

Original amendment submission date	Date of final publication	Citation/description
12/27/2004	5/3/2005	Section III.F and Section IV.A and G of Iowa's April 1999 Revegetation Success Standards and Statistically Valid Sampling Techniques.

### § 915.16 [Amended]

■ 3. Section 915.16 is amended by removing and reserving paragraph (a) and by removing paragraphs (c) through (e).

[FR Doc. 05-8732 Filed 5-2-05; 8:45 am]

BILLING CODE 4310-05-P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 917

[KY-248-FOR]

#### Kentucky Regulatory Program

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

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

**SUMMARY:** We are approving an amendment to the Kentucky regulatory program (the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky submitted examples of common husbandry practices in response to a required amendment.

**DATES:** *Effective Date:* May 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** William J. Kovacic, Telephone: (859) 260-8400. Telefax number: (859) 260-8410.

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky 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 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 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. Submission of the Proposed Amendment

By letter dated July 29, 2004, Kentucky sent us information pertaining to its program ([KY-248-FOR], administrative record No. KY-1634) under SMCRA (30 U.S.C. 1201 *et seq.*) in response to a required amendment at 30 CFR 917.16(i). The required amendment resulted from OSM's decision on June 9, 1993, to not approve proposed changes to 405 KAR (Kentucky Administrative Regulations) 16/18:200 Sections 1(7)(a), (7)(a)1 through 5, and 1(7)(d) that were submitted to OSM on June 28, 1991 (58 FR 32283). The finding stated, in part, that Kentucky (unlike other States) had not submitted any administrative record information to demonstrate that its proposed practices were normal husbandry practices within Kentucky. In its submission letter, Kentucky stated, in part, that its administrative regulations at 405 KAR 16/18:200 Sections 1(7)(a)1 through 5, and Sections 1(7)(b) and (d) "provide general direction on common remedial practices that will not extend the bond liability period" and "While these regulations establish a basic level of remedial activity that may occur, they do not identify many of the husbandry practices that may be commonly used in this region." Kentucky included guidance documents from the University of Kentucky College of Agriculture Cooperative Extension Service that identify the common husbandry practices that Kentucky would allow, subject to the limitations in 405 KAR 16:200/18:200 Section

1(7)(a) and (d). Kentucky also submitted information regarding similar husbandry practices approved and used in Tennessee, Ohio and Virginia. Finally, Kentucky provided examples of common practices that would be encountered on lands in Kentucky and would not restart or extend the bond liability period. The examples pertained to the following land uses: hayland, pastureland, forestland, commercial forestry, fish and wildlife, commercial, industrial, residential or recreational. We note that some of these examples do not pertain to the husbandry practices listed in 405 KAR 16/18:200 Section 1 (7)(a) and (d) so they are not considered in this amendment.

We announced receipt of the proposed amendment in the September 14, 2004, **Federal Register** (69 FR 55373), and in the same document invited public comment and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 14, 2004. We received one comment from the U.S. Fish and Wildlife Service.

#### III. OSM's Findings

Following is the finding we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. The regulation at 405 KAR 16/18:200 Section 1(7)(a) allows quarter acres or less of discrete areas to be reseeded without restarting the responsibility period if the areas meet one of the five exemptions and the total of these areas is no more than three percent of the permit acreage. The Federal rules at 30 CFR part 816 and 817.116(c)(4) allow the performance of normal husbandry practices during the period of responsibility, without restarting that period, if the State and OSM approve such practices and such practices can be expected to continue as part of the postmining land use or if discontinuance of the practice after the liability period expires will not reduce the probability of permanent revegetation success. We find that the three percent overall size limitation will not reduce the probability of permanent revegetation success because the Federal rules at 30 CFR part 816 and 817.116(a)(2) provide that ground cover,

production or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. Thus, the three percent limitation will still allow the area to meet the 90 percent success standard of part 816 and 817.116(a)(2). The size limitation of a specific area was addressed in our finding regarding Virginia's husbandry practices (59 FR 49195), where we said that the reseeded of large blocks of barren areas representing failed reclamation would be augmentative. The Federal rules at part 816 and 817.116(c)(4) prohibit husbandry practices to be augmentative. Kentucky's limit of a quarter acre for discrete areas would not be considered large blocks of barren areas. Thus, Kentucky's administrative record information is sufficient to support these practices as normal husbandry. Accordingly, we find 405 KAR 16/18:200 Section 1(7)(a) no less effective than the Federal rules.

405 KAR 16/18:200 section 1(7)(d) states that irrigating, reliming, and refertilizing pastureland; reseeding cropland; and renovating pastureland by overseeding after Phase II bond release and after three years from the initial seeding shall be considered normal husbandry practices. These practices will not restart the liability period if the amount and frequency of these practices do not exceed normal agricultural practices on unmined land in the region. The Federal rules at 30 CFR part 816 and 817.116(c)(4) permit selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided the regulatory authority obtains prior approval from OSM that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability. Kentucky has provided guidance documents it employs to identify common husbandry practices. The documents are published by the Kentucky College of Agriculture Cooperative Extension Service and are: Renovating Hay and Pasture Fields, Growing Red Clover in Kentucky and Establishing Forage Crops. The administrative record information submitted by Kentucky demonstrates that its practices are the usual or expected state, form, amount, or degree of management performed habitually to prevent exploitation, destruction, or neglect of the resource and maintain a prescribed level of use or productivity of similar unmined lands. We find that these documents establish an adequate administrative record to support the

normal husbandry practices listed in section 1(7)(d) and that 405 KAR 16/18:200 Section 1(7)(d) are no less effective than the Federal rules and can be approved.

It should be noted that 405 KAR 16/18:200 section 1(7)(b) was previously approved and therefore not part of this amendment (see 63 FR 41423, August 4, 1998).

#### IV. Summary and Disposition of Comments

##### *Public Comments*

We solicited public comments on September 14, 2004, and provided an opportunity for a public hearing on the amendment. Because no one requested an opportunity to speak, a hearing was not held.

##### *Federal Agency Comments*

According to 30 CFR 732.17(h)(11)(i), on September 30, 2004, we solicited comments on the proposed amendment submitted on May 14, 2004, from various Federal agencies with an actual or potential interest in the Kentucky program (administrative record No. KY-1634). We received one response from the U.S. Fish and Wildlife Service, who concurred without comment.

##### *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.*). Because the provisions of this amendment do not relate to air or water quality standards, we did not request EPA's concurrence.

#### V. OSM's Decision

Based on the above finding, we are approving 405 KAR 16:200 Section 1(7)(a) and 1(7)(d) and 405 KAR 18:200 Section 1(7)(a) and 1(7)(d) which were previously not approved. We are also removing the required amendment at 30 CFR 917.16(i) because Kentucky has submitted the administrative record information necessary to demonstrate that its proposed practices are normal husbandry practices within Kentucky as discussed in Section III above.

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 Kentucky's program demonstrate that it 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 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. The basis for this determination is our decision on a State regulatory program and does not involve a Federal regulation involving Indian lands.

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

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the

National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon 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 917**

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 17, 2005.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

**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 the “Date of Final Publication” to read as follows:

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

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Original amendment submission date	Date of final publication	Citation/description
* * * * *	* * * * *	* * * * *
June 28, 1991 with record material submitted July 29, 2004.	May 3, 2005 .....	405 KAR 16:200 Section 1(7)(a) and (7)(d) and 405 KAR 18:200 Section 1 (7)(a) and (7)(d).

**§ 917.16 Required regulatory program amendments.**

■ 3. Section 917.16 is amended by removing and reserving paragraph (i).  
[FR Doc. 05–8731 Filed 5–2–05; 8:45 am]

BILLING CODE 4310–05–P

**DEPARTMENT OF THE TREASURY**

**Fiscal Service**

**31 CFR Part 285**

**RIN 1510–AA70**

**Salary Offset**

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This final rule describes the rules and procedures applicable to the centralized offset of Federal salary payments to collect delinquent nontax debts owed by Federal employees to the United States. The Financial Management Service (FMS), a bureau of the U.S. Department of the Treasury, administers centralized salary offset through the Treasury Offset Program (TOP).