

discretionary authority provided by the Federal regulations at 30 CFR 777.17.

IV. Summary and Disposition of Comments

Public Comments

No public comments were received in response to our requests for comments from the public on the proposed amendments.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on May, 29, 2003, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the Virginia program (Administrative Record Number VA-1030). On June 4, 2003, the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) responded (Administrative Record Number VA-1032) and stated that it concurs with the changes concerning permit and fee rates. These changes, NRCS stated, will better reflect actual AML costs and changes passed by the 2003 Virginia General Assembly. NRCS stated that the amendment proposed by Virginia should conform to presently practiced regulations and costs to better suit their intended use. NRCS recommended that the amendment be accepted by OSM. As noted in our findings above, we are approving the amendment.

On June 6, 2003, the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded and stated that the amendment appears adequate to serve the intended purpose and does not conflict with MSHA regulation or policy (Administrative Record Number VA-1033).

On July 21, 2003, the U.S. Department of the Interior, Bureau of Land Management, Solid Minerals Group responded and stated that it had no comments regarding the revision (Administrative Record Number VA-1035).

Environmental Protection Agency (EPA) Concurrence and Comments

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.*). None of the revisions that Virginia proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. Under 30 CFR

732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record Number WV-1030).

The EPA responded by letter dated July 17, 2003 (Administrative Record Number VA-1034), and stated that there are no apparent inconsistencies with the Clean Water Act or other statutes or regulations under EPA's jurisdiction. EPA offered no further comments.

V. OSM's Decision

Based on the above findings, we approve the amendment sent to us by Virginia on May 16, 2003.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 946, which codify decisions concerning the 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 upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

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. This final rule applies only to the Virginia program and therefore does not affect tribal programs.

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