

taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Executive Order 13211 (Energy Effects)

This final rule has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RINs contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

#### List of Subjects in 23 CFR Part 460

Grant programs—transportation, Highway safety, Reporting and recordkeeping requirements.

Issued on: February 18, 2011.

**Victor M. Mendez,**  
Administrator.

In consideration of the foregoing, 23 CFR part 460 is amended as set forth below.

#### PART 460—PUBLIC ROAD MILEAGE FOR APPORTIONMENT OF HIGHWAY SAFETY FUNDS

■ 1. The authority citation for part 460 continues to read as follows:

**Authority:** 23 U.S.C. 315, 402(c); 49 CFR 1.48.

■ 2. Amend § 460.2 by revising paragraph (e) to read as follows:

##### § 460.2 Definitions.

\* \* \* \* \*

(e) *State* means any one of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. For the purpose of the application of 23 U.S.C. 402 on Indian reservations, *State* and *Governor of a State* include the Secretary of the Interior.

[FR Doc. 2011-5410 Filed 3-8-11; 8:45 am]

BILLING CODE 4910-22-P

#### DEPARTMENT OF THE INTERIOR

#### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 917

[KY-252-FOR; OSM-2009-0011]

#### Kentucky Regulatory Program

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

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

**SUMMARY:** We are approving an amendment to the Kentucky regulatory program (hereinafter, the “Kentucky program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky submitted revisions to its administrative regulations pertaining to the disposal of coal mine waste. Kentucky revised its program to be consistent with the corresponding Federal regulations and SMCRA. We are also correcting a codification error which occurred in 2002.

**DATES:** *Effective Date:* March 9, 2011.

**FOR FURTHER INFORMATION CONTACT:** Joseph L. Blackburn, Telephone: (859) 260-3900. E-mail: [jblackburn@osmre.gov](mailto:jblackburn@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Description of the 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 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 this Act \* \* \* and rules and regulations consistent with regulations issued by the Secretary pursuant to this 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 of the Kentucky program in the May 18,

1982, *Federal Register* (47 FR 21434). You can also find later actions concerning Kentucky’s program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

#### II. Description of the Proposed Amendment

By letter dated September 14, 2009, Kentucky submitted an amendment to its program (Administrative Record No. 1659), under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky sent the amendment in response to a May 27, 1997, letter (Administrative Record No. KY-1400) that we sent in accordance with 30 CFR 732.17(c) requesting that changes be made in order to be consistent with the Federal regulations. The provisions of Kentucky rules that Kentucky proposed to revise are: Kentucky Administrative Regulations (KAR) No. 405 KAR 16:140 and 405 KAR 18:140 with respect to the disposal of coal mine waste.

We announced receipt of the proposed amendment in the November 27, 2009, *Federal Register* (74 FR 62266). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting (Administrative Record No. KY-1661). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 14, 2009. We did not receive any comments.

#### III. OSM’s Findings

Kentucky sent the amendment in response to a May 27, 1997, letter that we sent in accordance with 30 CFR 732.17(c) requesting that changes be made in order to be consistent with the Federal regulations. In that letter, OSM referred to its revised regulations at 30 CFR 816.81 (Surface Mining—Coal mine waste: General Requirements) and 817.81 (Underground Mining—Coal mine waste: General requirements) that required that coal mine waste be “hailed or conveyed” instead of just requiring that it be “placed.” In addition, Kentucky also made changes at its own initiative.

Kentucky proposed to make substantially identical changes to administrative regulations pertaining to surface and underground mining: 405 KAR 16:140 *Disposal of Coal Mine Waste (surface mining)* and 405 KAR 18:140 *Disposal of Coal Mine Waste (underground mining)*. The text of the Kentucky regulations can be found in the administrative record and online at Regulations.gov

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at

30 CFR 732.15 and 732.17. We are approving the amendment. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

The Federal regulations at 30 CFR 816.81(a) and 817.81(a) state in part that “coal mine waste shall be hauled or conveyed and placed for final placement in a controlled manner.” In 405 KAR 16:140 Section 1 (1) and 18:140 Section 1(1), the phrase “transported and placed,” as it refers to coal mine waste, is replaced by “hauled and conveyed in a controlled manner” so that the first sentence of Section 1 of these Kentucky regulations now reads that “All coal mine waste shall be hauled and conveyed in a controlled manner approved by the cabinet in disposal areas approved by the cabinet for this purpose.”

Kentucky’s existing regulations at 405 KAR 16:140 Section 1 (1)(a) and 18:140 Section 1 (1)(a) also require that the coal waste disposal area shall be designed, constructed, and maintained in accordance with 405 KAR 16:130 Sections 1 and 2 and 18:130 Sections 1 and 2, respectively. Section 1 of both 405 KAR 16:130 and 18:130 requires among other things that excess spoil, which by definition includes coal mine waste, “shall be placed in designated disposal areas within a permit area, in a controlled manner.” We find that the amended language at 405 KAR 16:140 Section 1 (1) and 18:140 Section 1 (1) read in conjunction with existing language 405 KAR 16:140 Section 1 (1)(a) and 18:140 Section 1 (1)(a) and 405 KAR 16:130 Section 1 (1) and 18:130 Section 1 (1) is no less effective than the counterpart Federal regulations at 30 CFR 816.81(a) and 817.81(a) pertaining to coal mine waste disposal. This constitutes satisfaction of the last coal mine waste issue found in the May 27, 1997, 732 letter.

In Section 2 of 405 KAR 16:140 and 18:140 the Kentucky rules require that either a qualified professional engineer or other qualified person under the direct supervision of the responsible professional engineer must inspect all coal mine waste banks. Kentucky replaced the term “registered professional engineer” with “professional engineer.” Kentucky Revised Statute (KRS) section 322.010 defines “professional engineer” to mean “a person who is a licensed professional engineer by the board.” The board is the State Board of Licensure for Professional Engineers and Land Surveyors. In 1999, Kentucky changed its registration procedures to licensing procedures. See, KRS section 322.015. Kentucky prohibits the practice of engineering or

land surveying without a license. KRS 322.020. The Federal regulations at 30 CFR 816.83(d) (Surface Mining—Coal mine waste: Refuse Piles) and 817.83(d) (Underground Mining—Coal mine waste: Refuse Piles) require that a qualified registered professional engineer or other qualified professional specialist under the direction of the professional engineer shall inspect the refuse pile during construction. Both the Federal and Kentucky rules require inspection by an engineer that is approved by an appropriate regulatory body as qualified to be an engineer. Accordingly, we find that the proposed changes to Kentucky regulations are no less effective than the Federal regulations at 30 CFR 816.83(d) and 817.83(d).

Section 6 of 405 KAR 16:140 and 18:140 requires that a qualified professional engineer must prepare a plan for the removal of any burned coal mine waste or other material from the permitted disposal area. Kentucky replaced the term “registered professional engineer” with “professional engineer.” As cited above, KRS section 322.010 defines “professional engineer” to mean “a person who is a licensed professional engineer by the board.” The Federal regulations at 30 CFR 780.14(c) (Surface Mining—Operation plan: Maps and plans) and 784.23(c) (Underground Mining—Operation plan: Maps and plans) require that cross sections, maps, and plans shall be prepared, by or under the direction of, and certified by a qualified registered professional engineer, a professional geologist, etc. Both the Federal and Kentucky rules require plan preparation by an engineer that is approved by an appropriate regulatory body as qualified to be an engineer. Accordingly, we find that the proposed changes to Kentucky regulations are consistent with the Federal regulations at 30 CFR 780.14(c) and 784.23(c).

Throughout the Kentucky regulations, the term “coal processing waste” is replaced by “coal mine waste.” The Federal definition of “coal mine waste” at 30 CFR 701.5 (Definitions) means “coal processing waste and underground development waste.” The Kentucky definitions of coal mine waste at 405 KAR 16:001 (18) and 18:001 (19) define “coal mine waste” as “coal processing waste and underground development waste.” The Federal regulations at 30 CFR 816.81, 817.81, 816.83, and 817.83 use the term “coal mine waste.” Kentucky’s regulations at 405 KAR 16:140 and 18:140 also use this term. Since Kentucky defines the term the same as the Federal regulations and

appropriately uses the term “coal mine waste” at 405 KAR 16:140 and 18:140, we find the Kentucky proposed language is no less effective than the Federal regulations at 30 CFR 816.81 and 817.81 and 816.83 and 817.83.

We are also revising section 917.16 (Kentucky—Required regulatory program amendments) to correct a codification error which occurred in 2002. The required amendment at 405 KAR 20.060 section 3 (3)(b) was submitted by the State and the OSM approval was published on June 19, 2002, at 67 FR 41622, 41625, but the requirement was not removed from 30 CFR 917.16(d)(5) as it should have been. We are now removing 30 CFR 917.16(d)(5).

#### IV. Summary and Disposition of Comments

##### *Public Comments*

We asked for public comments on the amendment (Administrative Record No. 1661), but 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 Kentucky program (KY-1662). No comments were received.

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

Under 30 CFR 732.17(h)(11)(i) and (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 provisions that Kentucky proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

#### V. OSM’s Decision

Based on the above findings, we approve the amendment Kentucky sent to us on September 14, 2009. To implement this decision, we are amending the Federal regulations at 30 CFR part 917 which codify decisions concerning the Kentucky program. Pursuant to 5 U.S.C. 553(d)(3), an agency may, upon a showing of good cause, waive the 30 day delay of the effective date of a substantive rule following publication in the **Federal Register**, thereby making the final rule effective immediately.

We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Because 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.

## 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 Government*

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 Regulation 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 substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon 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 Kentucky 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 Kentucky 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: November 22, 2010.

**Thomas D. Shope,**  
*Regional Director, Appalachian Region.*

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 917.15 is amended by adding a new entry to the table in

chronological order by “Date of final publication” to read as follows:

**§ 917.15 Approval of Kentucky regulatory program amendments.**  
\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
September 14, 2009	March 9, 2011	405 KAR 16:140, Disposal of coal mine waste. 405 KAR 18:140, Disposal of coal mine waste.

**§ 917.16 [Amended]**

■ 3. Section 917.16 is amended by removing and reserving paragraph (d)(5).

[FR Doc. 2011-5386 Filed 3-8-11; 8:45 am]  
BILLING CODE 4310-05-P

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 918**

[SATS No. LA-023-FOR; Docket No. OSM-2010-0005]

**Louisiana Regulatory Program/ Abandoned Mine Land Reclamation Plan**

**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 an amendment to the Louisiana regulatory program and abandoned mine land reclamation plan under the Surface Mining Control and Reclamation Act of 1977. Louisiana proposed revisions to its regulations regarding: Definitions; lands eligible for re-mining; general provisions for review of permit application information and entry of information into Applicant Violator System (AVS); review of applicant, operator, and ownership and control information; review of permit history; review of compliance history; permit eligibility determination; unanticipated events or conditions at re-mining sites; eligibility for provisionally issued permits; written findings for permit application approval; initial review and finding requirements for improvidently issued permits; suspension or rescission requirements for improvidently issued permits; who may challenge ownership or control listings and findings; how to challenge an ownership or control listing or finding; burden of proof for ownership or control challenges; written

agency decision on challenges to ownership or control listings or findings; post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information; post-permit issuance information requirements for permittees; transfer, assignment, or sale of permit rights; certifying and updating existing permit application information; providing applicant and operator information; providing permit history information; providing violation information; backfilling and grading: previously mined areas; cessation orders; and contractor eligibility. Louisiana revised its regulatory program to be no less effective than the corresponding Federal regulations, and its abandoned mine land reclamation plan to be consistent with the Federal regulations.

**DATES:** *Effective Date:* March 9, 2011.

**FOR FURTHER INFORMATION CONTACT:** Sherry Wilson, Director, Birmingham Field Office. Telephone: (205) 290-7282. E-mail: [swilson@osmre.gov](mailto:swilson@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

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

**I. Background on the Louisiana 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 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 this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this 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 Louisiana program effective October 10, 1980. You can find background information on the

Louisiana program, including the Secretary’s findings, the disposition of comments, and the conditions of approval of the Louisiana program in the October 10, 1980, **Federal Register** (45 FR 67340). You can also find later actions concerning the Louisiana program and program amendments at 30 CFR 918.10, 918.15 and 918.16.

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary of the Interior approved the Louisiana plan on November 10, 1986. You can find background information on the Louisiana plan, including the Secretary’s findings, the disposition of comments, and the approval of the plan in the November 10, 1986, **Federal Register** (51 FR 40795). You can find later actions concerning the Louisiana plan and amendments to the plan at 30 CFR 918.25.

**II. Submission of the Amendment**

By letter dated March 4, 2010 (Administrative Record No. LA-369), Louisiana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Louisiana submitted its proposed amendment in response to a September 30, 2009, letter (Administrative Record No. LA-368) that OSM sent to Louisiana in accordance with 30 CFR 732.17(c). Louisiana proposed revisions to the Louisiana Surface Mining Regulations found in the Louisiana Administrative Code, Title 43, Part XV (LAC)