

is thirty days after publication of the fourth consecutive and final newspaper advertisement, as set forth at 30 CFR 773.6(b)(2).

Kentucky's law, at KRS Section 350.055(2) requires the applicant to publish a notice of intention to mine * * * at least once a week for four consecutive weeks beginning at the time of submission. This is consistent with SMCRA. The Kentucky regulations at 405 KAR 8:010 Section 8 (2)(a) state that " * * * [t]he first advertisement shall be published on or after the date the application is submitted to the Cabinet. The applicant may elect to begin notification on or after the date the applicant receives the notification from the Cabinet under Section 13(2) of this regulation that the application has been deemed administratively complete and ready for technical review * * * the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the Cabinet that the application has been deemed administratively complete and ready for technical review * * * "

These Kentucky requirements were approved by us *prior* to our revisions promulgated in 1983 to require an "administratively complete application" determination before beginning public notification. Although Kentucky's program does not require the applicant to begin public notification until after the determination of administrative completeness, it does require the last notice to be after the determination of administrative completeness. Moreover, the Kentucky program does not explicitly address the question of whether the four consecutive weekly advertisements must be repeated if the application is determined to be administratively incomplete.

As noted above, Kentucky's regulations at 405 KAR Section 8(2)(a) state in part that " * * * the advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the Cabinet that the application is deemed complete." This requires public advertisements to be published on "consecutive" weeks and that the final advertisement may only appear "after" the notification that the application is administratively complete. If an applicant chooses to begin publication before the administrative completeness determination, and Kentucky notifies the applicant that additional information is required before administrative completeness can be determined and the applicant stops

advertising, it is quite likely that a "break" in the newspaper notices would occur and the "consecutive" advertisement requirement would not be complied with by the applicant. When this occurs, the applicant must restart the newspaper advertisements to comply with the "consecutive" requirement of the Kentucky program. In such instances, the current program, without modification, compels the applicant to begin the advertisement process anew. While there may be instances when no "break" in the advertisement sequence would occur, the Kentucky program does not prohibit the Cabinet from requiring the applicant to begin the advertisement sequence again after the administrative completeness determination is made. For this reason, and as discussed below, we believe the current program can be implemented in a manner that renders it no less effective than the Federal regulations.

After reviewing the Federal requirements and Kentucky's requirements we have decided to withdraw the required amendment as set forth at 30 CFR 917.16 (d)(2). This action is based on the understanding that Kentucky's implementation of the public participation requirements for permit application processing will require that, if a permit application is found not to be administratively complete, the four consecutive weeks advertisement sequence must start anew after the application is determined to be administratively complete. If in the future, we determine that the Kentucky program is not being implemented according to this decision, we may require Kentucky to amend its program.

IV. Summary and Disposition of Comments

No public or Federal agency comments were received on this proposed action during the public comment period.

V. OSM's Decision

Based on the above findings, we are removing the required amendment to Kentucky's program at 30 CFR 917.16(d)(2).

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 the Kentucky program demonstrate that Kentucky 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 Kentucky and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.