

requirements of 405 KAR 16:070 (or 18:070) section 1(1)(g); (d) minimize short circuiting to the extent possible; and (e) provide periodic sediment removal sufficient enough to maintain adequate volume for the design event. The proposed plan for clean-out operations shall be included in the design and shall be approved if the Cabinet determines it is feasible. The plan shall include a time schedule or clean-out elevations, or an appropriate combination thereof, sufficient to maintain adequate volume for the sediment to be collected during the design precipitation event.

The Federal regulations at 30 CFR 816/817.46(d)(1) and Kentucky's proposed regulations both require that other treatment facilities be designed to treat the 10-year, 24-hour precipitation event unless a lesser event is approved by the regulatory authority. Additionally, the Federal regulations at 30 CFR 816/817.46(d)(2) require that other treatment facilities must be designed in accordance with the applicable requirements of 816/817.46(c). In the preamble to the 1983 Federal rule, OSM stated that in "every case, it is intended that 30 CFR 816.46(c)(1)(ii) and (c)(1)(iii)(A), (B), (E), and (F) will apply to all other treatment facilities." 60 FR 44032, 44047 (September 26, 1983). Kentucky's proposed regulations at section 6 (3)(a) through (e) are substantively identical to the Federal regulations at 30 CFR 816/817.46(c)(1)(ii) and (c)(1)(iii)(A), (B), (E), and (F). Thus, we find that Kentucky's proposed revisions to sections 1, 4, and 5 and the addition of Section 6 to its regulations are no less effective than the Federal regulations at 30 CFR 816/817.46(d).

IV. Summary and Disposition of Comments

Public Comments

We announced receipt of the proposed amendment in the August 16, 2002, **Federal Register** (67 FR 53539), and in the same document invited public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The Kentucky Resources Council, Inc. (KRC) submitted written comments on August 29, 2002 (administrative record no. KY-1566). The KRC generally supports the amendment and stated, "it appears that the state regulation, while different in structure and terminology, provides at least as protective and rigorous a review of proposed sediment controls as does the federal counterpart."

Federal Agency Comments

According to 30 CFR 732.17(h)(11)(i), by letter dated August 28, 2002, we solicited comments on the proposed amendment submitted on June 25, 2002, from various Federal agencies with an actual or potential interest in the Kentucky program (administrative record no. KY-1565). We received no responses.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated 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.*). By letter dated August 28, 2002, we solicited EPA's comments and/or concurrence (administrative record no. KY-1565). This amendment does not contain provisions that relate to air or water quality standards and, therefore, concurrence by the EPA is not required. EPA did not submit comments pertaining to Kentucky's addition of new Section 6 to 405 KAR 16/18:090 which is the subject of this rule, although the EPA commented on an earlier Kentucky submission in a letter dated November 28, 2000 (administrative record no. KY-1501).

V. OSM's Decision

Based on the above findings, we approve the proposed amendment as submitted by Kentucky on June 25, 2002, and revised on October 30, 2002. To implement this decision, we are amending the Federal regulations at 30 CFR part 917 which codify decisions concerning the Kentucky 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 Kentucky's program demonstrates that it 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.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs

that are not approved by OSM. In the oversight of the Kentucky program, we will recognize only the statutes, regulations, and other materials we have approved, together with any consistent implementing policies, directives, and other materials. We will require Kentucky to enforce only approved provisions.

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 exempted 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"