

U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that West Virginia proposed to make in this amendment pertains to air or water quality standards. Therefore, we did not ask EPA to concur on the proposed amendment.

Under 30 CFR 732.17(h)(11)(i), on July 3, 2001, and October 4, 2002, we requested comments on the amendments from EPA (Administrative Record Numbers WV-1221 and WV-1337). The EPA responded by letters dated August 20, 2001, and November 1, 2002 (Administrative Record Numbers WV-1242 and WV-1341, respectively). The EPA stated that it has some concerns about the proposed statutory amendment (Senate Bill 603) and provided the following comments. On August 20, 2001, EPA stated that W. Va. Code 5B-2A-9(f)(1) allows the coalfield development authorities to determine post-mining land use needs. These land use needs, EPA stated, are specified as industrial, commercial, agriculture, public facility, and recreational uses. EPA stated that it is apparent that certain land uses, such as commercial and industrial uses, require level land. This may necessitate disposal of excess spoil in valley fills, impacting headwater streams, rather than placement in the mined areas. EPA stated that a particular concern with the amendment is that there are no requirements for specific plans or commitments to develop the post-mining uses. This could result in leveled mountaintops lying idle indefinitely while waiting for an investment in commercial, industrial, or public development, EPA stated. In some instances, EPA stated, excess spoil which could have been placed on the leveled mined areas, may needlessly be placed in valley fills.

In response, and as we noted above in Finding 2, W. Va. Code 5B-2A does not supersede any part of the approved West Virginia program. While W. Va. Code 5B-2A-9(f)(1) does authorize the development of master land use plans that may identify postmining land use needs that include industrial, commercial, agricultural, and public facility uses or recreational facility uses, the approved program provisions continue to apply. For example, W. Va. Code 22-3-13(c) provides an exception for certain mountaintop removal mining operations from the requirements to restore approximate original contour (AOC). These provisions would continue to apply. W. Va. Code 22-3-13(c)(3) identifies the specific postmining land uses that may be approved for mountaintop removal mining operations under W. Va. Code

22-3-13(c). The provisions at W. Va. Code 22-3-13(c)(3), which specify the demonstrations that must be made to qualify for a mountaintop removal mining operations AOC exception, also continue to apply. We believe, however, that the proposed master land use plans and the data they may contain should be very useful to the regulatory authority as it assesses a permit application for compliance with the requirements of W. Va. Code 22-3-13(c).

Upon reviewing subsequent statutory and regulatory revisions pertaining to West Virginia's Office of Coalfield Community Development, EPA stated on November 1, 2002, that there were no apparent inconsistencies with the Clean Water Act or other statutes and regulations under EPA's jurisdiction.

V. OSM's Decision

Based on the above findings we approve the amendment to W. Va. Code 22-3-10(b) sent to us by West Virginia. We are not rendering a decision on the submitted, amended portions of W. Va. Code 5B-2A and the Emergency Rules at CSR 145-8 because they are outside the scope of SMCRA and do not, therefore, need our approval.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 948, which codify decisions concerning the West Virginia 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 State's 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. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget (OMB) 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 regulation involving Indian lands.

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,