

that sedimentation ponds are located as near as possible to the disturbed area and out of perennial streams unless otherwise approved. It recommends that applicants provide a rationale for pond location in the permit application. We note that this subsection was previously approved by OSM and not being revised at this time. The comment is, therefore, outside the scope of this rulemaking.

At section 2, the EPA suggests that the sediment pond proposed clean-out plan also include a description of the proposed disposal area to ensure that sensitive environmental resources are not adversely affected by disposal activities or erosion or sedimentation from the disturbed area. We note that the Federal regulations at 30 CFR 816/817.46(c) do not specify this requirement. Nonetheless, Kentucky's regulations at 16/18:060 section 1 require all surface mining activities be conducted to minimize disturbance to the hydrologic balance of the permit and adjacent areas and in no case shall any Federal or State water quality statutes, regulations, standards or effluent limitations be violated. Kentucky's proposed revisions are no less effective than the Federal counterparts.

At sections 5(6) and 5(7), the EPA recommends that Kentucky include criteria by which ponds will be removed and the affected stream reaches restored to original conditions. Kentucky proposed only minor revisions to these previously-approved regulations. It is no less effective than the Federal counterparts. The comment is, therefore, outside the scope of this rulemaking.

At sections 5(7) and 5(8), the EPA notes that a pond that is authorized pursuant to the Clean Water Act (CWA) Section 404 as a temporary structure is required by the conditions of those permits to be removed. If a pond is later proposed to be left as a permanent impoundment, CWA authorization will be required. We acknowledge the comment.

## 5. OSM's Decision

Based on the above findings, we approve the proposed amendment, with the exception of subsection 1(9)(c), as submitted by Kentucky on July 30, 1997, and revised on March 4, 1998, March 16, 1998, and July 14, 1998. As discussed in finding 2, we are removing the required amendment at 30 CFR 917.16(d)(4) because Kentucky has satisfied the requirement.

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.

## 6. 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 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 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, 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