

addition of such a statement in the amendment is not necessary.

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

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain 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 these West Virginia amendments pertains to air or water quality standards. Therefore, we did not ask EPA for its concurrence on any of the proposed amendments.

By letters dated December 1, 2000, and February 1, 2002, we requested comments from EPA on these amendments (Administrative Record Numbers WV-1188 and WV-1268, respectively).

The EPA responded by letters dated January 17, 2001, April 13, 2001, and February 28, 2002 (Administrative Record Numbers WV-1196, WV-1207, and WV-1282, respectively). EPA stated that it appears that the amendment is in compliance with the Clean Water Act and other statutes and regulations under the jurisdiction of the EPA.

#### **V. OSM's Decision**

Based on the above findings, and except as noted below, we are approving the amendments submitted to us on October 30, 2000 and November 28, 2001.

At CSR 199-1-3.10.d., the phrase "and only used for evaluating damage claims" is approved with the understanding that it does not preclude the use of pre-blast surveys to support the issuance of NOVs, COs, civil penalties or other forms of alternative enforcement actions under the West Virginia Surface Coal Mining and Reclamation Act and its implementing regulations to achieve the repair of blasting damage and thus resolve a damage claim. At CSR 199-1-4.8.c., we are not approving the phrase "substantial or significant." In addition, we are requiring the State to amend CSR 199-1-4.9.a and 4.9.b, or otherwise amend the West Virginia program, to provide that upon finding of willful conduct, the Secretary shall revoke or suspend a blaster's certification.

To implement this decision, we are amending the Federal regulations at 30 CFR part 948, which codify decisions concerning the West 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 rule 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 on the analysis performed for the counterpart Federal regulation.

##### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempt 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 our decision on a State regulatory program and does not involve Federal regulations 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 major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

##### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

##### *Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a