

of a retroactive annuity starting date is a single-sum distribution that is based on the present value of the early retirement annuity payable as of the retroactive annuity starting date, then the amount of the distribution must be no less than the present value of the early retirement annuity payable as of the distribution date, determined as of the distribution date using the applicable mortality table and applicable interest rate that apply as of the distribution date.

(vi) *Timing of notice and consent requirements in the case of retroactive annuity starting dates.* In the case of a retroactive annuity starting date, the date of the first actual payment of benefits based on the retroactive annuity starting date is substituted for the annuity starting date for purposes of satisfying the timing requirements for giving consent and providing an explanation of the QJSA provided in paragraphs (b)(3)(i) and (ii) of this section, except that the substitution does not apply for purposes of paragraph (b)(3)(iii) of this section. Thus, the written explanation required by section 417(a)(3)(A) must generally be provided no less than 30 days and no more than 90 days before the date of the first payment of benefits and the election to receive the distribution must be made after the written explanation is provided and on or before the date of the first payment. Similarly, the written explanation may also be provided less than 30 days prior to the first payment of benefits if the requirements of paragraph (b)(3)(ii) of this section would be satisfied if the date of the first payment is substituted for the annuity starting date.

(vii) *Administrative delay.* A plan will not fail to satisfy the 90-day timing requirements of paragraphs (b)(3)(iii) and (vi) of this section merely because, due solely to administrative delay, a distribution commences more than 90 days after the written explanation of the QJSA is provided to the participant.

\* \* \* \* \*

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

■ **Par. 3.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 4.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

\* \* \* \* \*

(b) \* \* \*

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
1.417(e)-1 .....	1545-1724
* * * * *	* * * * *

**Robert E. Wenzel,**  
*Deputy Commissioner for Services and Enforcement.*

Approved: July 9, 2003.

**Pamela Olson,**  
*Assistant Secretary of the Treasury.*  
[FR Doc. 03-17869 Filed 7-15-03; 8:45 am]  
**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE INTERIOR**  
**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 917**

[KY-242-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 concerns the determination of the premining use of land that was not previously mined. In doing so, we find that the Kentucky program is no less effective than the corresponding Federal regulations.

**EFFECTIVE DATE:** July 16, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kentucky Field Office Director William J. Kovacic. Telephone: (859) 260-8402; Internet address: [wkovacic@osmre.gov](mailto: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 October 1, 1992, we published, in the **Federal Register** (57 FR 45295), a requirement that Kentucky amend their program to provide that in determining premining uses of land not previously mined, the land must have been properly managed. We codified the required amendment in the Federal regulations at 30 CFR 917.16(g). Subsequent review of Kentucky's program led to our determination that this requirement may not be necessary to assure that Kentucky's program is as effective as the Federal regulations. We announced our intent to reconsider this required amendment in the April 29, 2003, **Federal Register** (68 FR 22646). In the same document, we invited public comment on the proposed removal of the required amendment. The public comment period closed on May 29, 2003. We received comments from one Federal agency.

**III. OSM's Findings**

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

The Kentucky regulations at 405 Kentucky Administrative Regulations (KAR) 16:210 and 405 KAR 18:220 Section 1 (1)(a) and (b) currently provide:

Prior to the final release of performance bond, affected areas shall be restored in a timely manner:

(a) To conditions capable of supporting the uses which the areas were capable of supporting before any mining; or

(b) To conditions capable of supporting higher or better alternative uses as approved by the cabinet under Section 4 of this administrative regulation.

These provisions are no less effective than their Federal counterparts at 30 CFR 816.133(a) and 817.133(a). The State regulations at 405 KAR 16:210 Section 2(1) states in relevant part, “the premining use of land to which the postmining land use is compared shall be those uses which the land previously supported if the land has not been previously mined.” When Kentucky submitted this change in 1992, OSM indicated that, “[t]his rule, while similar to the Federal rule at 30 CFR 816.133(b), fails to provide that a postmining land use must be compared to premined land which was properly managed, as set forth in the cited Federal rule”. [October 1, 1992, **Federal Register** (57 FR 45295, 45300)]. When OSM determined that the Kentucky rule was less effective, to the extent Kentucky failed to require a comparison to a premining land use that was properly managed, OSM required an amendment. The required amendment at 30 CFR 917.16(g) requires Kentucky to submit proposed revisions to its regulations to provide that in determining premining uses of land not previously mined, the land must have been properly managed.

We find, as discussed below, that the Kentucky program as it currently exists is no less effective than the Federal regulations and that the required amendment at 30 CFR 917.16(g) can be removed.

The Kentucky program, like the Federal regulations at 30 CFR 816.133(a) and 817.133(a), requires that all disturbed areas be restored in a timely manner to conditions that are capable of supporting either the uses that they were capable of supporting before any mining or any approved higher or better uses. (The Kentucky program also extends this requirement to all affected areas and does not limit it to disturbed areas.) In general, compliance with this requirement rests on a determination that the site has been restored to a condition capable of supporting the approved postmining land use. This determination consists primarily of two components: (1) Site configuration, which is addressed by the backfilling and grading regulations and is not dependent upon premining land use or management; and (2) revegetation success.

As authorized by 30 CFR 816.116 and 816.117, the Kentucky program (*see* 405 KAR 16:200/18:200 Section 5) relies primarily upon technical standards (ground cover; productivity standards; and tree and shrub stocking standards) to evaluate revegetation success for the various postmining land use categories. These technical standards for ground cover, stocking, and production are not

site specific and apply regardless of how the land was used or managed before mining. The technical standards are based on accepted management practices for the land use in question.

Further, Kentucky’s rules allow the use of reference areas to evaluate revegetation success. These references must be on unmined areas and as close to the permit area as possible. Under 405 KAR 16:200/18:200 Section 7, reference areas must be managed in accordance with the regional norm for the approved postmining land use. Regional norms would not be considered improper management practices for purposes of determining whether the land has been restored to its premining capability.

For these reasons, we find that, with respect to the provision at issue in 30 CFR 917.16(g), Kentucky’s program is no less stringent than SMCRA and no less effective than the Federal regulations implementing SMCRA. Therefore, we are removing the required amendment at 30 CFR 917.16(g).

#### IV. Summary and Disposition of Comments

##### *Public Comments*

No public comments were received on this proposed action.

##### *Federal Agency Comments*

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on April 29, 2003, we requested comments on the proposed removal of the required amendment at 30 CFR 917.16(g). We received one Federal Agency comment. On May 14, 2003, we received a comment from the U.S. Department of Labor’s Mine Safety and Health Administration (MSHA) (Administrative Record No. KY-1579). The letter indicated that upon review of the proposed removal of the required amendment, MSHA has determined that there will be no impact of concern to their office.

On June 16, 2003, the USFWS contacted the Lexington Field Office and informed them that they would have no comments.

##### *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.*). This amendment does not pertain to air or water quality standards.

Therefore, we did not ask the EPA for their concurrence or comment.

#### V. OSM’s Decision

Based on the above finding, we are removing the required amendment to Kentucky’s program relating to the determination of premining uses of land not previously mined having to be properly managed.

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 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. SMCRA requires consistency of State and Federal standards.

#### VI. Procedural Determinations

##### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

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

This rule is exempted from review by the Office of Management and Budget (OMB) 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 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**

Intergovernmental relations, 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 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.*

**§ 917.16 [Amended]**

■ 2. Section 917.16 is amended by removing and reserving paragraph (g).

[FR Doc. 03–17966 Filed 7–15–03; 8:45 am]

**BILLING CODE 4310–05–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Parts 26, 161, 164, and 165**

**[USCG–2003–14757]**

**RIN 1625–AA67**

**Automatic Identification System; Vessel Carriage Requirement; Correction**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Correcting amendments.

**SUMMARY:** On July 1, 2003, the Coast Guard published a temporary interim rule with request for comments and notice of meeting in the **Federal Register** concerning the implementation of Automatic Identification Systems (AIS). This document contains corrections to that rule.

**DATES:** Effective on July 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this document, write or call Mr. Jorge Arroyo, Office of Vessel Traffic Management (G–MWV), U.S. Coast Guard by telephone 202–267–1103, toll-free telephone 1–800–842–8740 ext. 7–1103, or by electronic mail [msregs@comdt.uscg.mil](mailto:msregs@comdt.uscg.mil). If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at telephone 202–366–5149.

**SUPPLEMENTARY INFORMATION:** The Coast Guard published a temporary interim rule with request for comments and notice of meeting in the **Federal**