

decision affirmed the validity of the violation to submit proof that the violation was being corrected to the satisfaction of the agency with jurisdiction over the violation. In contrast, final § 773.14(c) requires that the regulatory authority initiate action to suspend or revoke the permit as improvidently issued if the disposition of challenges or administrative or judicial appeals affirms the violation or ownership or control listing or finding. We made this change to ensure prompt implementation of the section 510(c) permit block sanction once the validity of a violation or ownership or control listing or finding is affirmed on appeal. (The previous rule did not specify what action the regulatory authority must take if the permittee did not submit the required proof within 30 days.) 65 FR at 79623.

Because the required amendment at 30 CFR 938.16(ss) required the State to comply with the previous regulations found at 30 CFR 773.15(b)(1)(ii) rather than new Federal regulations found at 30 CFR 773.14(c), it is now unnecessary and we are therefore removing it.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment in a January 7, 2003, **Federal Register** notice (68 FR 721) but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program (Administrative Record No. 844.06).

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). We did not seek EPA concurrence on this amendment because we determined that it contains no such provisions.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On March 1, 2002, we requested comments on Pennsylvania's amendment (Administrative Record No.

844.06), but neither the SHPO nor the ACHP responded to our request.

V. OSM's Decision

Based on the above findings, we are removing the required amendment. To implement this decision, we are amending the Federal regulations at 30 CFR part 938, which codify decisions concerning the Pennsylvania program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the Pennsylvania program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. 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 because we have removed the counterpart Federal regulation upon which the required amendment was based. Therefore, we are requiring no action by the State.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted 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 regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

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 surface coal mining and reclamation operations. 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 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to 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 basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian tribes.

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

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that