

fixed coverage period for a fixed cost because the coverage period is not fixed.

(iii) Arrangement J does not satisfy the requirements of section 419A(f)(6) and this section because, at a minimum, the requirement of paragraph (a)(1)(iii) of this section is not satisfied. Arrangement J maintains experience-rating arrangements with respect to individual employers because the cost of coverage for a participating employer is based on a proxy for the overall experience of that employer. Under Arrangement J, the contributions of a participating employer are fixed. The benefits or other amounts payable with respect to an employer are the one-, two-, or three-times-compensation death benefit for each employee of the employer for the current year, plus the extended term protection coverage for future years. Thus, for any period extending to or beyond the end of the original term of one or more of the policies on the lives of an employer's employees, the employer's cost of coverage is the relationship between the fixed contributions for that period and the variable benefits payable under the arrangement. The value of those variable benefits depends on the aggregate value of the policies insuring the employer's employees (*i.e.*, the total of the premiums paid on the policies by Arrangement J to the insurance company, reduced by the mortality and expense charges that were needed to provide the original term protection, and increased by any investment return credited to the policies). The aggregate value of the policies insuring an employer's employees is, at any time, a proxy for the employer's overall experience. Thus, a participating employer's cost of coverage for any period described above is based on a proxy for the overall experience of that employer. Accordingly, Arrangement J maintains experience-rating arrangements with respect to individual employers.

Example 15. (i) Arrangement K provides a death benefit to employees of participating employers equal to a specified multiple of compensation. Under the arrangement, a flexible-premium universal life insurance policy is purchased on the life of each covered employee in the amount of that employee's death benefit. Each policy has a face amount equal to the employee's death benefit under the arrangement. Each participating employer is charged annually with the aggregate amount (if any) needed to maintain the policies covering the lives of its employees. However, each employer is permitted to make additional contributions to the arrangement and, upon doing so, the additional contributions are paid to the insurance company and allocated to one or more contracts covering the lives of the employer's employees. In the event that any policy covering the life of an employee would lapse in the absence of new contributions from that employee's employer, and if at the same time there are policies covering the lives of other employees of the employer that have cash values in excess of the amounts needed to prevent their lapse,

the employer has the option of reducing its otherwise-required contribution by amounts withdrawn from those other policies.

(ii) Arrangement K exhibits at least two of the characteristics listed in paragraph (c) of this section generally indicating that an arrangement is not a 10 or more employer plan described in section 419A(f)(6). First, assets of the plan are allocated to specific employers. Second, because the plan allows an employer to choose to contribute an amount that is different than that contributed by another employer for the same benefit, the amount charged under the plan is not the same for all participating employers (and the differences in the amounts are not merely reflective of differences in current risk or rating factors that are commonly taken into account in manual rates used by insurers for the particular benefit or benefits being provided), resulting in differential pricing.

(iii) Arrangement K does not satisfy the requirements of section 419A(f)(6) and this section because, at a minimum, the requirement of paragraph (a)(1)(iii) of this section is not satisfied. Arrangement K maintains experience-rating arrangements with respect to individual employers because the cost of coverage for any employer participating in the arrangement is based on a proxy for the overall experience of that employer. Under Arrangement K the benefits with respect to an employer for any year are a fixed amount. For purposes of determining the employer's cost of coverage for that year, the Commissioner may treat the employer's contribution under the special rule of paragraph (b)(4)(ii) of this section (concerning treatment of flexible contribution arrangements) as being the minimum contribution amount needed to maintain the universal life policies with respect to that employer for the death benefit coverage for that year. Because the employer has the option to prevent the lapse of one policy by having amounts withdrawn from other policies, that minimum contribution amount will be based in part on the aggregate value of the policies on the lives of that employer's employees. That aggregate value is a proxy for the employer's overall experience. Accordingly, Arrangement K maintains experience-rating arrangements with respect to individual employers.

(g) *Effective date*—(1) *In general.* Except as set forth in paragraph (g)(2) of this section, this section applies to contributions paid or incurred in taxable years of an employer beginning on or after July 11, 2002.

(2) *Compliance information and recordkeeping.* Paragraphs (a)(1)(iv), (a)(2), and (e) of this section apply for taxable years of a welfare benefit fund beginning after July 17, 2003.

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 an 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.
* * *	* * *
1.419A(f)(6)–1	1545–1795
* * *	* * *

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: July 9, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–18041 Filed 7–16–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–228–FOR]

Kentucky Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving, with the exception of one provision, 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 8/16/18:001 definitions of “impounding structure,” “impoundment,” and “other treatment facilities;” at 16/18:090 sections 1 through 5; at 16/18:100; and at 16/18:160 pertaining to sedimentation ponds and impoundments. Kentucky revised its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: July 17, 2003.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

1. Background on the Kentucky Program
2. Submission of the Proposed Amendment
3. OSM's Findings
4. Summary and Disposition of Comments
5. OSM's Decision
6. Procedural Determinations

1. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16 and 917.17.

2. Submission of the Proposed Amendment

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 18:210.

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).

By letter dated June 25, 2002 (administrative record no. KY-1544),

Kentucky sent us a proposed change to 405 KAR 16/18:090, by adding section 6, which established performance standards for "other treatment facilities." We announced this proposed revision in the August 16, 2002, **Federal Register** (67 FR 53540). In a letter dated October 30, 2002 (administrative record no. KY-1568), Kentucky sent us a final version of 405 KAR 16/18:090 section 6 as well as non-substantive changes to 405 KAR 6/18:090 section 1(1), (2)(a) and (4); section 2; section 4 and section 5(2).

We addressed Kentucky's revisions to its subsidence control regulations at 405 KAR 18:210 in a **Federal Register** notice published on May 7, 2002 (67 FR 30549). In this rule, we will address only those revisions at 405 KAR 8/16/18:001 definitions of "impounding structure," "impoundment," and "other treatment facilities," 16/18:090 sections 1 through 5, 16/18:100, and 16/18:160 pertaining to sedimentation ponds and impoundments. The minor revisions to 16/18:090 submitted by Kentucky on October 30, 2002, will not be discussed in this rule. The October 30, 2002, revisions and any other remaining revisions to the Kentucky regulations not previously addressed, will be in a future **Federal Register** notice (KY-216) or in a recently approved notice (KY-241).

3. 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 with the exception of one provision. Also, we are removing a required amendment at 30 CFR 917.16(d)(4). Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

(a) Minor Revisions to Kentucky's Rules

Kentucky proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved rules.

State rule	Subject	Federal counterpart
405 KAR 16:090 section 5(7)/18:090 section 5(8)	Sedimentation Ponds	30 CFR 816/817.46
405 KAR 16/18:100 section 2(1)	Impoundments	30 CFR 816/ 817.49(b)(1)
405 KAR 16/18:160 section 3(1), 3(1)(e)	Impoundments	30 CFR 816/817.84

Because the changes are minor, we find that they will not make Kentucky's rules less effective than the corresponding Federal regulations.

(b) Revisions to Kentucky's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

Because these proposed rules contain language that is the same as or similar to the corresponding Federal

regulations, we find that they are no less effective than the corresponding Federal regulations.

Kentucky proposed revisions to the following rules containing language that is the same as or similar to the corresponding sections of the Federal regulations.

State rule	Subject	Federal counterpart
405 KAR 8:001/16:001 section 1 (50)/18:001 section 1 (52)	Impounding Structure	30 CFR 701.5
405 KAR 8:001/16:001 section 1 (51)/18:001 section 1 (53)	Impoundment	30 CFR 701.5
405 KAR 16:001 section 1 (69)/18:001 section 1 (72)	Other Treatment Facilities	30 CFR 701.5
405 KAR 16/18:160 section 3(1) (a)	Coal Mine Waste Impoundments	30 CFR 816/ 817.84(b)(2)
405 KAR 16/section 3(3) 18:160	Coal Mine Waste Impoundments	30 CFR 816/ 817.84(e)
405 KAR 16/18:160 section 4	Coal Mine Waste Impoundments	30 CFR 816/ 817.84(f)

(c) Revisions to Kentucky's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. 405 KAR 16/18:090. At section 1, subsections (1) through (3), Kentucky is requiring that sedimentation ponds comply with its impoundment regulations at 405 KAR 16/18:100. We find that Kentucky's proposed regulations are no less effective than the Federal regulations at 30 CFR 816/817.46(b)(4), which require the compliance with the impoundment regulations at 30 CFR 816/817.49 since sections 405 KAR 16/18:100 are Kentucky's counterpart to the Federal regulations at 30 CFR 816/817.49. Additionally, Kentucky requires that sedimentation ponds must be designed and certified by a qualified registered professional engineer as meeting Kentucky's sedimentation ponds and impoundment requirements; and be inspected during construction by or under the direct supervision of the responsible registered professional engineer, and after construction be certified by the engineer as having been constructed in accordance with the approved design plans. The sedimentation pond must also be constructed and certified before any disturbance in the watershed that drains into the sedimentation pond. Kentucky is deleting the requirements at former subsections (3) and (4) that sedimentation ponds meet the criteria of these regulations and that they be removed unless approved for retention. These requirements can be found at revised sections 1(1) and 5(6), respectively. While Kentucky requires the construction of the sedimentation ponds before any disturbance in the watershed that drains into the sedimentation pond and the Federal rule requires construction before any

surface mining activities are conducted, both rules serve the same purpose to ensure that "any mining activities in a new drainage area" will have in place adequate siltation structures. 48 FR 44032-44037 (September 26, 1983) (emphasis added). Accordingly, we find that Kentucky's proposed regulations are no less effective than the Federal regulations at 30 CFR 816/817.46(b)(3) and (4), which require that siltation structures be constructed before beginning any surface mining activities in that area and be designed, certified, constructed, and maintained as approved in the reclamation plan.

At section 2, Kentucky is requiring that plans for clean-out operations include a time schedule or clean-out elevations, or an appropriate combination thereof, that provides periodic sediment removal sufficient to maintain adequate volume for the design precipitation under section 3. This language replaces a requirement that sediment storage volume be the anticipated volume of sediment that will be collected by the pond between scheduled clean-out operations. The Federal rules at 816/817.46(c)(1)(iii)(F) require periodic sediment removal sufficient to maintain adequate volume for the design precipitation event. Thus, the only difference between Kentucky's proposed language and the Federal rules is that Kentucky allows the permittee to choose between alternative methods to maintain adequate sediment storage volume. Since the permittee must maintain adequate volume, we find that Kentucky's proposed regulations are no less effective than the Federal regulations at 30 CFR 816/817.46(c)(1)(iii)(F).

At section 3, Kentucky is adding requirements that sedimentation ponds

be designed, constructed, and maintained to: (1) contain the runoff from the 10-year, 24-hour precipitation event by providing a runoff storage volume, between the top elevation of the design sediment storage volume and the principal spillway elevation, equal to or greater than the runoff from that precipitation event. Kentucky may approve a smaller runoff storage volume based on the terrain, the amount of disturbance, other site-specific conditions, and a demonstration by the permittee that effluent limitations will be met; or (2) treat runoff from the 10-year, 24-hour precipitation event by using other treatment facilities in conjunction with adequate runoff storage volume so that effluent limitations will be met. The proposed revisions clarify that sedimentation ponds must meet the requirements at subsections (1) and (2) in order to provide detention time for the runoff from a precipitation event. The detention is necessary so the effluent limits for the water leaving the permit area can be met. We find that Kentucky's proposed regulations are no less effective than the Federal regulations at 30 CFR 816/817.46(c)(1)(iii)(B) and (C), which require that sedimentation ponds provide adequate detention time to allow the effluent from ponds to meet State and Federal effluent limitations, and contain or treat the 10-year, 24-hour precipitation event unless a lesser event is approved by the State.

At section 4, Kentucky is revising its dewatering regulations that pertain to dewatering devices or spillways. They cannot be located at a lower elevation than the top elevation of the design sediment storage volume. The Federal regulations at 30 CFR 816/817.46(c)(1)(iii)(D) require that

nonclogging dewatering devices be adequate to maintain specified detention times. Kentucky's proposed regulations at 405 KAR 16/18:090 section 3(1) address detention times and reference effluent limitations at 405 KAR 16/18:070. Therefore, we find that Kentucky's proposed regulations at 405 KAR 16/18:090 section 4, when read in conjunction with 405 KAR 16/18:090 section 3(1) and 405 KAR 16/18:070, are no less effective than the Federal regulations.

At section 5, Kentucky is deleting its existing regulations pertaining to sedimentation ponds at subsections (3)-(16) and (20). The remaining sections have been renumbered. In its letter dated August 10, 2000, Kentucky noted that the revisions described above were made because the same requirements appear at 405 KAR 16/18:100. We find that Kentucky's proposed deletions at 16/18:090 section 5, when read in conjunction with revised 405 KAR 16/18:090 and 16/18:100, are no less effective than the Federal regulations at 30 CFR 816/817.46 and 816/817.49. Additionally, at subsections (4) and (5), Kentucky is adding requirements that sediment be removed in accordance with the approved clean-out plan and that spillways be provided in accordance with 405 KAR 16/18:100. We find these additions are consistent with changes that we are approving and are no less effective than the Federal rules at 30 CFR 816/817.46(c).

2. *405 KAR 16/18:100.* At section 1, subsection (1)(a), Kentucky is referencing compliance with permit application requirements as they pertain to the submission of the Mine Safety and Health Administration (MSHA)-approved impoundment plans. At section 1, subsections (3)(a) 1, Kentucky is now adding Class B and C impoundments to its performance standard that requires Class B and C impoundments, as well as other impoundments, to have a minimum static safety factor of 1.5 and a seismic safety factor of 1.2. The Federal rules at 30 CFR 816/817.49(a)(4) also require impoundments meeting the Class B or C criteria found in the Soil Conservation Service's (SCS) (now known as the Natural Resources Conservation Service) Technical Release No. 60 (TR-60) to meet a minimum static safety factor of 1.5 and a seismic safety factor of 1.2. However, Kentucky does not refer to TR-60 with regard to its Class B and C impoundments. In its letter dated August 10, 2000, Kentucky stated its Class B and C criteria (at 405 KAR 7:040 section 5 and 401 KAR 4:030) and those of TR-60 are virtually identical. Further, Kentucky stated that its criteria were

developed based on the SCS criteria, making a reference to TR-60 unnecessary. Kentucky's criteria are substantively identical to the TR-60 criteria. Therefore, based on the criteria found in Kentucky's regulations, we find that Kentucky's proposed regulations are no less effective than the Federal regulations, if Kentucky does not change its reference criteria at 405 KAR 7:040 section 5 and 401 KAR 4:030. We are also removing the required amendment at 30 CFR 917.16(d)(4), which directed Kentucky to require that all C class impoundments have a minimum static safety factor of 1.5 and all other impoundments have a minimum static safety factor of 1.3 or meet specific design criteria no less effective than the standard. Kentucky is also adding a requirement that all impoundments not included in subsection (3)(a) 1, except coal mine waste impoundments, shall have a minimum static safety factor of 1.3 for the normal pool with steady state seepage saturation conditions. This language is substantively identical to and no less effective than the Federal rules at 30 CFR 816/817.49(a)(4)(ii).

At section 1, subsections (5)(a) 2, Kentucky is now adding Class B and C impoundments to its performance standard that requires Class B and C impoundments, as well as other impoundments to have foundation investigations. This is substantively identical to and no less effective than the Federal rules at 30 CFR 816/817.49(a)(6).

At section 1(6), Kentucky is requiring that a 24-hour event may be used in lieu of a 6-hour event for the duration of a design precipitation event specified in subsection (6). OSM previously evaluated this issue for the design of spillways. In an OSM memorandum dated March 15, 1990, the results of a computer modeling analysis done for various types of watershed configurations typical to the coal fields of Kentucky were summarized (administrative record no. KY-1581). The computer modeling indicated the peak discharge for a 24-hour duration precipitation event was higher than the peak discharge for a 6-hour event having the same return period and would require a larger spillway than the 6-hour event. The proposed language is no less effective than the Federal regulations at 30 CFR 816/817.49(a)(9)(ii). At subsections (6)(a)1 and 2, Kentucky is requiring that Class A structures not meeting MSHA criteria pass: a 25-year, 6-hour precipitation event if it is a temporary structure; a 50-year, 6-hour precipitation event if it is a permanent structure; or a 100-year, 6-hour event if

it does meet the MSHA criteria. We find that Kentucky's proposed regulations are no less effective than the Federal regulations at 30 CFR 816/817.49(a)(9)(ii)(C), which require a 25-year, 6-hour standard or greater as specified by the regulatory authority.

Kentucky is proposing two changes allowing exemptions from impoundment inspection/examination requirements. First, at subsection (9)(c), Kentucky is proposing to allow an exemption from the engineer inspection requirements of subsection (9) for an impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, that is not a sedimentation pond or coal mine waste impoundment and is not otherwise intended to facilitate active mining. If Kentucky determines, on a case-by-case basis that an engineering inspection and certification are necessary to ensure public health and safety or environmental conditions, it will establish appropriate inspection and certification requirements for the impoundment that will apply in lieu of the requirements of subsection (9) and will notify the permittee in writing.

This proposal constitutes a limited exemption from the State counterpart to the Federal regulations at 30 CFR 816/817.49(a)(11), which require that all impoundments be inspected by an engineer during construction, upon completion of construction and thereafter at least yearly. Following each inspection, a certified report shall be provided to the regulatory authority.

Second, Kentucky is proposing, at subsection (10)(b), to allow an exemption for impoundments not meeting the MSHA requirements of 30 CFR 77.216 or not meeting the Class B and C classifications, from qualified person examination requirements specified in subsection 10(b) for an impoundment with no embankment structure, that is completely incised, or is created by a depression left by backfilling and grading. This proposal constitutes an exemption from the State counterpart to the Federal regulations at 30 CFR 816/817.49(a)(12), which require that all impoundments not meeting the SCS Class B or C criteria or the criteria of 30 CFR 77.216-3, shall be examined quarterly.

The Federal regulations regarding inspection/examination of impoundments were adopted in 1979 and revised and strengthened in 1983 for the express purpose of identifying structural weakness, instability, or other hazardous conditions so that potential hazards might be addressed and emergency procedures implemented in

order to “properly ensure protection of health and safety of all persons as well as the protection of the environment.” 48 FR 43994–44000 (September 26, 1983).

The criteria for approving proposed State program amendments are that they be no less effective than the Federal rule in meeting the requirements of SMCRA. We recognize that, since the regulations require the identification of potentially hazardous conditions, not conducting inspections/examinations where there is no potential for hazardous conditions is no less effective than conducting such inspections/examinations. The issue then, in deciding whether or not these two amendments can be approved, is whether or not there is a reasonable potential for hazardous conditions in the limited exemptions provided for in the proposals.

The issues related to impoundment inspection/examination requirements raised by these two proposals are not new. OSM has previously addressed the applicability of the impoundment inspection/examination requirements, particularly where there is no embankment, in ways with some relevance to the decisions on these two proposals.

In 1987, OSM issued Directive TSR–2, which states “If an impoundment is constructed without an embankment, OSMRE policy will exempt these impoundments from the quarterly examination requirement [now 30 CFR 816.49(a)(12)] since there is no embankment to examine for structural weaknesses or other hazardous conditions.” The Directive goes on to state that the decision as to which structures are exempt should be made on a case-by-case basis by the regulatory authority during the permitting process.

In September 1990, guidance was developed by the Technical Assistance Division of OSM’s Eastern Field Operations Office specifically to assist Illinois in developing a limited exemption from the requirements of current 30 CFR 816.49(a)(11). This 1990 guidance addressed incised impoundments as well as impoundments which do not facilitate mining or reclamation and, under certain conditions, small non-hazardous impoundments with embankments. For incised impoundments, that guidance stated they should not equate to building an embankment-type dam and, for those with hydraulic gradients, there needs to be a demonstration by the operator that the impoundment poses no risk. For impoundments that don’t facilitate mining or reclamation, there should be a showing that no drainage entering the impoundment would be

from a disturbed area and the exiting drainage would not enter an impoundment that facilitates mining.

This guidance was referenced in the December 1991 **Federal Register** Notice approving Illinois’ exemption for impounding structures, including those with embankments, designed for a water elevation not more than 5 feet above the upstream toe of the structure and with a storage volume of less than 20 acre-feet. To obtain, the exemption requires a certified engineer’s report describing the hazard potential of the structure. The 1990 guidance was also relied on when OSM approved a proposed amendment to Indiana’s program containing a similar limited exemption. In 1995, OSM issued Directive TSR–14, which is intended to promote the creation of wetlands, to supplement and enhance post-mining land use and address the perception that regulatory barriers prohibit such activities. The Directive notes that OSM’s regulations (including specific reference to the impoundment regulations at issue here) allow and encourage construction of wetlands that supplement and enhance fish and wildlife habitat. It goes on to state that OSM’s regulations provide three options to leave wetlands on completed mine sites; small depressions, fish and wildlife habitat, and impoundments. Thus, small depressions and fish and wildlife habitat are distinguished from impoundments and the inspection requirements that go with them.

Concerning small depressions, it also states that surface area and depth of water which would qualify as “small” are not defined by Federal rules. Therefore, “depressions may be of any size compatible with the postmining land use and must not pose a safety risk associated with potential failure of an impoundment.” It also states small depressions must be a dugout or basin as opposed to an embankment-type construction and that deep pits with steep sloping sides are not suitable small depressions for the purposes of wetland habitat. Regarding impoundments, it states that when the crest of a dam is reduced to the elevation necessary to only saturate the sediment to the extent necessary to sustain a wetland ecosystem and any possible safety issues have been eliminated, OSM would consider it a wetland constructed for wildlife enhancement rather than an impounding structure.

In 2000, OSM approved an amendment to the Colorado program waiving, for certain impoundments and in limited circumstances, the requirements for quarterly

impoundment examinations and allowing the annual inspection to be conducted by a qualified person other than an engineer. To qualify for the waiver, the impoundment must either be completely incised or must not exceed two acre-feet in capacity nor have embankments larger than five feet in height measured from the bottom of the channel. In approving this amendment, OSM relied in part on Directive TSR–2 and also referenced the 1991 Illinois decision discussed above.

In 2001, OSM’s Western region developed guidance for evaluation of small depressions under the Indian Lands program, which among other things, addressed the distinction between small depressions and impoundments.

We will now turn to the two exemptions Kentucky has proposed and discuss them separately. The proposed exemption from engineer inspection requirements to the State counterpart to 30 CFR 816.49(a)(11) has some overlap but does not match either the Illinois or Indiana approved exemptions.

Kentucky asserted in its letter dated August 10, 2000, that the proposed exemption is extremely limited and not available for impoundments that are sedimentation ponds, coal mine waste impoundments, or are otherwise intended to facilitate active mining. Since the impoundments subject to the exemption do not have embankments that could fail or present safety hazards or other environmental concerns, Kentucky does not see the need to require the impoundments be inspected or to have the certified reports prepared. There is some merit to that argument. Unfortunately, that validity of that argument does not extend as far as the exemption.

It is inappropriate to presume all incised impoundments, particularly larger impoundments or those in steeper slopes as occur in Eastern Kentucky, have no hazard potential. Even completely incised impoundments may pose a risk as discussed in OSM’s 1990 guidance to Illinois. For example, an incised impoundment could pose a risk if the impoundment contained a substantial amount of water and was built out of material that could fail (such as bulked spoil or natural material of deep colluvium or alluvium). Most of Kentucky’s coal mining operations are conducted in the mountainous region of Eastern Kentucky and not in Western Kentucky where the terrain is relatively flat and similar to the terrain in Illinois and Indiana. Another example is where the impoundment, which doesn’t facilitate active mining, is upstream of and drains into a sedimentation pond.

In the mountainous area of Eastern Kentucky, such an impoundment could affect the performance of the downstream sedimentation pond. While Kentucky's proposed exemption allows for the possibility for inspections it does not require the demonstration of suitability for exemption from inspections prior to allowing the exemption.

It is not clear what is intended by the proposed amendment in relation to depressions left by backfilling and grading. Kentucky's guidelines for determining Approximate Original Contour (AOC) state all depressions, except small depressions, shall be eliminated (administrative record no. KY-1582). As noted above, OSM policy does not consider small depressions as impoundments and, therefore, no exemption is needed. Large depressions would be inconsistent with Kentucky's AOC guidance. It should be noted that Kentucky allows the construction of small depressions on backfilled areas under certain, limited circumstances and the regulations appear at 405 KAR 16/18:190 section 2(5)(a)-(e).

Accordingly, OSM is not approving Kentucky's proposed regulations at 16/18:100 section 1(9)(c) because they are less effective than the Federal regulations at 30 CFR 816/817.49(a)(11). However, this action should not be construed as applying those Federal inspection requirements to small depressions left or incisions made to facilitate construction of wetlands as a post-mining land use consistent with OSM's Directive TSR-14.

The second exemption proposed by Kentucky is to subsection (10)(b) and allows an exemption from examinations of impoundments with no embankment structure that are completely incised or created by a depression left by backfilling and grading but not meeting MSHA requirements set forth at 30 CFR 77.216 or not meeting the Class B and C classifications. The rationale for the change was because the impoundments are small, non-hazardous impoundments without embankment structures. (See Kentucky's letter dated August 10, 2000).

This is an exemption from the same examination requirement addressed in OSM Directive TSR-2 discussed above. The Colorado exemption discussed above also addressed this requirement. However, it also included small embankments and contained a rigorous case-by-case protocol to qualify for the exemption.

We concur in the rationale for this amendment since it is consistent with the rationale contained in Directive TSR-2. Our one concern with this

proposal is that it does not address how determinations will be made on which impoundments qualify for the exemption. Directive TSR-2 states that the decision on which impoundments are exempt should be made on a case-by-case basis. We anticipate that in applying this exemption, Kentucky will consider, on a case-by-case basis, whether a particular structure meets the limitations of the exemption. That will include a determination that the impoundment does not meet the Class B or C impoundment hazard criteria.

Based on the above discussion, the Director finds that Kentucky's proposed rule at 405 KAR 16/18:100 section 1(10)(b) is not inconsistent with the Federal regulations at 30 CFR 816/817.49(a)(12) and we are approving the revision to the extent that it is implemented and managed in accordance with the provisions of OSM Directive TSR-2. Again, we note that we do not consider small depressions in the backfill as impoundments at issue in this decision and that other depressions should have been eliminated under Kentucky's AOC guidance.

3. *405 KAR 16/18:160*. At section 1(3), Kentucky is requiring that an impounding structure constructed of coal mine waste or intended to impound coal mine waste not be retained permanently as part of the approved postmining land use. Kentucky is also changing "coal processing waste" to "coal mine waste" in this and subsequent sections. We find that Kentucky's proposed regulations are no less effective than the Federal regulations at 30 CFR 816/817.84(b)(1), which prohibit the permanent retention of such structures. We also find Kentucky's change from the term "coal processing waste" to "coal mine waste" is consistent with the Federal rules at 30 CFR 816/817.81 *et seq.*, which use the term "coal mine waste."

At section 2(2), Kentucky is proposing to require that diversions be designed to carry the peak runoff from a 100-year, 6-hour precipitation event. Twenty-four hours may be used in lieu of six hours for the duration of the 100-year design precipitation event. The current regulations require a 100-year, 24-hour event. We find that Kentucky's proposed regulations are no less effective than the Federal regulations at 30 CFR 816/817.84(b) and (d). Please refer to the discussion presented at section 2 above for 405 KAR 16/18:100 section 1(6).

At section 3(1)(b) 1 through 4, Kentucky is proposing requirements for closed conduit principal spillways for impounding structures with a drainage area of 10 square miles or less without

open channel emergency spillways. The impounding structure must have sufficient storage capacity to store the entire runoff from the probable maximum precipitation event while maintaining the required freeboard and disregarding flow through the principal spillway. In general, the spillway requirements ensure passing routed freeboard hydrograph peak discharges without clogging. The Federal rules at 30 CFR 816/817.49(a)(5) require that impoundments have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The Kentucky rules also require that impounding structures maintain the required freeboard against overtopping. The Federal rules at 30 CFR 816/817.49(a)(9) also require that the spillways be designed and constructed to safely pass the applicable design precipitation event. Likewise, Kentucky requires that the conduit meet the probable maximum precipitation event and the impounding structure have sufficient storage capacity available to store the entire runoff from the probable maximum precipitation event, disregarding flow through the principal spillway. Additionally, Kentucky has specific requirements for spillways that are not specified in the rules. We find that Kentucky's proposed requirements are no less effective than the Federal regulations pertaining to freeboard and spillways at 30 CFR 816/817.49(a).

At section 3(1)(c), Kentucky is proposing that for impounding structures not meeting the criteria of 30 CFR 77.216(a), the maximum water elevation must be determined by the freeboard hydrograph criteria for the appropriate structure hazard classification under 405 KAR 7:040 section 5 and 401 KAR 4:030. The Federal regulations at 30 CFR 816/817.49(a)(5) require compliance with the criteria in the Minimum Emergency Spillway Hydrologic Criteria in TR-60. Kentucky's referenced regulations and the Kentucky regulations cross-reference to the Division of Water Engineering Memorandum No. 5 (2-1-75) achieve the same design precipitation values for the freeboard hydrograph criteria as does the Federal regulations. Therefore, based on Kentucky's referenced regulations and the Division of Water Engineering Memorandum No. 5, we find the proposed language at 3(1)(c) no less effective than 30 CFR 816/817.49(a)(5).

4. Summary and Disposition of Comments

Public Comments

We solicited public comments and provided an opportunity for a public hearing on the proposed amendment submitted on July 30, 1997, and revised on March 4, 1998, March 16, 1998, and July 14 1998. Because no one requested an opportunity to speak, a hearing was not held. The National Citizens' Coal Law Project, a part of Kentucky Resources Council, Inc. (KRC), submitted comments on several different occasions in response to the original Kentucky submission and the subsequent revisions. The comments are summarized below and organized by date of submission. Only those comments pertaining to the issues contained in this rule are included here.

July 11, 2002 (administrative record no. KY-1553)—the KRC addressed issues contained in OSM's May 26, 2000, issue letter and Kentucky's subsequent response on August 10, 2000. The remarks supplement previous comments on record by the KRC.

(a) 405 KAR 16/18:100 sections 1(9)(c) and 1(10)(b)—the KRC states that embankment failure is not the only mechanism that could cause release from impoundments and that the exemption from inspections for non-embankment impoundments should be disapproved. We agree. As stated in our findings at (c)2, we are not approving the proposed regulation at 1(9)(c) because even completely incised impoundments may have a hazard potential, for example, larger impoundments or those located in steep slopes. We are approving the proposed regulation at 1(10)(b) to the extent that it is implemented and managed in accordance with the provisions of OSM Directive TSR-2 dated September 14, 1987. As required in OSM Directive TSR-2, for impoundments that are to be considered for exemption from inspection, but were not included in the permit application, such as those created by a depression left by backfilling and grading, there will have to be case-by-case decisions made by Kentucky based on additional information specific to each impoundment being considered for exemption from quarterly examinations. This has to include, at a minimum, a certified report that the impoundment does not meet the Class B or C impoundment hazard criteria and there are no safety or environmental concerns.

(b) 405 KAR 16/18:160 section 3(1)(c)—the KRC states that a reference to TR-60 should be included in the Kentucky impoundment regulations. We

agree that a reference to TR-60 or equivalent criteria should be included. As discussed in finding (c)3, we found Kentucky's reference to 405 KAR 7:040 section 5 and 405 KAR 4:030, and the Division of Water Engineering Memorandum No. 5 to be no less effective than 30 CFR 816/817.49 (a)(5). Therefore, adding a reference to TR-60 is not necessary.

December 9, 1998 (administrative record no. KY-1446)—the KRC addressed those changes submitted by Kentucky on November 14, 1997, and formally submitted to OSM on March 4, 1998.

(a) 405 KAR 16/18:090 section 3—the KRC notes that it sought and received clarification from Kentucky that the requirement that all drainage from disturbed areas pass through a sediment pond, and that the pond be constructed before any other disturbance, apply with equal force to other treatment facilities (administrative record no. KY-1431, November 14, 1997).

(b) 405 KAR 16/18:100 sections 1(9)(c) and 1(10)(b)—the KRC objected to the categorical exemption from engineering inspections at sections 1(9)(c) and 1(10)(b). We note that only section 1(9)(c) concerns exemption from engineering inspections. As noted above, we are disapproving section 1(9)(c).

(c) 405 KAR 16/18:100 section 1(1)(b)—the KRC states that the deletion of former 405 KAR 16:090 section 20 allows temporary structures, which fall within the definition of dams to avoid meeting the requirements of 405 KAR 7:040 section 5 and 401 KAR 4:030, since 405 KAR 16:100 section 1(1)(b) limits to "permanent" dams. The KRC suggested that the word "permanent" should be removed from the phrase "permanent dams" so as not to limit the applicability of the regulation. First, Kentucky's definition of "dams" at KRS 151.100 is less inclusive than Kentucky's definition of "impoundments", which is substantively identical to the Federal definition. We note that the complete language of 405 KAR 16/18:100 section 1(1)(b) reads, "all impoundments classified as Class B-moderate or Class C-high hazard, and all permanent 'dams' as defined in KRS 151.00, shall comply with 405 KAR 7:040, section 5 and 401 KAR 4:030." All impoundments, temporary or permanent, meeting the specified criteria must meet the requirements. The retention of the word "permanent" does not, therefore, limit compliance.

(d) 405 KAR 16/18:160—the KRC supports the retention of requirements relating to minimum freeboard,

vegetative matter removal, and spillway design. The KRC sought and received clarification from Kentucky that the use of the term "coal mine waste," (rather than "coal processing waste") is not intended to allow use of underground development waste that is toxic or acid-forming, and that the natural slaking and combustion potential of the underground development waste will be accounted for in the assessment of embankment stability. Accordingly, since the KRC supports the language, no additional response is necessary.

October 6, 1997 (administrative record no. KY-1415)—the KRC submitted comments on several issues already addressed in the comment sections above.

Federal Agency Comments

According to 30 CFR 732.17(h)(11)(i), we solicited comments on the proposed amendment submitted on July 30, 1997, and revised on March 4, 1998, March 16, 1998, and July 14, 1998, from various Federal agencies with an actual or potential interest in the Kentucky program. The Department of Labor, Mine Safety and Health Administration, commented that the proposed amendment had no apparent impact on its program (administrative record nos. KY-1542 and KY-1554).

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 June 6, 2000, we solicited EPA's comments and/or concurrence (administrative record no. KY-1477). The EPA submitted comments in a letter dated November 28, 2000 (administrative record no. KY-1501). Only those comments pertaining to the specific regulations included in this rule will be addressed here.

At 405 KAR 16/18:090 section 1, the EPA recommends that language be incorporated that specifically states that "watershed disturbance" include activities like timber harvesting and construction of haul roads. We note that Kentucky's proposed regulation is no less effective than the Federal regulations. Examples of activities are not necessary because Kentucky requires that sedimentation ponds be in place before any disturbance. We are not requiring that Kentucky further revise its regulations. The EPA also commented that there is little evidence

that sedimentation ponds are located as near as possible to the disturbed area and out of perennial streams unless otherwise approved. It recommends that applicants provide a rationale for pond location in the permit application. We note that this subsection was previously approved by OSM and not being revised at this time. The comment is, therefore, outside the scope of this rulemaking.

At section 2, the EPA suggests that the sediment pond proposed clean-out plan also include a description of the proposed disposal area to ensure that sensitive environmental resources are not adversely affected by disposal activities or erosion or sedimentation from the disturbed area. We note that the Federal regulations at 30 CFR 816/817.46(c) do not specify this requirement. Nonetheless, Kentucky's regulations at 16/18:060 section 1 require all surface mining activities be conducted to minimize disturbance to the hydrologic balance of the permit and adjacent areas and in no case shall any Federal or State water quality statutes, regulations, standards or effluent limitations be violated. Kentucky's proposed revisions are no less effective than the Federal counterparts.

At sections 5(6) and 5(7), the EPA recommends that Kentucky include criteria by which ponds will be removed and the affected stream reaches restored to original conditions. Kentucky proposed only minor revisions to these previously-approved regulations. It is no less effective than the Federal counterparts. The comment is, therefore, outside the scope of this rulemaking.

At sections 5(7) and 5(8), the EPA notes that a pond that is authorized pursuant to the Clean Water Act (CWA) Section 404 as a temporary structure is required by the conditions of those permits to be removed. If a pond is later proposed to be left as a permanent impoundment, CWA authorization will be required. We acknowledge the comment.

5. OSM's Decision

Based on the above findings, we approve the proposed amendment, with the exception of subsection 1(9)(c), as submitted by Kentucky on July 30, 1997, and revised on March 4, 1998, March 16, 1998, and July 14, 1998. As discussed in finding 2, we are removing the required amendment at 30 CFR 917.16(d)(4) because Kentucky has satisfied the requirement.

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.

6. 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 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: June 12, 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 917.12 is amended by adding paragraph (e) to read as follows:

§ 917.12 State regulatory program and proposed program amendment provisions not approved.

* * * * *

(e) The exemption from the engineer inspection requirements of subsection 9 for an impoundment with no embankment structure, that is completely incised, or is created by a depression left by backfilling and grading, that is not a sedimentation pond or coal mine waste impoundment and is not otherwise intended to facilitate active mining at section 1(9)(c) at 405 KAR 16/18:100 is not approved. The exemption from examination for an impoundment with no embankment structure, that is completely incised or created by a depression left by backfilling and grading but not meeting MSHA requirements at 30 CFR 77.216 or not meeting the Class B and C classifications at section 1(10)(b) is not approved to the extent that it is not implemented and managed in accordance with the provisions of OSM Directive TSR–2.

■ 3. Section 917.15 is amended in the table in paragraph (a) by adding a new entry in chronological order by “DATE OF PUBLICATION IN THE FEDERAL REGISTER” to read as follows:

§ 917.15 Approval of Kentucky regulatory program amendments.

(a) * * *

Original amendment submission date	Date of final publication	Citation/description
* July 30, 1997	* July 17, 2003	* 405 KAR 8:001 section 1(50); 16:001 section 1(50), (51), (69); 16:090 sections 1 through 5; 16:100 section 1(1),(3),(5),(6),(10), section 2(1); 16:160 section 1(1),(2),(3), section 2(2), section 3(1),(3), section 4; 18:001 section 1(52), (53), (72); 18:090 sections 1 through 5; 18:100 section 1(1),(3),(5),(6),(10), section 2(1); and 18:160 section 1(1),(2),(3), section 2(2), section 3(1),(3) and section (4).

* * * * *

■ 4. Section 917.16 is amended by removing and reserving paragraph (d)(4).

[FR Doc. 03–17968 Filed 7–16–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–236–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 pertains to public notification of permit applications. In doing so, we find that the Kentucky