

does need to expend IRR or other funds in developing PS&Es and prioritize the project on their transportation improvement program (TIP) before they can apply for the IRRBP funds.

Based on this analysis the FHWA has determined that this action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. Although this proposal is a significant regulatory action under Executive Order 12866, we have determined that it is not a significant energy action under that order, because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, protection of Children from Environmental Health Risks and Safety Risks. This action is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This action will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be

used to cross-reference this action with the Unified Agenda.

List of Subjects 23 CFR Part 661

Bridges, Highways and roads, Indian reservation roads and bridges.

Issued on: May 1, 2003.

Mary E. Peters,
Federal Highway Administrator.

In consideration of the foregoing, and under the authority of 23 U.S.C. 120(j) and (k), 202, and 315; and 49 CFR 1.48, the interim final rule establishing 23 CFR part 661, which was published at 64 FR 38565 on June 19, 1999, is adopted as a final rule without change.

[FR Doc. 03-11295 Filed 5-7-03; 8:45 am]

BILLING CODE 4910-22-P

ject of FR Doc. 03-2063, is corrected as follows:

■ On page 4918, column 3, the regulation heading in the middle of the column, line 5, the “RIN 1545-AY56” is corrected to read “RIN 1545-AY04”.

Cynthia E. Grigsby,
Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03-11487 Filed 5-7-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY-241-FOR]

Kentucky Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving a proposed amendment to the Kentucky regulatory program (the “Kentucky program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky proposed revisions to the Kentucky Administrative Regulations (KAR) at 16/18:090 sections 1, 4, and 5 and added section 6 pertaining to sedimentation ponds and “other treatment facilities.” Kentucky revised its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: May 8, 2003.

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

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

Background

The final regulations that are the subject of these corrections are under sections 152 and 7805(f) of the Internal Revenue Code.

Need for Correction

As published, these final regulations contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

- Accordingly, the publication of final regulations (TD 9040), that were the sub-

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 June 25, 2002 (administrative record no. KY-1544), Kentucky sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky sent the amendment in response to our request for additional information in a letter dated February 23, 2001 (administrative record no. KY-1503). In that letter, we asked Kentucky to clarify that its sedimentation pond performance standards also apply to other treatment facilities. This issue was originally presented to Kentucky in an issue letter dated May 26, 2000 (administrative record no. KY-1479). Kentucky's response on August 10, 2000 (administrative record no. KY-1489) did not fully satisfy our concerns.

In this submission, Kentucky responded by adding a new Section (6) to its sedimentation pond regulations at 405 KAR 16:090 and 18:090 to establish performance standards for "other treatment facilities."

We announced receipt of the proposed amendment in the August 16, 2002, **Federal Register** (67 FR 53539), and in the same document invited public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on September 16, 2002.

By letter dated October 30, 2002, (administrative record no. KY-1568) Kentucky submitted revisions to its original submittal at sections 1, 4, 5 and 6. Because the revisions were comprised of references and did not change the substance or meaning of the regulations, we did not re-open the comment period.

The chronology of events that preceded this notice follow. By letter dated July 30, 1997 (administrative record no. KY-1410), Kentucky sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment revises 405 KAR at

sections 8:001, 8:030, 8:040, 16:001, 16:060, 16:090, 16:100, 16:160, 18:001, 18:060, 18:090, 18:100, 18:160, and 18:120.

We announced receipt of the proposed amendment in the September 5, 1997, **Federal Register** (62 FR 46933), and in the same document invited public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 6, 1997. On November 14, 1997, a Statement of Consideration of public comments was filed with the Kentucky Legislative Research Committee. As a result of the comments and by letter dated March 4, 1998, Kentucky made changes to the original submission (administrative record no. KY-1422). The revisions were made at 405 KAR 8:040, 16:060, 18:060, and 18:210. By letter dated March 16, 1998, Kentucky made additional changes to the original submission (administrative record no. KY-1423). The revisions were made at 8:001, 8:030, 8:040, 16:001, 16:060, 16:090, 16:100, 16:160, 18:001, 18:060, 18:090, 18:100, 18:160, and 18:210. By letter dated July 14, 1998, Kentucky submitted a revised version of the proposed amendments (administrative record no. KY-1431). All the revisions, except for a portion of those submitted March 16, 1998, were announced in the August 26, 1998, **Federal Register** (63 FR 45430).

During our review of the amendment, we identified concerns relating to the provisions at 405 KAR 8:001, 8:030, 8:040, 16:001, 16:060, 16:090, 16:100, 16:160, 18:001, 18:060, 18:090, 18:100, 18:160, and 18:210. We notified Kentucky of the concerns by letter dated May 26, 2000 (administrative record no. KY-1479). Kentucky responded in a letter dated August 10, 2000, and submitted additional explanatory information (administrative record no. KY-1489). The explanatory information and those revisions not included in previous notices were announced in the June 5, 2002, **Federal Register** (67 FR 38621).

In this rule, we will address only those revisions at 405 KAR 16:18:090 sections 1, 4, 5, and at new section 6. We addressed Kentucky's revisions to its subsidence control regulations at 405 KAR 18:210 in a **Federal Register** notice (KY-229) published on May 7, 2002 (67 FR 30549). We will address the remaining revisions to the Kentucky regulations in future **Federal Register** notices (KY-216 and KY-228).

III. OSM'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.

At 405 KAR 16:18:090—

Sedimentation Ponds, sections 1 and 5 are revised to require that sedimentation ponds comply with sections 1 through 6 of 405 KAR 16:18:090. The revision was made to incorporate a reference to the new performance standards for "other treatment facilities" at section 6 since those facilities may be used in conjunction with, or in addition to, sedimentation ponds. Sections 1, 4, and 6 also cite KRS 350.050, which is the general grant of authority and powers to Kentucky's Natural Resources and Environmental Protection Cabinet (Cabinet). Accordingly, these added references are not inconsistent with the requirements of SMCRA and the Federal regulations.

At 405 KAR 16:18:090 new section 6, Kentucky is adding regulations for "other treatment facilities." The definition of this term was included in Kentucky's July 30, 1997, submission (administrative record no. KY-1410). It will be approved in the final rule notice for KY-228. In new section 6, Kentucky is permitting the use of other treatment facilities in conjunction with sedimentation ponds or in place of sedimentation ponds, if specifically approved by the Cabinet for that purpose on a case-by-case basis, pursuant to the Cabinet's authority in KRS 350.050. Other treatment facilities shall be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the Cabinet based on terrain, climate, other site-specific conditions and a demonstration by the permittee that the effluent limitations of 405 KAR 16:070 (or 18:070) Section 1(1)(g) will be met. They must meet all requirements for sedimentation ponds, if the requirements can be appropriately applied to other treatment facilities. The Cabinet shall determine the applicable requirements on a case-by-case basis depending upon the type of other treatment facilities. In every case, the other treatment facilities shall be designed, constructed, and maintained to: (a) Be located as near as possible to the disturbed area and out of perennial streams unless approved by the Cabinet, pursuant to the Cabinet's authority in KRS 350.050; (b) provide adequate sediment storage volume, as approved on a case-by-case basis by the Cabinet based upon the anticipated volume of sediment to be collected during the design precipitation event and a feasible plan for clean-out operations; (c) provide adequate detention time so that the discharges shall meet the

requirements of 405 KAR 16:070 (or 18:070) section 1(1)(g); (d) minimize short circuiting to the extent possible; and (e) provide periodic sediment removal sufficient enough to maintain adequate volume for the design event. The proposed plan for clean-out operations shall be included in the design and shall be approved if the Cabinet determines it is feasible. The plan shall include a time schedule or clean-out elevations, or an appropriate combination thereof, sufficient to maintain adequate volume for the sediment to be collected during the design precipitation event.

The Federal regulations at 30 CFR 816/817.46(d)(1) and Kentucky's proposed regulations both require that other treatment facilities be designed to treat the 10-year, 24-hour precipitation event unless a lesser event is approved by the regulatory authority. Additionally, the Federal regulations at 30 CFR 816/817.46(d)(2) require that other treatment facilities must be designed in accordance with the applicable requirements of 816/817.46(c). In the preamble to the 1983 Federal rule, OSM stated that in "every case, it is intended that 30 CFR 816.46 (c)(1)(ii) and (c)(1)(iii)(A), (B), (E), and (F) will apply to all other treatment facilities." 60 FR 44032, 44047 (September 26, 1983). Kentucky's proposed regulations at section 6 (3)(a) through (e) are substantively identical to the Federal regulations at 30 CFR 816/817.46(c)(1)(ii) and (c)(1)(iii)(A), (B), (E), and (F). Thus, we find that Kentucky's proposed revisions to sections 1, 4, and 5 and the addition of Section 6 to its regulations are no less effective than the Federal regulations at 30 CFR 816/817.46(d).

IV. Summary and Disposition of Comments

Public Comments

We announced receipt of the proposed amendment in the August 16, 2002, **Federal Register** (67 FR 53539), and in the same document invited public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The Kentucky Resources Council, Inc. (KRC) submitted written comments on August 29, 2002 (administrative record no. KY-1566). The KRC generally supports the amendment and stated, "it appears that the state regulation, while different in structure and terminology, provides at least as protective and rigorous a review of proposed sediment controls as does the federal counterpart."

Federal Agency Comments

According to 30 CFR 732.17(h)(11)(i), by letter dated August 28, 2002, we solicited comments on the proposed amendment submitted on June 25, 2002, from various Federal agencies with an actual or potential interest in the Kentucky program (administrative record no. KY-1565). We received no responses.

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.*). By letter dated August 28, 2002, we solicited EPA's comments and/or concurrence (administrative record no. KY-1565). This amendment does not contain provisions that relate to air or water quality standards and, therefore, concurrence by the EPA is not required. EPA did not submit comments pertaining to Kentucky's addition of new Section 6 to 405 KAR 16/18:090 which is the subject of this rule, although the EPA commented on an earlier Kentucky submission in a letter dated November 28, 2000 (administrative record no. KY-1501).

V. OSM's Decision

Based on the above findings, we approve the proposed amendment as submitted by Kentucky on June 25, 2002, and revised on October 30, 2002. 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 demonstrates 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.

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 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. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program 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 28, 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.*

■ 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.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
June 25, 2002	May 8, 2003	KAR 16:090 Sections 1(1), (2), 4, 5(2) and (6) and 18:090 Sections 1(1), (2), 4, 5(2) and (6).

[FR Doc. 03-11221 Filed 5-7-03; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[WY-030-FOR]

Wyoming 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 Wyoming regulatory program (the “Wyoming program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Wyoming proposed revisions to rules about placement of spoil outside the mined-out area, clarification of self-