

the allocation of the burden of proof in one kind of proceeding under SMCRA.

3. This rule will not alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The existing regulation has to do with the burden of proof in one kind of proceeding under SMCRA, not with entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

4. This rule does not raise novel legal or policy issues. Rather, it conforms OHA's regulations to recent court precedent.

B. Regulatory Flexibility Act. The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Changing the allocation of the burden of proof on one issue in individual civil penalty proceedings under SMCRA will have no effect on small entities. A Small Entity Compliance Guide is not required.

C. Small Business Regulatory Enforcement Fairness Act. This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

1. This rule will not have an annual effect on the economy of \$100 million or more. Changing the allocation of the burden of proof in one kind of proceeding under SMCRA will have no effect on the economy.

2. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. Changing the allocation of the burden of proof in one kind of proceeding under SMCRA will not affect costs or prices for citizens, individual industries, or government agencies.

3. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Changing the allocation of the burden of proof in one kind of proceeding under SMCRA will have no effects, adverse or beneficial, on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), the Department finds as follows:

1. This rule will not have a significant or unique effect on state, local, or tribal governments or the private sector.

Changing the allocation of the burden of proof in one kind of proceeding under SMCRA will neither uniquely nor significantly affect these governments. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*, is not required.

2. This rule will not produce an unfunded Federal mandate of \$100 million or more on state, local, or tribal governments or the private sector in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

E. Takings (E.O. 12630). In accordance with Executive Order 12630, the Department finds that this rule will not have significant takings implications. A takings implication assessment is not required. Imposing on OSM the burden of proof on one issue in one kind of proceeding under the SMCRA will have no effect on property rights.

F. Federalism (E.O. 13132). In accordance with Executive Order 13132, the Department finds that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. States with approved regulatory programs may be affected to the extent they make a conforming change to their own rules and consequently bear the burden of proof on the issue of whether someone who receives a proposed individual civil penalty assessment was an officer, director, or agent of the corporation. These effects are so minor that a Federalism Assessment is not required.

G. Civil Justice Reform (E.O. 12988). In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. This rule, because it simply changes the allocation of the burden of proof proceedings in one kind of proceeding under SMCRA, will not burden either administrative or judicial tribunals.

H. Paperwork Reduction Act. This rule will not require an information collection from 10 or more parties, and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I has not been prepared and has not been approved by the Office of Policy Analysis. This rule will only change the allocation of the burden of proof in one kind of proceeding under SMCRA; it will not require the public to provide information.

I. National Environmental Policy Act. The Department has analyzed this rule in accordance with the National Environmental Policy Act of 1969

(NEPA), 42 U.S.C. 4321 *et seq.*, Council on Environmental Quality (CEQ) regulations, 40 CFR part 1500, and the Department of the Interior Departmental Manual (DM). CEQ regulations, at 40 CFR 1508.4, define a "categorical exclusion" as a category of actions that the Department has determined ordinarily do not individually or cumulatively have a significant effect on the human environment. The regulations further direct each department to adopt NEPA procedures, including categorical exclusions. 40 CFR 1507.3. The Department has determined that this rule is categorically excluded from further environmental analysis under NEPA in accordance with 516 DM 2, Appendix 1, which categorically excludes "[p]olicies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature." In addition, the Department has determined that none of the exceptions to categorical exclusions, listed in 516 DM 2, Appendix 2, applies to this rule. This rule is an administrative and procedural rule, relating to the allocation of the burden of proof in one kind of proceeding under SMCRA. Therefore, neither an environmental assessment nor an environmental impact statement under NEPA is required.

J. Government-to-Government Relationship with Tribes. In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, the Department has evaluated potential effects of this rule on Federally recognized Indian tribes and has determined that there are no potential effects. This rule will not affect Indian trust resources; it will simply change the allocation of the burden of proof in one kind of proceeding under SMCRA.

K. Effects on the Nation's Energy Supply. In accordance with Executive Order 13211, the Department finds that this regulation does not have a significant effect on the nation's energy supply, distribution, or use. Changing the allocation of the burden of proof in one kind of proceeding under SMCRA will not affect energy supply or consumption.

III. Determination To Issue Final Rule

The Department has determined that prior publication of a proposed rule to amend 43 CFR 4.1307 is not required by the notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), because an opportunity was provided to comment on the change