

(9) The claimant shows that it is to his or her advantage to select a later annuity beginning date and refunds, by cash payment or setoff, past payments applying to the period prior to the later beginning date, subject, however, to the provisions of subpart D of part 217 and § 218.9 of this chapter;

(10) The decision is incorrect because of a failure to apply a reduction, or the proper reduction, to the tier I component of an annuity, but the Board shall apply the reduction only for the months following the month the Board first takes corrective action.

(d) Revision of the amount or payment of a separation allowance lump sum amount pursuant to section 6(e) of the Railroad Retirement Act is limited to 60 days from the date of notification of the award of the separation allowance lump sum payment.

**§ 261.3 Change of legal interpretation or administrative ruling.**

A change of legal interpretation or administrative ruling upon which a decision is based does not render a decision erroneous and does not provide a basis for reopening.

**§ 261.4 Decisions which shall not be reopened.**

The following decisions shall not be reopened:

(a) An award of an annuity beginning date to an applicant later found to have been in compensated service to an employer under part 202 of this chapter on that annuity beginning date and who is found not to be at fault in causing the erroneous award; provided, however, that this exception shall not operate to permit payment of benefits for any month in which the claimant is found to be engaged in compensated service.

(b) An award of an annuity based on a subsequently discovered erroneous crediting of months of service and compensation to a claimant where:

(1) The loss of such months of service and compensation will cause the applicant to lose his or her eligibility for an annuity previously awarded;

(2) The erroneously credited months of service do not exceed six months; and

(3) The annuitant is found not to be at fault in causing the erroneous crediting.

(c) An erroneous award of an annuity where the error is no greater than one dollar per month per annuity affected.

(d) An erroneous award of a lump sum or accrued annuity payment where the error is no greater than \$25.00.

**§ 261.5 Late completion of timely investigation.**

(a) A decision may be revised after the applicable time period in § 261.2(a) or

§ 261.2(b) of this part expires if the Railroad Retirement Board begins an investigation into whether to revise the decision before the applicable time period expires and the agency diligently pursues the investigation to the conclusion. The investigation may be based on a request by a claimant or on action by the Railroad Retirement Board.

(b) *Diligently pursued* for purposes of this section means that in view of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted. Diligent pursuit will be presumed to have been met if the investigation is concluded and, if necessary, the decision is revised within 6 months from the date the investigation began.

(c) If the investigation is not diligently pursued to its conclusion, the decision will be revised if a revision is applicable and if it is favorable to the claimant. It will not be revised if it would be unfavorable to the claimant.

**§ 261.6 Notice of revised decision.**

(a) When a decision is revised, notice of the revision will be mailed to the parties to the decision at their last known address. The notice will state the basis for the revised decision and the effect of the revision. The notice will also inform the parties of the right to further review.

(b) If a hearings officer or the three-member Board proposes to revise a decision, and the revision would be based only on evidence included in the record on which the prior decision was based, all parties will be notified in writing of the proposed action. If a revised decision is issued by a hearings officer, any party may request that it be reviewed by the three-member Board, or the three-member Board may review the decision on its own initiative.

**§ 261.7 Effect of revised decision.**

A revised decision is binding unless:

(a) The revised decision is reconsidered or appealed in accord with part 260 of this chapter;

(b) The three-member Board reviews the revised decision; or

(c) The revised decision is further revised consistent with this part.

**§ 261.8 Time and place to request review of a revised decision.**

A party to a revised decision may request, as appropriate, further review of the decision in accordance with the rules set forth in part 260 of this chapter.

**§ 261.9 Finality of findings when later claim is filed on same earnings record.**

If two claims for benefits are filed on the same record of compensation, findings of fact made in a decision in the first claim may be revised in determining or deciding the second claim, even though the time limit for revising the findings made in the first claim has passed. However, a finding in connection with a claim that a person was fully or currently insured at the time of filing an application, at the time of death, or any other pertinent time, may be revised only under the conditions stated in § 261.2 of this part.

**§ 261.10 Increase in future benefits where time period for reopening has expired.**

If, after the time period for reopening under § 261.2(b) of this part has expired, new evidence is furnished showing a different date of birth or new evidence is furnished which would cause a correction in a record of compensation as provided for in part 211 of this chapter and, as a result of the new evidence, increased benefits would be payable, the Board will pay increased benefits, but only for the months following the month the new evidence is received.

**§ 261.11 Discretion of the three-member Board to reopen or not to reopen a final decision.**

In any case in which the three-member Board may deem proper, the Board may direct that any decision, which is otherwise subject to reopening under this part, shall not be reopened or direct that any decision, which is otherwise not subject to reopening under this part, shall be reopened.

Dated: August 21, 1997.

By Authority of the Board.

For the Board,

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 97-23080 Filed 8-28-97; 8:45 am]

BILLING CODE 7905-01-P

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 917**

[KY-211-FOR]

**Kentucky Regulatory Program**

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

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

**SUMMARY:** OSM is approving a proposed amendment to the Kentucky regulatory program (hereinafter referred to as the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kentucky proposed revisions to the Kentucky Revised Statutes (KRS) pertaining to reclamation contracts, coal processing waste, and penalty assessment. The amendment is intended to revise the Kentucky program to be consistent with the Federal regulations and SMCRA.

**EFFECTIVE DATE:** August 29, 1997.

**FOR FURTHER INFORMATION CONTACT:** William J. Kovacic, Director, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (606) 233-2896.

**SUPPLEMENTARY INFORMATION:**

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

**I. Background on the Kentucky Program**

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982 **Federal Register** (47 FR 21404). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

**II. Submission of the Proposed Amendment**

By letter dated August 15, 1996, (Administrative Record No. KY-1371) Kentucky submitted a proposed amendment to its program pursuant to SMCRA at its own initiative. Two bills were enacted in the regular session of the 1996 Kentucky General Assembly that amend KRS Chapter 350. Senate Bill (SB) 231 creates a new subsection (3) of KRS 350.131 and amends 350.150(1). Both subsections pertain to reclamation contracts. SB 231 also creates a new section of KRS Chapter 350 to address backstowing of coal processing waste. House Bill (HB) 764 amends KRS 350.0301(1) and 350.990(1). These subsections pertain to cessation orders.

OSM announced receipt of the proposed amendment in the September 4, 1996, **Federal Register** (61 FR 46577), and in the same document opened the public comment period and provided an

opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 4, 1996.

During its review of the amendment, OSM identified concerns relating to the issuance of cessation orders and the assessment of penalties. OSM notified Kentucky of these concerns by letter dated May 28, 1997 (Administrative Record No. KY-1389). By letter dated June 27, 1997 (Administrative Record No. KY-1392), Kentucky responded to OSM's concerns by submitting additional clarifying information. Because the information was explanatory in nature and did not constitute any major revision to the Kentucky program, OSM did not reopen the comment period.

**III. Director's Findings**

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

**A. KRS 350.131(3)—Reclamation Contract**

Kentucky proposes to add new subsection (3) to allow the Natural Resources and Environmental Protection Cabinet (Cabinet) to negotiate and enter into a contract with a permit applicant to reclaim the disturbed area of a permit area in exchange for all or part of the forfeited bond funds if requested by the applicant. This applies to those situations where a bond is forfeited and a person subsequently applies for a permit overlapping all or part of the disturbed area. If the applicant proposes to overlap only a part of the disturbed area, the Cabinet may enter into a contract with the applicant to reclaim the overlap if it has retained a portion of the forfeited bond that is sufficient to reclaim the part of the disturbed area that is not overlapped. The applicant is not eligible if he/she has any ownership or control connection with the permittee. The Cabinet will determine the amount of forfeited bond fund to pay the applicant based upon the estimated cost to reclaim the overlap but the amount cannot exceed the forfeited bond amount collected. If the applicant obtains a permanent program permit overlapping a forfeited interim permit, any disturbances created in connection with the overlapping permit on areas that were disturbed under the forfeited permit may be covered under a contract and shall be reclaimed to permanent program standards. Areas where coal is not removed under the overlapping permit and the disturbances are for

reclamation of the interim permit shall be reclaimed to interim program standards. If the applicant obtains a permanent program permit overlapping a forfeited interim permit, any new disturbances shall not be covered by a contract and shall be reclaimed to permanent program standards. No person is exempt from the permitting, bonding, and reclamation requirements of Chapter 350 and the surety retains the right to reclaim any permit or increment thereof to avoid bond forfeiture.

While there is no Federal counterpart to the Kentucky proposal, the Director finds the proposed statute at KRS 350.131(3) not inconsistent with SMCRA and the Federal regulations.

**B. KRS 350.150(1)—Award of Contract**

Kentucky proposes to revise subsection (1) to exempt contracts negotiated under KRS 350.131(3) from the requirement that reclamation contracts be awarded to the lowest responsible bidder upon competitive bids after reasonable advertisement.

While there is no Federal counterpart to the Kentucky proposal, the Director finds the proposed statute at KRS 350.150(1) not inconsistent with SMCRA and the Federal regulations.

**C. KRS Chapter 350 Section 3—Backstowing**

Kentucky proposes to add a new section (3) in which the General Assembly affirms the authorization of backstowing of coal processing and coal underground development waste as a disposal method under appropriate conditions. The General Assembly directs the Cabinet to negotiate improved coordination of State and Federal agencies in the review of backstowing or reinjection of coal processing waste consistent with State and Federal laws.

The Director finds the proposed statute at KRS Chapter 350, Section 3, not inconsistent with SMCRA and the Federal regulations at 30 CFR 817.81(f).

**D. KRS 350.0301(1)—Administrative Hearings**

Kentucky proposes to revise subsection (1) to permit a petitioner to contest the validity of an underlying notice of noncompliance in a timely filed demand for hearing to contest the validity of a cessation order issued for failure to abate the violation contained in the notice of noncompliance.

While there is no Federal counterpart to the Kentucky proposal, the Director finds the proposed statute at KRS 350.0301(1) not inconsistent with SMCRA and the Federal regulations.

*E. KRS 350.990(1)—Civil Penalty Assessments*

Kentucky proposes to revise subsection (1) to require that a civil penalty of not more than \$5000 be assessed for each violation in a noncompliance underlying an imminent danger cessation order. No separate civil penalty shall be assessed for the order.

The Director finds that the proposed statute at 350.990(1) is no less stringent than section 518(a) of SMCRA and consistent with the Federal penalty assessment provisions at 30 CFR 845.14 and 845.15.

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

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment submitted on August 15, 1996. Because no one requested an opportunity to speak at a public hearing, no hearing was held.

One public comment was received. The commenter generally supported the provisions of Senate Bill 231. However, the provisions of House Bill 764 are inconsistent with SMCRA and the Federal regulations according to the commenter. The change to KRS 350.0301(1) which permits a petitioner to contest the validity of an underlying notice of noncompliance in a timely filed demand for hearing may, in the commenter's opinion, encourage an operator to delay compliance. The commenter also expressed concern that the fact of the underlying violation could be raised for the first time in a hearing on a cessation order even when the time for appealing the underlying notice of violation had lapsed without an appeal. The Director notes that in *Harman Mining Corp. v. Office of Surface Mining Reclamation and Enforcement*, 114 IBLA 291,300 (May 10, 1990), the Interior Board of Land Appeals held that the fact of a violation set out in a notice of violation may be contested in a proceeding to review a cessation order issued for failure to abate the notice of violation, as well as in civil penalty proceedings.

The change to KRS 350.990(1) which requires that a civil penalty of not more than \$5000 be assessed for each violation in a noncompliance underlying an imminent danger cessation order has three distinct problems according to the commenter. The first is that the provision appears to prevent the imposition of a separate civil penalty for the issuance of an imminent danger cessation order. The second is that the provision appears to cap the amount of

penalty for underlying violations at \$5000 per violation but does not allow for imposition of penalties on a daily basis. The third is that there are instances in which an imminent harm cessation order is issued in which there is no underlying notice of noncompliance or violation issued in conjunction with the cessation order. The commenter contends that, in those cases, no civil penalty would result according to the revised statute. In response to the commenter's first two concerns, the Director notes that Kentucky stated in its June 27, 1997, letter that KRS 350.990(1) provides for the assessment of a civil penalty of up to \$5,000 for each violation cited in the underlying notice of noncompliance underlying the cessation order. The statute further provides that each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment. Kentucky may assess a "per violation/per day" penalty whenever an imminent danger cessation order is issued. The mandatory 2-day assessment for a violation which continues for two or more days and which is assigned more than 70 points is not affected by the amendment as provided by 405 KAR 7:095, Section 5. KRS 350.990(1) requires that a civil penalty of not less than \$750 be assessed for each day during which a violation is not abated within the time period prescribed in the failure to abate cessation order or notice of noncompliance. Kentucky does not interpret the language at KRS 350.990(1) to prohibit the imposition of a separate civil penalty for each day during which the violation continues. In response to the commenter's third concern, the Director notes that Kentucky affirmed in its June 27, 1997, letter that it always issues an underlying notice of noncompliance and order for remedial measures along with the related imminent danger cessation order (see 405 KAR 12:020, section 3(2)(b)). KRS 350.990(1), as amended by HB 764, links the penalty assessment for the cessation order to the underlying notice of noncompliance. KRS 350.130(1) and 405 KAR 12:020, Section 2, require that a notice of noncompliance be issued for any violation of the statutes, regulations, permit conditions, or any other applicable requirement. For these reasons, the Director finds the provisions of HB 764 to be no less stringent than SMCRA and consistent with the Federal regulations.

*Federal Agency Comments*

Pursuant to 30 CFR 732.17(h)(11)(I), the Director solicited comments on the proposed amendment submitted on

August 15, 1996, and revised on January 11, 1995, from various Federal agencies with an actual or potential interest in the Kentucky program. No comments were received.

*Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated 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 Kentucky proposed to make in its amendment pertains to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

**V. Director's Decision**

Based on the above findings, the Director approves the proposed amendment as submitted by Kentucky on August 15, 1996.

The Federal regulations at 30 CFR part 917, codifying decisions concerning the Kentucky program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

**VI. Procedural Determinations***Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, 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 since each such 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 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.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since 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 has determined 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 corresponding 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. 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 corresponding Federal regulations.

*Unfunded Mandates*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 30, 1997.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations 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 in the table by adding a new entry 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
August 15, 1996	August 29, 1997	KRS 350.131(3), 350.150(1), 350.990(1), Chapter 350 Section 3, KRS 350.0301(1), 350.990(1).

[FR Doc. 97-23106 Filed 8-28-97; 8:45 am]  
BILLING CODE 4310-05-M

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 100**

[CGD 05-97-065]

RIN 2115-AE46

**Special Local Regulations for Marine Events; Hampton Offshore Challenge, Chesapeake Bay, Hampton, Virginia**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Special local regulations are being adopted for the Hampton Offshore Challenge boat race to be held in the Chesapeake Bay, Hampton, Virginia. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

**EFFECTIVE DATES:** This regulation is effective from 10:30 a.m. to 6 p.m. EDT

(Eastern Daylight Time) on September 6 and September 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Chief Warrant Officer D. Merrill, Marine Events Coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, Virginia 23703, (757) 483-8568.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The request to hold the event was not received until July 30, 1997. Publishing a notice of proposed rulemaking and delaying its effective date would be contrary to safety interests, since immediate action is needed to minimize potential danger to the public posed by the large number of racing vessels participating in this event.

**Discussion of Regulations**

On September 6 and September 7, 1997, the United States Offshore Racing Association will sponsor the Hampton Offshore Challenge race in the

Chesapeake Bay near Buckroe Beach, Hampton, Virginia. The event will consist of Offshore Performance Boats racing at high speeds along an 8 mile oval course. These regulations are necessary to control spectator craft and provide for the safety of life and property on navigable waters during the event.

**Regulatory Evaluation**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory procedures of DOT is unnecessary. Entry into the regulated area will only be prohibited while the race boats are actually competing. Because vessels will be allowed to transit the event area between heats, the