

#### IV. Summary and Disposition of Comments

##### *Public Comments*

We asked for public comments on the amendment (Administrative Record No. PA 803.28), but we 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. PA 803.28). On July 1, 2003 (Administrative Record No. PA 803.31), the United States Department of Labor, Mine Safety and Health Administration's (MSHA) New Stanton Office wrote to us indicating that the proposed rule did not conflict with any of its rules or regulations. On July 3, 2003 (Administrative Record No. PA 803.30), MSHA's Wilkes-Barre Office wrote to us noting that it had no comments on the proposal.

##### *State Agency Comments*

The Pennsylvania Game Commission (PGC) commented on June 24, 2003 (Administrative Record No. PA 803.29), that it generally approves a species composition that contains a minimum of 75% woody species. However, some endangered and threatened species may require more than 25% of their habitat to be open grassy areas devoid of trees and shrubs. PGC noted that in those cases, it must have the ability to alter the tree to grass ratios. PGC further noted that it supports the recommendations of the Bureau of Forestry and believes that removal of the proposed amendment satisfies the applicable criteria of 30 CFR 732.15.

We believe that the Pennsylvania program currently provides regulations that satisfy PGC's concerns regarding species composition. Pennsylvania's regulations at 25 Pa. Code 87.151(d), 89.86(e)(2)(ii)(C), and 90.155(d) provide that the vegetation configuration and species composition for a postmining land use of fish and wildlife habitat must be established in accordance with guidelines from the Fish and Boat Commission and the PGC. Thus, the program provides for input by the PGC on species composition. In addition, the regulations at 25 Pa. Code 87.138, 89.82, and 90.150 provide protections for threatened and endangered species that require consultation with the PGC. This section also provides additional guidelines for selecting and planting vegetation on areas where the approved postmining land use is fish and wildlife habitat.

The Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation (PHMC) submitted comments on July 3, 2003 (Administrative Record No. PA 803.32). PHMC indicated that removing the referenced amendment will not affect the consideration of cultural resources in the mine reclamation process. PHMC further stated it supported the Pennsylvania Bureau of Forestry recommendation to avoid the use of invasive species which can be harmful to the environment and historic buildings and landscapes.

We agree with PHMC's assessment on removal of the required amendment. With regard to PHMC's comment on invasive species, which reflected the Bureau of Forestry's recommendation, Pennsylvania's regulations are no less effective than the Federal regulations at 30 CFR 816/817.111. The Federal regulations require that the revegetation be comprised of native species or, where necessary to achieve the postmining land use, an approved introduced species; be compatible with plant and animal species of the area, and "meet the requirements of applicable State and Federal seed, poisonous and noxious plant and introduced species laws or regulations." Similarly, Pennsylvania's regulations at 25 Pa. Code 87.147, 87.149, 89.86, 90.151 and 90.153 also require that the revegetation be of the same seasonal variety native to the area unless an introduced species is necessary to achieve the postmining land use; compatible with animal and plant species; can not be poisonous or noxious species; and must meet the applicable requirements of State and Federal seed and introduced species statutes. Additionally, Pennsylvania informed us in its January 30, 2002 (Administrative Record No. PA 803.23), letter supporting removal of the required amendment that the configuration and species composition for reclaiming forestland is reviewed and approved on a permit-by-permit basis by foresters in its District Mining Offices.

##### *Environmental Protection Agency (EPA) Comments*

Under 30 CFR 732.17(h)(11)(i) we requested comments on the amendment from EPA (Administrative Record No. PA 803.28). EPA responded on July 17, 2003 (Administrative Record No. PA 803.33), that it has determined that removal of the required amendment at 30 CFR 938.16(ff) would not be inconsistent with the Clean Water Act or other statutes or regulations under its jurisdiction.

#### V. OSM's Decision

Based on the above findings, we are removing the required amendment at 30 CFR 938.16(ff).

#### 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 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.