

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 substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

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. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does 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. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 12, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 917 is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

2. Section 917.12 is amended by adding paragraph (e) to read as follows:

§ 917.12 State regulatory program and proposed program amendment provisions not approved.

\* \* \* \* \*

(e) The exemption from the engineer inspection requirements of subsection 9 for an impoundment with no embankment structure, that is completely incised, or is created by a depression left by backfilling and grading, that is not a sedimentation pond or coal mine waste impoundment and is not otherwise intended to facilitate active mining at section 1(9)(c) at 405 KAR 16/18:100 is not approved. The exemption from examination for an impoundment with no embankment structure, that is completely incised or created by a depression left by backfilling and grading but not meeting MSHA requirements at 30 CFR 77.216 or not meeting the Class B and C classifications at section 1(10)(b) is not approved to the extent that it is not implemented and managed in accordance with the provisions of OSM Directive TSR-2.

3. Section 917.15 is amended in the table in paragraph (a) by adding a new entry in chronological order by "DATE OF PUBLICATION IN THE FEDERAL REGISTER" to read as follows:

§ 917.15 Approval of Kentucky regulatory program amendments.

(a) \* \* \*

Original amendment submission date	Date of final publication	Citation/description
July 30, 1997	July 17, 2003	405 KAR 8:001 section 1(50); 16:001 section 1(50), (51), (69); 16:090 sections 1 through 5; 16:100 section 1(1),(3),(5),(6),(10), section 2(1); 16:160 section 1(1),(2),(3), section 2(2), section 3(1),(3), section 4; 18:001 section 1(52), (53), (72); 18:090 sections 1 through 5; 18:100 section 1(1),(3),(5),(6),(10), section 2(1); and 18:160 section 1(1),(2),(3), section 2(2), section 3(1),(3) and section (4).

\* \* \* \* \*

4. Section 917.16 is amended by removing and reserving paragraph (d)(4).

[FR Doc. 03-17968 Filed 7-16-03; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY-236-FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; withdrawal of required amendment.

SUMMARY: We are withdrawing a required amendment to the Kentucky regulatory program (the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The required amendment pertains to public notification of permit applications. In doing so, we find that the Kentucky

program is consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** July 17, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Kentucky Field Office Director William J. Kovacic. Telephone: (859) 260-8402, Internet address: *wkovacic@osmre.gov*.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Kentucky Program
- II. Submission of the Required Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

**I. Background on the Kentucky Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21426). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.12, 917.13, 917.15, 917.16, and 917.17.

**II. Submission of the Required Amendment**

On December 31, 1990, we published in the **Federal Register** (55 FR 53490) a requirement that Kentucky amend its program to require that public notice shall not be initiated until the Kentucky Natural Resources and Environmental Protection Cabinet (Cabinet) has determined that a permit application is administratively complete. Kentucky was required to respond by January 30, 1991, but by letter of February 1, 1991, requested an extension to February 28, 1991. We granted that extension by letter of February 22, 1991. On March 4, 1991, Kentucky responded by letter indicating that the existing regulation at 405 Kentucky Administrative Regulations (KAR) 8:010 is as effective as the Federal regulations. Kentucky's response reminded OSM that the initial

program approval of May 18, 1982, considered these public notice differences and deemed them to be no less effective than the Federal regulations. No action was taken on the letter. We announced our intent to reconsider this required amendment when we published a proposed rule notice in the June 6, 2002, **Federal Register** (67 FR 38917), and in the same document we invited public comment on the proposed action during a public comment period that closed on July 5, 2002.

**III. OSM's Findings**

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17.

Our order that Kentucky amend its program was based on a regulation change made by us in 1983 that added the concept of an "administratively complete application" that starts the public notification process at 30 CFR 773.13(a)(1), later renumbered 30 CFR 773.6(a). As discussed below, the applicant could not begin the public notification process until the regulatory authority notified the applicant that the permit application was administratively complete. Our concern with the Kentucky program at the time, was that it appeared that if the permit application was determined *not* to be administratively complete after the notification process began, Kentucky did not have a provision that restarted the notification process once the permit application was determined to be administratively complete by Kentucky.

Kentucky's initial response to our order to amend its program stated that we had approved the provision, later found to be deficient in 1990, in 1982. However, the issue considered in the initial program approval in 1982 was different than the issue addressed in the required amendment since the required amendment was the result of a change in the Federal regulations in 1983.

The issue considered in the May 18, 1982, conditional approval is discussed in Finding 14.15 (47 FR 21415). That finding relates directly to an earlier finding, 14.27, regarding the review of Kentucky's initial program submittal published on October 22, 1980 (45 FR 69956). Finding 14.27 reads as follows: 405 KAR 8:010E Section 8(8) is less stringent than 30 CFR 786.11(d) concerning public notice of filing permit applications. The State regulation does not specify when the applicant must file a copy of the application in a local public office for public inspection; while the Federal regulation requires the filing by the first newspaper

publication date. The newspaper publication would be meaningless if the application were not on file and available for public review at the same time.

As this finding indicates, the primary issue was when a copy of the submitted permit application would be made available for public review. When we conditionally approved the Kentucky program on May 18, 1982, we stated in finding 14.15 that Kentucky's explanation of its process persuaded us that Kentucky's program was no less effective than the Federal regulations.

The 1990 required amendment, on the other hand, resulted from a change in the Federal regulations that was made on September 28, 1983, when the concept of "administratively complete application" was added to the Federal definitions at 30 CFR 701.5 and applied at 30 CFR 773.13(a)(1) and later renumbered to the current 30 CFR 773.6(a), which provides for public notification of an administratively complete permit application.

Although Section 513(a) of SMCRA requires "At the time of submission such advertisement shall be placed by the applicant in a local newspaper of general circulation in the locality of the proposed surface mine at least once a week for four consecutive weeks", we believed that to achieve consistency among the various State and Federal regulatory programs the initial regulations adopted to implement this provision needed to be revised. The revision of the definition of a "complete permit application" to an "administratively complete application" was discussed in the 1983 preamble. There, we stated that:

Under previous 30 CFR 786.11(a), applicants were required to place newspaper advertisements upon the filing of complete permit applications. In practice, however, the previous rule was not strictly applied and the comment period was not started anew each time additional information was submitted to the regulatory authority following the filing of an application. The final definition of an "administratively complete application" recognizes these practical realities, while ensuring that each regulatory requirement is addressed in sufficient detail initially to provide meaningful regulatory authority and public review of the applications."

[48 FR 44349, September 28, 1983]. Thus, the 1983 regulatory changes recognize that the public notification process does not restart every time a change is made to a permit application.

We believe the intent of notifying the public that a permit application has been submitted is to alert it to the right to comment on the application. The deadline for submitting those comments

is thirty days after publication of the fourth consecutive and final newspaper advertisement, as set forth at 30 CFR 773.6(b)(2).

Kentucky's law, at KRS Section 350.055(2) requires the applicant to publish a notice of intention to mine \* \* \* at least once a week for four consecutive weeks beginning at the time of submission. This is consistent with SMCRA. The Kentucky regulations at 405 KAR 8:010 Section 8 (2)(a) state that "\* \* \* [t]he first advertisement shall be published on or after the date the application is submitted to the Cabinet. The applicant may elect to begin notification on or after the date the applicant receives the notification from the Cabinet under Section 13(2) of this regulation that the application has been deemed administratively complete and ready for technical review \* \* \* the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the Cabinet that the application has been deemed administratively complete and ready for technical review \* \* \*"

These Kentucky requirements were approved by us *prior* to our revisions promulgated in 1983 to require an "administratively complete application" determination before beginning public notification. Although Kentucky's program does not require the applicant to begin public notification until after the determination of administrative completeness, it does require the last notice to be after the determination of administrative completeness. Moreover, the Kentucky program does not explicitly address the question of whether the four consecutive weekly advertisements must be repeated if the application is determined to be administratively incomplete.

As noted above, Kentucky's regulations at 405 KAR Section 8(2)(a) state in part that "\* \* \* the advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the Cabinet that the application is deemed complete." This requires public advertisements to be published on "consecutive" weeks and that the final advertisement may only appear "after" the notification that the application is administratively complete. If an applicant chooses to begin publication before the administrative completeness determination, and Kentucky notifies the applicant that additional information is required before administrative completeness can be determined and the applicant stops

advertising, it is quite likely that a "break" in the newspaper notices would occur and the "consecutive" advertisement requirement would not be complied with by the applicant. When this occurs, the applicant must restart the newspaper advertisements to comply with the "consecutive" requirement of the Kentucky program. In such instances, the current program, without modification, compels the applicant to begin the advertisement process anew. While there may be instances when no "break" in the advertisement sequence would occur, the Kentucky program does not prohibit the Cabinet from requiring the applicant to begin the advertisement sequence again after the administrative completeness determination is made. For this reason, and as discussed below, we believe the current program can be implemented in a manner that renders it no less effective than the Federal regulations.

After reviewing the Federal requirements and Kentucky's requirements we have decided to withdraw the required amendment as set forth at 30 CFR 917.16 (d)(2). This action is based on the understanding that Kentucky's implementation of the public participation requirements for permit application processing will require that, if a permit application is found not to be administratively complete, the four consecutive weeks advertisement sequence must start anew after the application is determined to be administratively complete. If in the future, we determine that the Kentucky program is not being implemented according to this decision, we may require Kentucky to amend its program.

#### **IV. Summary and Disposition of Comments**

No public or Federal agency comments were received on this proposed action during the public comment period.

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

Based on the above findings, we are removing the required amendment to Kentucky's program at 30 CFR 917.16(d)(2).

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 the Kentucky program demonstrate that Kentucky 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 Kentucky 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 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 Tribes.

*Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 that 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

substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*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. For the reasons previously stated, this rule: (a) does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does 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. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 917**

Surface mining, Underground mining.

Dated: June 27, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

■ For the reasons set out in the preamble, 30 CFR 917 is amended as set forth below:

**PART 917—Kentucky**

■ 1. The authority citation for part 917 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

**§ 917.16 [AMENDED]**

■ 2. Section 917.16 is amended by removing and reserving paragraph (d)(2). [FR Doc. 03–18100 Filed 7–16–03; 8:45 am]

**BILLING CODE 4310–05–P**

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 920**

**[MD–048–FOR]**

**Maryland Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving a proposed amendment to the Maryland regulatory program (the “Maryland program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Maryland proposed revisions to and additions of rules about descriptions of proposed mining operations, impoundments, and inspection and certification of impoundments.

**EFFECTIVE DATE:** July 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Telephone: 412–937–2153. Internet: [grieger@osmre.gov](mailto:grieger@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Maryland Program
- II. Submission of the Proposed Amendment
- III. OSM’s Findings
- IV. Summary and Disposition of Comments
- V. OSM’s Decision
- VI. Procedural Determinations

**I. Background on the Maryland Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, “a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Maryland program on December 1, 1980. You can find background information on the