IV. 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 the Federal Government and Indian tribes. This determination is based on the fact that the Indiana program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Indiana program has no effect on Federally-recognized 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 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 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 914

Intergovernmental relations, Surface mining, Underground mining.


Charles E. Sandberg,
Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 04–16290 Filed 7–16–04; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–247–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.
In addition, you may receive a copy of the amendment during regular business hours at the following location: Department for Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859) 260–8400. Internet: bkovacic@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

II. Description of the Proposed Amendment

III. Public Comment Procedures

IV. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primary responsibility for the regulation of surface coal mining and reclamation operations on non-Federal 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 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 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 May 14, 2004, Kentucky sent us an amendment to its program, [(KY–247–FOR), administrative record No. KY–1624], under SMCRA (30 U.S.C. 1201 et seq.). Kentucky submitted House Bill (HB) 537 promulgated by the 2004 Kentucky General Assembly. It amends the Kentucky Revised Statutes (KRS) at Section 1 of 350.280. A summary of the amended language follows.

Subsection (1)(b)—the following quoted language is deleted from the conditions under which an easement of necessity is recognized, or order directing abatement of a violation on the basis of imminent danger to health or 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.”

Subsection (1)(b)1—the following quoted language is added to the existing provisions to specify that an easement of necessity becomes effective and a permittee or operator is authorized to enter a property to take immediate action to abate a violation if he/she provides: “a plan of action reasonably calculated to result in abatement of the violation, repair of the damage, and restoration of the property, and provides proof of liability insurance and workers’ compensation insurance covering any accidents or injuries occurring on the property during the remedial work.”

Subsection (1)(b)2—this subsection has been revised to require, in part, that a permittee or operator “diligently pursue abatement of the violation” and obtain an appraisal completed by a real estate appraiser “certified under KRS Chapter 324A” of damages that have resulted from the violation. The original language describing the damages “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” is deleted. The appraisal must be completed and provided to the property owner or legal occupant within three days of abatement of the violation.

Subsection (1)(c)1—this subsection requires that an appraiser be certified and that the appraisal be completed and submitted to the property owner or legal occupant within three days of “abatement of the violation” (originally “entry on the property”).

Subsection (1)(c)2—this subsection requires that the property owner or legal occupant shall accept or reject the appraisal in writing within seven days of receipt of the completed appraisal (originally three days).

Subsection (1)(c)3—this subsection requires that a real estate appraiser hired by the property owner of legal occupant be certified under KRS Chapter 324A and that the appraisal “be completed and presented to the permittee or operator within thirty days of receipt of the permittee’s or operator’s
completed appraisal.” Deleted is a requirement that the appraisal include the damages, including loss of use, 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.”

Subsection (1)(c)—this subsection requires that if the property owner or legal owner “accepts the permittee’s or operator’s appraisal, the permittee or operator shall promptly pay the property owner or legal occupant the amount of damages reflected therein.” The original language (now deleted) required that if the property owner or legal occupant has the appraisal done, it shall be completed and provided to the permittee or operator within seven days of receipt of the permittee’s or operator’s completed appraisal.

Subsection (1)(e)—this subsection specifies if the property owner or legal occupant does not accept or reject the permittee’s or operator’s appraisal and other funds for damages “within the time specified in subparagraph 2 of paragraph (c) of this subsection, the appraisal and offer shall be deemed accepted.” The original requirement that the operator or permittee pay the appraised damages to the circuit court within three business days of the nonacceptance, with the funds placed in an interest-bearing account until resolution, is deleted.

Subsection (1)(f)—this new subsection requires that “the appraiser shall calculate the damages to the property, including loss of use, that have resulted from the violation which the owner or the legal occupant shall be entitled to under this subsection as the difference between the fair market value of the property before the violation and after the abatement of the violation, plus the reasonable rental value of the property during the period of time between the effective date of the easement of necessity and the date of the abatement of the violation.”

Subsection 2—this subsection pertains to violations other than those described in subsection (1), and requires that a real estate appraiser be certified under KRS Chapter 324. He/she will appraise damages that “likely” will result from a violation. This replaces the original language that the appraiser appraise damages 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.” The same language is replaced in subsection (3)(a)(4).

Subsection (3)—this subsection clarifies that the referenced appraisal pertains to that specified in subsection (2).

Subsection (3)(a)(4)—this subsection requires that the operator or permittee pay the property owner or legal occupant an entry fee “calculated as one-half of the amount of the appraisal or the sum of five hundred dollars, whichever is greater, for the privilege to enter the property and conduct” the appraisal.

Subsection (3)(b)—this new subsection requires that “upon payment of the entry fee by the permittee or operator, an easement of necessity shall be recognized on behalf of the permittee or operator for limited purposes of abating the violation and the operator or permittee shall be authorized to enter the property to undertake immediate action to abate the violation, provided that the landowner has been provided a plan of action reasonably calculated to result in abatement of the violation, repair of the damage, and restoration of the property, and the permittee or operator provides proof of liability insurance and workers’ compensation covering any accidents or injuries occurring on the property during the remedial work.”

Subsection (3)(c)—this subsection states that “following the effective date of the easement, the property owner or legal occupant shall be entitled to retain the entry fee in its entirety.” The original language, “when the easement takes effect, the property owner or legal occupant shall allow access for the permittee’s or operator’s certified real estate appraiser or other qualified appraiser to conduct the appraisal,” has been deleted.

Subsection (4)—this subsection specifies that “nothing in this section shall affect any person’s right to bring a civil suit action for damages, including punitive and compensatory damages, or other appropriate relief.” The original language in subsections (4), (5), (6), (7), and (8) has been deleted. These subsections pertained to procedures for the appraisal of damages addressed in this amendment in revised subsection (1)(c).

The full text of the program amendment is available for you to read at the locations listed above under ADDRESSES.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the program.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not consider or include in the administrative record any comments received after the time indicated under DATES or at locations other than the Lexington Field Office.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include “Attn: KY—247—FOR/Administrative Record No. KY—1624” and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Lexington Field Office at (859) 260–8400.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under FOR FURTHER INFORMATION CONTACT by 4 p.m., e.s.t. on August 3, 2004. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under FOR FURTHER INFORMATION CONTACT. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an
opportunity to speak, we will not hold
the hearing. To assist the transcriber and
ensure an accurate record, we request, if
possible, that each person who speaks at
a public hearing provide us with a
written copy of his or her comments.
The public hearing will continue on the
specified date until everyone scheduled
to speak has been given an opportunity
to be heard. If you are in the audience
and have not been scheduled to speak
and wish to do so, you will be allowed
to speak after those who have been
scheduled. We will end the hearing after
to speak after those who have been
scheduled to speak and others
present in the audience who wish to
speak, have been heard. If you are
disabled and need a special
accommodation to attend a public
hearing, contact the person listed under
FOR FURTHER INFORMATION CONTACT.

Public Meeting

If only one person requests an
opportunity to speak, we may hold a
public meeting rather than a public
hearing. If you wish to meet with us to
discuss the amendment, please request
a meeting by contacting the person
listed under FOR FURTHER INFORMATION
CONTACT. All such meetings are open to
the public and, if possible, we will post
notices of meetings at the locations
listed under ADDRESSES. We will make
a written summary of each meeting a
part of the administrative record.

IV. 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 regulations.

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, to the extent
allowable 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
the Federal regulations at 30 CFR
730.11, 732.15, and 732.17(b)(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. Section 503(a)(7) requires that
State programs contain rules and
regulations “consistent with”
regulations issued by the Secretary
pursuant to SMCRA.

Executive Order 13175—Consultation
and Coordination With Indian Tribal
Governments

In accordance with Executive Order
13175, we have evaluated the potential
effects of this rule on Federally-
recognized Indian tribes and have
determined that the rule does not have
substantial direct effects on one or more
Indian tribes, on the relationship
between the Federal Government and
Indian tribes, or on the distribution
of power and responsibilities between
the Federal Government and Indian
Tribes. The basis for this determination is
that our decision is on a State regulatory
program and does not involve a Federal
program involving Indian Tribes.

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

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

Section 702(d) of SMCRA (30 U.S.C.
1292(d)) provides that a decision on a
proposed State regulatory program
provision does not constitute a major
Federal action within the meaning of
section 102(2)(C) of the National
Environmental Policy Act (42 U.S.C.
4332(2)(C)). A determination has been
made that such decisions are
categorically excluded from the NEPA
process (516 DM 8.4.A).

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
that 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.
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
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, geographic
regions, or Federal, State or local
governmental agencies; 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 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.


George J. Rieger,
Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 04–16286 Filed 7–16–04; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement
30 CFR Part 920
[MD–054–FOR]

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendments.

SUMMARY: We are announcing receipt of a proposed amendment to the Maryland regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the Code of Maryland Regulations (COMAR) concerning valid existing rights. The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations.

DATES: We will accept written comments on this amendment until 4 p.m. (local time), on August 18, 2004. If requested, we will hold a public hearing on the amendment on August 13, 2004. We will accept requests to speak at a hearing until 4 p.m. (local time), on August 3, 2004.

ADDRESSES: You should mail or hand-deliver written comments and requests to speak at the hearing to Mr. George Rieger at the address listed below.

You may review copies of the Maryland program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Appalachian Regional Coordinating Center.

Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153. E-mail: grieger@osmre.gov.

Mr. C. Edmon Larrimore, Program Manager, Mining Program, 1800 Washington Boulevard, Baltimore, Maryland 21230, Telephone: (410) 537–3557 or 1–800–633–6101.

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

SUPPLEMENTARY INFORMATION:
I. Background on the Maryland Program
Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, “* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *” and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Maryland program on December 1, 1980. You can find background information on the Maryland program, including the Secretary’s findings, the disposition of comments, and conditions of approval in the December 1, 1980, Federal Register (45 FR 79431). You can also find later actions concerning Maryland’s program and program amendments at 30 CFR 920.12, 920.15, and 920.16.

II. Description of the Proposed Amendment
By letter dated May 4, 2004 (Administrative Record Number MD–583–11), Maryland sent us an amendment to its program under SMCRA (30 U.S.C. 1201 et seq.). The amendment revises COMAR provisions concerning valid existing rights.

The full text of the program amendment is available to you to read at the locations listed above under ADDRESSES. Specifically, Maryland proposes the following amendments to COMAR.

1. COMAR 26.20.10.01.B(7) Definition of Valid Existing Rights
This definition is amended at paragraph (7)(a)(ii) by deleting the phrase “on August 3, 1977” and by adding in its place the words “at the time the land came under the protection of Environment Article § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter.”

Subparagraph (7)(a)(iii) is amended by several deletions and additions of language as follows. In the first sentence, the phrase “these lands either had” is revised to read “the land had.” The following words are added immediately following the revised phrase “the land had: “obtained all permits and other authorizations required to conduct surface coal mining operations or had.” Further along in the first sentence, “good faith efforts” is amended to be “good faith effort.” Also in the first sentence, the words “State and federal permits” are deleted. The words “permits and authorizations” are added immediately before the words “to conduct the operations.” The word “those” is deleted and replaced by the word “the.” The words “lands, or on before” are revised to read “land before.” The date “August 3, 1977” is deleted, and the following words are added in their place: “the land came under the protection of Environment Article, § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter and at a minimum had submitted an application for any permit required under this subtitle.” The word “coal” is being deleted following the phrase “to the Bureau that the” and the word “land” is added in its place. The word “both” is deleted from the phrase “is both needed for.” The words “an ongoing” are being deleted immediately following the words “adjacent to.” The words “obtained before August 3, 1977” are being deleted at the end of the sentence, and those words are being replaced by the following words:

And other authorizations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made before the land came under the protection of Environment Article § 15–505(b)(2), Annotated Code of Maryland or Regulation .02 of this chapter.

As amended, COMAR 26.20.10.01.B(7)(a)(ii) provides as follows:
(iii) The person proposing to conduct surface coal mining operations on the land had obtained all permits and other authorizations required to conduct surface coal mining operations or had made a good faith effort to obtain all necessary permits and authorizations to conduct the operations...