

II. OSM's Findings

During the course of implementing SMCRA, we occasionally issue new regulations. As a result, States may have to amend their approved programs in order to be consistent with the new Federal regulations. In addition, States may submit proposed amendments to their approved programs on their own initiative. In either event, we must determine whether the amendment submitted by the State meets the requirements of SMCRA. When it does, the amendment is approved and when it does not, it is not approved and the State may be instructed to further amend its program. These instructions are codified in our regulations at 30 CFR 917.16 for the Kentucky program. For the reasons that follow, we are removing two such instructions to the State of Kentucky.

At 30 CFR 917.16 (c)(2), Kentucky was required to submit proposed regulations to implement the program changes contained in Senate Bill (SB) 374. SB 374 added a new section to Kentucky's statutes pertaining to the issuance of special permits for the re-mining of previously affected mined areas. However, SB 374 specifically prohibits its own implementation until implementing regulations are promulgated by Kentucky and approved by OSM. In addition, 30 CFR 732.17(g) prohibits states from implementing proposed amendments to their programs until OSM approves the amendments. Because Kentucky has never submitted these implementing regulations, and because OSM determined that SB 374 could not be implemented without accompanying regulations, SB 374 is not a functioning part of the approved State program. See 51 FR 26002, 26005 (July 18, 1986). For these reasons, the requirement codified at 30 CFR 917.16(c)(2) is unnecessary and the instruction should be removed. Senate Bill 374 cannot take effect, of course, until Kentucky submits implementing regulations and we approve them.

At 30 CFR 917.16(o), Kentucky was required to submit a program change to the Kentucky Revised Statutes (KRS) at 350.060 to: (1) Clarify that a person may not continue to conduct surface coal mining operations under an expired permit unless the permittee filed a complete application for renewal at least 120 days before the permit expired and the regulatory authority had not yet approved or disapproved the application when the permit expired, and (2) require the issuance of an imminent harm cessation order to any person conducting surface coal mining operations under an expired permit

unless the permittee filed a complete application for renewal at least 120 days before the permit expired and the regulatory authority had not yet approved or disapproved the application when the permit expired. On September 6, 2000, we announced the preemption and supersession of KRS 350.060(16) because it was inconsistent with the requirements of SMCRA (30 CFR 917.13(c); 65 FR 53909). Because both our disapproval and subsequent supersession of the quoted provisions of the statute prevent Kentucky from implementing those provisions, and because the Kentucky program otherwise requires issuance of imminent harm cessation orders to persons conducting surface coal mining operations under expired permits, we believe that the requirements codified at 30 CFR 917.16(o) are no longer necessary and the instruction should be removed.

III. Summary and Disposition of Comments

Public Comments

In the July 15, 2002, **Federal Register** (67 FR 46432), we asked for public comments on our proposal to remove the two instructions (administrative record no. KY 1562), but did not receive any.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). Because the instructions proposed for removal did not pertain to these subjects, we did not request EPA concurrence.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the proposal from EPA (administrative record No. KY 1562). EPA did not respond to our request.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule is a technical amendment and does not have takings implications.

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.

Executive Order 13132—Federalism

This rule is a technical amendment and does not have Federalism implications.

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.*). This rule is a technical amendment that does not impose any additional requirements on small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons previously stated, this rule: (a) Does not have an annual effect