

[FR Doc. 03-32108 Filed 12-30-03; 8:45 am]  
BILLING CODE 4310-05-P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 917

[KY-245-FOR]

#### Kentucky Regulatory Program

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

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

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing the removal of a required amendment to the Kentucky regulatory program (the "Kentucky program"). The Kentucky program was established under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) and authorizes Kentucky to regulate surface coal mining and reclamation operations in Kentucky.

**EFFECTIVE DATE:** December 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** William J. Kovacic, Field Office Director; Telephone: (859) 260-8400; E-mail: [bkovacic@osmre.gov](mailto:bkovacic@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Purpose of the Rule
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

#### I. Background on the Kentucky Program

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

(47 FR 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. Purpose of the Rule

The required amendment at 30 CFR 917.16(k) reads as follows:

By October 1, 1993, Kentucky shall submit to OSM either proposed amendments or a schedule for the submission of proposed amendments to Kentucky Administrative Regulations (KAR) to require that the assessment Conference Officer's Report mentioned in 405 KAR 7:092 Section 4(5) be served in a manner consistent with 405 KAR 7:091 Section 5, and to specify that the time allowed under 405 KAR 7:092 Section 6(1)(b) to file a petition for administrative review of the proposed penalty set forth in the Conference Officer's Report does not begin to run until service is obtained in this manner.

On March 28, 2003, OSM forwarded a letter to Kentucky requesting that the required amendment at 30 CFR 917.16(k) be addressed by forwarding to OSM a policy statement that established its procedures on mailing of Conference Officer's Reports and the date that begins the administrative petition process. In response to this request we received a letter from the Kentucky Natural Resources and Environmental Protection Cabinet, Office of Administrative Hearings, dated April 3, 2003, requesting that its policy of requiring all Conference Officer's Reports be sent by certified mail be considered by us as fulfilling the requirements of the above-mentioned amendment (Administrative Record No. KY-1576). Included in the letter was a copy of a memorandum, dated April 2, 2002, sent from the Chief Hearing Officer to the Penalty Assessments Coordinator and the Assessment Conference Officer. This memorandum reminded its recipients that, according to policy, all Conference Officer's Reports should be mailed via certified mail, return receipt requested, and that, in calculating the time for the filing of an administrative petition, the beginning date should be the date of service of the Conference Officer's Report, rather than the mailing date. The memorandum acknowledged that Kentucky's regulation, which allows service by regular mail, had been found by OSM to be less effective than a corresponding Federal regulation (Administrative Record No. KY-1605).

Based on the commitments included in the above-referenced letter and accompanying memorandum, we announced our proposal to remove this required amendment on October 3, 2003, in the **Federal Register** (68 FR

57398). In the same notice we opened the public comment period and provided an opportunity for a public hearing or meeting on whether the policy letter discussed above meets the requirements of the required amendment, thereby eliminating the need for a revision to the Kentucky regulatory program. We did not hold a public hearing or meeting because no one requested one. The public comment period closed on November 3, 2003. We received comments from two Federal agencies (U.S. Department of the Interior, Fish and Wildlife Service and the U.S. Army Corps of Engineers). We also received comments from the Kentucky Resources Council, Inc.

#### III. OSM's Findings

In our August 6, 1993, decision we determined that the required amendment was necessary because we were concerned that 405 KAR 7:092 section 4(5) was less effective than its Federal counterpart found at 30 CFR 845.18 because of the way in which Conference Officer's Reports were administratively handled (58 FR 42001, 42006). Although Kentucky has not amended its regulations in response to this required amendment, Kentucky's policy has been to serve all Conference Officer's Reports by certified mail and to begin the period for filing an administrative petition from the date of service of the report (Administrative Record No. KY-1605). Our analysis of this policy indicates that it clarifies the language of the Kentucky regulation, which requires service by "mail", without specifying whether the service must be made by "certified" or "regular" mail. 405 KAR 7:092, section 4(5). In addition, Kentucky's policy of starting the appeal period from the date of service indicates that the State interprets its regulation at 405 KAR 7:092, section 6(1)(b), which begins the appeal period on the mailing date, in a manner consistent with its policy, and with the Federal regulations. In other words, it is apparent that Kentucky interprets the term "mailing" to include service, *i.e.*, receipt, of the Conference Officer's Report. Furthermore, the record is devoid of any indication that Kentucky has failed to follow this policy in the last decade. With these policy clarifications now in place, these aspects of the Kentucky program clearly meet the requirements of, and are therefore consistent with, the Federal regulations at 30 CFR 845.17 and 845.18.

We do recognize that this determination is being made based on program implementation based on a State policy, rather than via a statutory