that do not involve an imminent danger or significant, imminent environmental harm will be addressed using OSMRE's procedures under section 521 of SMCRA, 30 U.S.C. 1271, and the corresponding regulations under 30 CFR parts 842 and 843.

Article VIII: Enforcement

DEP will have primary enforcement authority on Federal lands to ensure operator compliance with the requirements of the State program and this Agreement in accordance with 30 CFR 740.4(c)(5); OSMRE retains its SMCRA enforcement authority, as specified in section 521 of SMCRA, 30 U.S.C. 1271, and the corresponding regulations under 30 CFR parts 842-846. Enforcement authority given to the Secretary under other Federal laws and Executive Orders including, but not limited to, those Federal authorities listed in Appendix A (attached) is reserved to the Secretary.

During any joint inspection by DEP and OSMRE, DEP will have primary responsibility for taking enforcement actions, including issuance of orders of cessation, notices of violation, and assessment of civil or criminal penalties. DEP must inform OSMRE and any Federal land management agency prior to issuance of any decision to suspend or revoke a permit on Federal lands.

A permit to conduct coal exploration or surface coal mining and reclamation operations on Federal lands may be suspended or revoked by DEP pursuant to the State program.

If a permit to conduct surface coal mining and reclamation operations on lands containing leased Federal coal is suspended or revoked, the DEP must notify BLM so it can determine whether action should be taken to cancel the Federal lease pursuant to 30 CFR 740.13(f)(2).

During any inspection made solely by OSMRE or any joint inspection where DEP and OSMRE fail to agree regarding the propriety of any particular enforcement action, OSMRE may take any enforcement action necessary to comply with 30 CFR parts 843, 845, and 846. Such enforcement action will be based on the standards in the State program, SMCRA or both and will be taken using the procedures and penalty system contained in 30 CFR parts 843, 845, and 846.

DEP and OSMRE will promptly notify each other and any Federal land management agency of all violations of applicable laws, regulations, orders or approved mining permits subject to this Agreement and of all actions taken with respect to such violations.

Consistent with applicable law, personnel of DEP and the Department of the Interior, including OSMRE, will be mutually available to serve as litigation witnesses in enforcement actions taken by either party.

This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal authorities other than SMCRA. Appendix A of this Agreement lists some, but not all, of the Federal authorities other than SMCRA that may be relevant to this Agreement.

Article IX: Bonds

DEP and the Secretary will require each operator who conducts coal exploration operations or surface coal mining and reclamation operations on Federal lands to submit a performance and/or penal bond payable to both the State of West Virginia and the United States to cover the operator's responsibilities under SMCRA and the State program. The performance and/or penal bond will be conditioned upon compliance with the requirements of SMCRA, the State program, other State or Federal laws and regulations, and any other requirements imposed by the Secretary or any Federal land management agency. Such bond will provide that if this Agreement is suspended or terminated, the portion of the bond covering Federal lands will be converted to a full-cost reclamation bond and made payable only to the United States. Before termination, DEP will assist OSMRE in obtaining the full-cost reclamation bond from the operator for those areas where only Federal lands are covered by the bond. If applicable, DEP will advise OSMRE of any annual adjustments to the performance and/or penal bond pursuant to the State program.

Performance and/or penal bonds will be subject to release and forfeiture in accordance with the procedures and requirements of the State program. Where coal exploration operations or surface coal mining and reclamation operations are conducted on Federal lands, the performance and/or penal bond must be released by the State upon compliance with all applicable State and Federal requirements and after the release is concurred in by OSMRE. OSMRE's concurrence will include coordination with any Federal land management agency and any other agency with jurisdiction or responsibility over Federal lands affected by the coal exploration operation or surface coal mining and reclamation operation.

In the event of forfeiture by an operator of a performance and/or penal bond for a coal exploration operation or a surface coal mining and reclamation operation on Federal lands covered by this Agreement, the State must use funds received from the forfeited bond and, where necessary, funds from the West Virginia Special Reclamation Fund and/or the Special Reclamation Water Trust Fund, pursuant to W. Va. Code § 22-3-11, to ensure that complete reclamation is accomplished in accordance with the State program, the reclamation plan of the permit, and the mining plan prior to revocation or any modification thereto.

Submission of a performance and/or penal bond does not satisfy the requirements for a Federal lease bond required by 43 CFR subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of SMCRA. Where Federal lease or lessee protection bonds are required, OSMRE or the appropriate Federal agency is responsible for the collection and maintenance of such bonds.

If a Federal lease bond is required, as provided by 30 CFR 740.15, such bond may be released by the applicable Federal agency upon satisfactory compliance with all

applicable requirements of 43 CFR part 3400 and after the release is concurred in by BLM.

Article X: Designating Land Areas Unsuitable for all or Certain Types of Surface Coal Mining and Reclamation Operations and Activities and Valid Existing Rights (VER) and Compatibility Determinations

A. Unsuitability Petitions

The authority to designate Federal lands as unsuitable for mining pursuant to a 30 CFR part 769 petition is reserved by the Secretary as provided by 30 CFR 745.13(a).

OSMRE will consider the minimum criteria set forth in 30 CFR part 762 when evaluating each petition for designating an area as unsuitable for mining. In addition, OSMRE will process all requests for designating Federal lands as unsuitable for mining or for terminating previous designations in accordance with 30 CFR part 769.

When either DEP or OSMRE receives a petition to designate land areas unsuitable for all or certain types of surface coal mining operations that could impact adjacent Federal or non-Federal lands pursuant to section 522(c) of SMCRA, the agency receiving the petition will notify the other of its receipt within 5 calendar days and the anticipated schedule for reaching a decision and request and fully consider data, information, and recommendations of the other. OSMRE will coordinate with any Federal land management agencies with jurisdiction over the petition area and will solicit comments from any such agency.

B. Valid Existing Rights Determinations

The following actions will be taken when requests for determinations of VER pursuant to section 522(e) of SMCRA and 30 CFR 761.11 are received prior to or at the time of submission of a permit application that involves surface coal mining and reclamation operations and activities:

For Federal lands within the boundaries of any areas specified under section 522(e)(1) of SMCRA and 30 CFR 761.11(a), OSMRE will determine whether VER exists for such areas pursuant to 30 CFR 745.13(o).

For Federal lands within the boundaries of any national forest where proposed operations are prohibited by section 522(e)(2) of SMCRA and 30 CFR 761.11(b), OSMRE will make the VER determinations pursuant to 30 CFR 745.13(o). OSMRE will process requests for determinations of compatibility under section 522(e)(2) of SMCRA and 30 CFR 761.13.

For private in-holdings within areas protected under 30 CFR 761.11(a) and SMCRA section 522(e)(1), DEP will process the VER request, in accordance with the State program, but use the Federal VER definition at 30 CFR 761.5 when making the VER determination.

For any lands, DEP will determine whether any proposed operation will adversely affect any publicly owned park or, in consultation with the State Historic Preservation Officer, sites listed on the National Register of Historic Places, with respect to the prohibitions or limitations of section 522(e)(3) of SMCRA and 30 CFR 761.11(c). DEP will make the VER determination for such lands using the approved State program definition of VER. DEP will coordinate with any affected agency or agency with jurisdiction over the proposed surface coal mining and reclamation operations.

In the case that VER is determined not to exist under section 522(e)(3) of SMCRA or 30 CFR 761.11(c), no surface coal mining operations will be permitted unless jointly approved by DEP and the Federal, State or local agency with jurisdiction over the publicly owned park or historic place.

C. Compatibility Determinations

As provided by 30 CFR 740.4(a)(5), the Secretary is responsible for the issuance of findings concerning whether there are significant recreational, timber, economic, or

other values that may be incompatible with surface coal mining operations incident to underground mining on Federal lands within the boundaries of a national forest protected pursuant to section 522(e)(2) of SMCRA and 30 CFR 761.11(b). OSMRE will process requests for compatibility determinations in accordance with the procedures set forth at 30 CFR 761.13.

Article XI: Termination of Cooperative Agreement

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

Article XII: Reinstatement of Cooperative Agreement

If this Agreement has been terminated in whole or in part, it may be reinstated under the provisions of 30 CFR 745.16.

Article XIII: Amendment of Cooperative Agreement

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Article XIV: Changes in State or Federal Standards

The Secretary or the Governor may from time to time promulgate new or revised performance standards or reclamation requirements or enforcement and administration procedures. Each party will, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations or request necessary legislative action. Such changes will be made under the procedures of 30 CFR part 732 for changes to the State program and under the procedures of sections 501 and 523 of SMCRA for changes to the Federal lands program.

DEP and OSMRE will provide each other with copies of any changes to their respective laws, rules, regulations, or standards pertaining to the enforcement and administration of this Agreement.

Changes in State law or regulations cannot take effect for the purposes of this Agreement until they have been approved by OSMRE pursuant to 30 CFR 732.17.

Article XV: Changes in Personnel and Organization

In accordance with 30 CFR part 745, each party to this Agreement will notify the other, when necessary, of any changes in personnel, organization, and funding or other changes that may affect the implementation of this Agreement to ensure coordination of responsibilities and to facilitate cooperation.

Article XVI: Reservation of Rights

As provided by 30 CFR 745.13, this Agreement will not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement and that the State or the Secretary may have under laws other than SMCRA or their regulations including, but not limited to, those listed in Appendix A.

Approved:

/s/Doug Burgum
Doug Burgum,
Secretary of the Interior

Dated:
February 3, 2026

/s/Patrick Morrisey
Patrick Morrisey,
Governor of West Virginia

Dated:
January 29, 2026

Appendix A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations, including 43 CFR part 3400 and 30 CFR part 746.
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR part 1500.
4. The Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR part 402.
5. The Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 *et seq.*; 48 Stat. 401.
6. The Bald and Golden Eagle Protection Act of 1940, as amended, 16 U.S.C. 668-668d, and implementing regulations.
7. The Migratory Bird Treaty Act, as amended, 16 U.S.C. 701-718h *et seq.*
8. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR part 800.
9. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.
10. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.
11. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.
12. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*
13. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.
14. Executive Order 11988 (May 24, 1977), for flood plain protection.
15. Executive Order 11990 (May 24, 1977), for wetlands protection.
16. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.
17. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*
18. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa *et seq.*, as amended.
19. The Constitution of the United States.

20. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, as amended.
21. 30 CFR Chapter VII.
22. The Constitution of the State of West Virginia.
23. West Virginia Department of Environmental Protection Permanent Regulatory Program at 30 CFR part 948, as amended.
24. West Virginia Surface Coal Mining and Reclamation Act at W.Va. Code § 22-3-1 *et seq.*
25. West Virginia Department of Environmental Protection, Surface Mining Reclamation Regulations, CSR § 38-2-1 *et seq.*
26. The Office of Explosives and Blasting at W.Va. Code § 22-3A-1 *et seq.*
27. The West Virginia Surface Mining Blasting Rule, CSR § 199-1-1 *et seq.*

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