

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the Office of Management and Budget 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 915**

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 20, 2002.

**Charles E. Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

For the reasons set out in the preamble, 30 CFR 915 is amended as set forth below:

**PART 915—IOWA**

1. The authority citation for part 915 continues to read as follows:

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

2. Section 915.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

**§ 915.15 Approval of Iowa regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* June 14, 2002	* November 6, 2002	* IAC 27-40.71(207).

[FR Doc. 02-28203 Filed 11-5-02; 8:45 am]  
BILLING CODE 4310-05-P

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 917**

[KY-238-FOR]

**Kentucky Regulatory Program**

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

**SUMMARY:** We, the Office of Surface Mining (OSM) are approving, with certain conditions, an amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kentucky proposed revisions to their State statutes pertaining to easement of necessity. To the extent that it is construed in the manner discussed

in the findings below, Kentucky's proposed amendment is consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** November 6, 2002.

**FOR FURTHER INFORMATION CONTACT:**

William J. Kovacic, Field Office Director, Telephone: (859) 260-8400. Address: Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503.

**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**

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 21404). 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. Submission of the Proposed Amendment**

By letter dated April 25, 2002 (Administrative Record No. KY-1530), Kentucky sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky sent the amendment

at its own initiative. A summary of the amended language follows. It amends the Kentucky Revised Statutes (KRS) at 350.280 and is referenced as Kentucky House Bill 809.

We announced receipt of the proposed amendment in the June 19, 2002, **Federal Register** (67 FR 41653). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. The public comment period ended on July 19, 2002.

We did not hold a public hearing or meeting because no one requested one. We did, however, receive four comments; one of these was from an industry group and three were from Federal agencies.

### III. Director'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. We are approving the amendment to the extent described below. Any revisions that we do not specifically discuss below concern non-substantive wording or editorial changes.

*(a) Revisions to Kentucky's Statute That Are Not the Same as the Corresponding Provisions of the Federal Regulation(s) and/or Statute(s)*

#### General

Kentucky submitted the following amendment to KRS 350.280, Section (1): Added subsection (a) in its entirety to read (at page 1, line 2) "As used in this section, 'he or she' includes 'person' as defined in KRS 350.010."

We find that this amended language is non-substantive and, as such, does not render the Kentucky program less stringent than SMCRA or less effective than the Federal regulations. The language is, therefore, approved.

#### Easements of Necessity for Cessation Orders Issued Due to Imminent Danger to the Public or Significant, Imminent Environmental Harm

Existing language in subsection (1) was renamed subdivision (b), and amendments were added. As now proposed, subdivision (b) reads as follows, with new language shown in italics:

(b) If a permittee or operator has been issued a notice or order directing abatement of a violation on the basis of an imminent danger to health and safety of the public or significant imminent environmental harm, and the violation involves an order of cessation and immediate compliance or an order to abate and alleviate in which the cabinet directs the permittee or operator to

begin immediate abatement of the violation, and the notice or order requires access to property for which the permittee or operator does not have the legal right of entry necessary in order to abate that violation, and the owner or legal occupant of that property has refused access, an easement of necessity is recognized on behalf of the permittee or operator for the limited purpose of abating that violation. *The easement of necessity becomes effective, and the permittee or operator is authorized to enter the property to undertake immediate action to abate the violation if he or she concurrently:*

1. Provides to the property owner or legal occupant a copy of the cabinet's order;
2. Provides to the property owner or legal occupant and cabinet an affidavit that he or she has been denied access to the property; and
3. Provides to the property owner or legal occupant a statement that he or she, the permittee or operator, will obtain an appraisal completed by a certified real estate appraiser or other qualified appraiser of the damages to the property, including loss of use, that will result from the violation, as abated, and those that are likely to occur to the property when the permittee or operator enters the property in order to abate the violation, that the appraisal will be completed and provided to the property owner or legal occupant within three (3) days of entry of the operator or permittee, and that he or she will pay the property owner or legal occupant the amount of the damages in the permittee or operator's appraisal at that time.

Kentucky also created new subdivisions (c)–(e), which read as follows:

*(c) Following the effective date of the easement of necessity, the following procedure shall be followed with respect to the appraisal of the damages that will result from the violation, as abated, and those that are likely to occur to the property when the permittee or operator enters the property in order to abate the violation:*

1. The permittee or operator shall have an appraiser on the site and have his or her appraisal completed and submitted to the property owner or legal occupant within three (3) days of entry on the property by the operator or permittee;
2. The property owner or legal occupant shall accept or reject this appraisal in writing within three (3) days of receipt of the completed appraisal;
3. If the property owner or legal occupant rejects this appraisal, he or she may hire a certified real estate appraiser or other qualified appraiser to appraise the damages, including loss of use, that will result from the violation, as abated, and those that are likely to occur to the property if the permittee or operator is allowed to enter the property in order to abate the violation. Upon receipt of the invoice the permittee or operator shall pay for the property owner or legal occupant's appraisal up to the amount he or she paid for his or her own appraisal; and
4. If the property owner or legal occupant has the appraisal done, he or she shall have it completed and provided to the permittee or operator within seven (7) days of receipt of the permittee or operator's completed appraisal.

*(d) If the property owner or legal occupant has an appraisal done, and if, based on his or her appraisal and the permittee or operator's appraisal, an agreement is not reached on the appraised damages, the permittee or operator shall pay the property owner or legal occupant the amount of the permittee or operator's appraisal damages, and if the property owner or legal occupant's appraisal damages are for more than the permittee or operator's, the permittee or operator shall pay the difference to the Circuit Clerk, in the county in which the majority of the property lies, to be placed in an interest-bearing account in a bank until final resolution of the matter by agreement or court or jury judgment. If the property owner or legal occupant is granted award of some or all of the difference, he or she shall also receive the interest on that portion of the difference.*

*(e) If the property owner or legal occupant does not accept or reject the permittee or operator's appraisal and offer of funds for damages, the operator or permittee shall pay the appraised damages to the Circuit Clerk within three (3) business days of the nonacceptance. These funds shall be placed in an interest-bearing account in a bank until resolution of the matter by agreement or court or jury judgment.*

We previously approved Kentucky's creation of an easement of necessity for a permittee or operator who lacks legal right of entry, or permission to enter, land in order to abate conditions that create imminent danger to the public or imminent, significant environmental harm, as cited in a notice or order of cessation under the approved Kentucky program. (66 FR 33020, 33021, June 20, 2001) However, subsection (1), as amended, creates a real property damage appraisal procedure that is not provided for in either SMCRA or the Federal regulations. While the language on its face does not appear inconsistent with SMCRA or its accompanying regulations, we are concerned that the appraisal process could delay the abatement of imminent dangers to the public or of imminent, significant environmental harm. Therefore, we find subsection (1), as amended, to be consistent with 30 CFR 843.11(b)(2), which requires expeditious abatement of imminent dangers and harms, but it is consistent only to the extent that the easement of necessity is created immediately after completion of the three steps contained in subsection (1)(b), and that the operator or permittee proceed immediately thereafter with abatement of the imminent danger to the public or the imminent, significant environmental harm that is the subject of the cessation order in the most expeditious manner physically possible, in accordance with the Federal regulations at 30 CFR 843.11(b)(2). As

such, we are approving amended subsection (1) only to this extent.

#### Easements of Necessity for Abatement of Violations That Do Not Cause Imminent Danger to the Public or Significant, Imminent Environmental Harm

Kentucky has repealed existing new subsections (2) through (6), which we have previously declined to approve (66 FR at 33021), and replaced them with new subsections (2)–(7) (from page 3, line 24), which read as follows:

(2) If a permittee or operator has been issued a notice or order directing abatement of a violation other than one described in subsection (1) of this section, and the notice or order requires access to property for which the permittee or operator does not have the legal right of entry necessary in order to abate that violation, and the owner or legal occupant of that property has refused access, an easement of necessity is recognized on behalf of the permittee or operator, for the limited purpose of allowing a certified real estate appraiser or other qualified appraiser, chosen by the permittee or operator, to enter upon the property to which the owner or legal occupant has refused access in order for the appraiser to appraise the damages, including loss of use, that will result from the violation, as abated, and those that are likely to occur to the property if the permittee or operator is allowed to enter the property in order to abate the violation.

(3) (a) The easement for the limited purpose of allowing the appraisal shall be recognized and take effect when the operator or permittee:

1. Provides to the property owner or legal occupant a copy of the cabinet's order;
2. Provides to the property owner or legal occupant and cabinet a plan of remedial measures to abate the violation;
3. Provides to the property owner or legal occupant and cabinet an affidavit that he or she has been denied access to the property; and
4. Provides to the property owner or legal occupant a statement that he or she, the permittee or operator, will within seven (7) days of entry of the appraiser obtain an appraisal, by a certified real estate appraiser or other qualified appraiser, of the damages to the property including loss of use, that will result from the violation, as abated, and those that are likely to occur to the property when the permittee or operator enters the property in order to abate the violation, and that upon completion of the appraisal he or she will provide the appraisal to the property owner or legal occupant and pay the property owner or legal occupant the amount of the appraisal.

(a) When the easement takes effect, the property owner or legal occupant shall allow access for the permittee or operator's certified real estate appraiser or other qualified appraiser to conduct the appraisal.

(4) Following the effective date of the easement of necessity, the following procedure shall be followed with respect to the appraisal of the damages to the property that will result from the violation, as abated,

and those that are likely to occur, under this subsection:

(a) The permittee or operator shall have an appraiser on the site and have his or her appraisal completed and submitted to the property owner or legal occupant within seven (7) days of the entry of the appraiser on the property.

(b) The property owner or legal occupant shall accept or reject this appraisal within three (3) days of receipt of the completed appraisal;

(c) If the property owner or legal occupant rejects this appraisal, he or she may hire a certified real estate appraiser or other qualified appraiser to appraise the damages to the property, including loss of use, that will result from the violation, as abated, and those that are likely to occur to the property if the permittee or operator is allowed to enter the property in order to abate the violation. Upon receipt of the invoice, the permittee or operator shall pay for the property owner or legal occupant's appraisal up to the amount he or she paid for his or her own appraisal; and (d) If the property owner or legal occupant has the appraisal done, he or she shall have it completed and provided to the permittee or operator within seven (7) days of receipt of the permittee or operator's appraisal.

(5) (a) If the property owner or legal occupant has an appraisal done, and if, based on his or her appraisal, an agreement is not reached on the appraised damages, the permittee or operator shall pay the property owner or legal occupant the amount of the permittee or operator's appraisal damages.

(b) If the property owner or legal occupant's appraisal damages are for more than the permittee or operator's, the permittee or operator shall pay the difference to the circuit clerk.

(c) The difference shall be placed in an interest-bearing account in a bank until final resolution of the matter by agreement or court or jury judgment.

(d) If the property owner or legal occupant is granted award of some or all of the difference, he or she shall also receive the interest on that portion of the difference.

(6) If the property owner or legal occupant does not accept or reject the permittee or operator's appraisal and offer of funds for damages, the operator or permittee shall pay the appraised damages to the Circuit Clerk within three (3) business days. These funds shall be placed in an interest-bearing account in a bank until resolution of the matter by agreement or court or jury judgment.

(7) In cases under subsection (2) of this section, when the procedures in subsections (4) and (5)(a) and (b) of this section, or subsections (4)(a) and (b) and (6) of this section, have been satisfied, the permittee or operator may enter the property to abate the violation."

As is the case with subsection (1), discussed above, subsection (2) creates a real property damage appraisal procedure that is not provided for in either SMCRA or the Federal regulations. While the procedure does not, on its face, appear inconsistent with SMCRA or its accompanying

regulations, we are again concerned that the appraisal process could interfere with the timely abatement of violations. With respect to violations that do not create imminent danger to the public or imminent, significant harm to the environment, the maximum abatement period, subject to exceptions not applicable here, is 90 days. See SMCRA section 521(a)(3), 30 U.S.C. 1271(a)(3); 30 CFR 843.12(c). Therefore, we find that subsection (2) is consistent with these provisions of SMCRA and the Federal regulations, but only to the extent that the property damage appraisal process created in this subsection does not delay the abatement of violations beyond 90 days after their issuance. As such, we are approving subsection (2) only to this extent.

#### IV. Summary and Disposition of Comments

##### Public Comments

We received one public comment from an industry group.

The Kentucky Coal Association (KCA) commented by letter dated July 16, 2002 (Administrative Record No. KY-1551). The comment indicated that as a representative of large and small, surface and underground operators in the Kentucky coalfields, the KCA supports the amendment as proposed by Kentucky.

##### 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 (Administrative Record No. KY-1537).

We received three agency comments, two in response to our request and one as a response to the **Federal Register** notice of the proposed rule (67 FR 41653).

The U.S. Department of Labor's Mine Safety and Health Administration (MSHA) commented by letter dated July 18, 2002 (Administrative Record No. KY-1554). MSHA indicated that the proposed amendment has no apparent impact concerning its office.

The U.S. Fish and Wildlife Service (FWS) commented by letter dated July 15, 2002 (Administrative Record No. KY-1555). FWS indicated that the amendment does not appear to have the potential for resulting in negative environmental effects. As such, the FWS did not object to the proposed regulatory change.

The U.S. Department of Agriculture's Forest Service (USFS) commented by letter dated August 1, 2002

(Administrative Record No. KY-1557). USFS indicated that they do not believe that Federal authorization exists to access national forest land without Forest Service approval.

In response, we note that the amendment appears to be applicable whenever access to land upon which reclamation has been ordered is denied, whether the land be private or Federal. While we are sympathetic to USFS's concerns, we have found that the amendment, as construed above, is consistent with SMCRA and its implementing Federal regulations. In addition, no provision in SMCRA may be construed to vest in any regulatory authority the jurisdiction to adjudicate property title disputes, such as a dispute as to whether an easement of necessity is lawful if created on national forest land. See SMCRA Section 507(b)(9), 30 U.S.C. 1257(b)(9). Should a dispute occur over access to national forest land by a coal permittee or operator, the burden is on the permittee or operator to pursue all legal means to achieve reclamation. In any event, we trust that, in the great majority of cases, the USFS will be amenable to allowing access to national forest land upon which surface coal mining reclamation has been ordered by the Kentucky Regulatory Authority or by OSM.

*Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(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 revisions 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.

*State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. None of the revisions that Kentucky proposed to make in this amendment pertain to or have a perceived effect on historic properties. Therefore, we did not specifically ask the SHPO or ACHP for comments.

**V. Director's Decision**

Based on the above findings we approve the Kentucky amendment, to

the extent described, as submitted on April 25, 2002.

*Effect of OSM's Decision*

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary.

Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment.

The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Kentucky program, we will recognize only the statutes, regulations, and other materials we have approved, together with any consistent implementing policies, directives, and other materials. We will require Kentucky to enforce only approved provisions.

**VI. Procedural Determination**

*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 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 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 that 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: October 8, 2002.

**Allen D. Klein,**  
*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.*

2. Section 917.15 is amended in the table by adding a new entry in chronological order by November 6, 2002 to read as follows:

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

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
April 25, 2002	November 6, 2002	2002 HB 809, Kentucky Revised Statutes at Chapter 350.

[FR Doc. 02-28198 Filed 11-5-02; 8:45 am]  
BILLING CODE 4310-05-P

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 938**

[PA-136-FOR]

**Pennsylvania Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.  
**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving a proposed amendment to the Pennsylvania regulatory program ( the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Pennsylvania proposed to revise its program at 25 Pa. Code Sections 86.37(a)(5), 87.160(a), 88.138(a), 88.231(a), 88.335(a), and 90.134(a) about criteria for permit approval or denial and for performance standards for retention of roads following completion of surface mining activities. Pennsylvania intended to revise its program to be consistent with the corresponding Federal regulations and SMCRA, and to clarify ambiguities.

**EFFECTIVE DATE:** November 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Telephone: (717) 782-4036. Email: *grieger@osmre.gov*.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Pennsylvania 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 Pennsylvania 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 Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of

approval in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

**II. Submission of the Proposed Amendment**

By letter dated February 25, 2002, Pennsylvania sent us an amendment to its program (Administrative Record No. PA 889.00) under SMCRA (30 U.S.C. 1201 *et seq.*). Pennsylvania sent the amendment in response to the required program amendment at 30 C.F.R. 938.16(gggg) and to include changes made at its own initiative.

We announced receipt of the proposed amendment in the April 16, 2002, **Federal Register** (67 FR 18518). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendments adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on May 16, 2002. We did not receive any comments.

**III. OSM's Findings**

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