

or regulatory change. Should we find that in the future the State's actions concerning Conference Officer's Reports are no longer consistent with the requirements of 30 CFR 845.17 and 845.18, we will take the necessary action at that time to bring their program into compliance with this decision.

Therefore, we have determined that the required amendment at 30 CFR 917.16(k) is no longer needed and will be removed.

IV. Summary and Disposition of Comments

Public Comments

The Kentucky Citizens Coal Law Project (KCCLP), a division of the Kentucky Resources Council, submitted comments dated October 28, 2003 (Administrative Record No. KY-1603). These comments primarily relate to two specific concerns which we address below:

(1) KCCLP does not believe the Kentucky policy resolves the conflict between State and Federal regulations concerning the timing for appeal of the Conference Officer's Report.

As we discussed in the above finding, Kentucky has stated, in its policy, that the date for filing an administrative petition begins on the date of service. Therefore, we have determined that the implementation of this program is consistent with the Federal requirements. If we subsequently find that Kentucky is no longer able or willing to enforce its program in a manner consistent with Federal regulations, we will take appropriate action to bring the program back into compliance.

(2) KCCLP does not believe that a Kentucky policy of serving Conference Officer's Reports by certified mail is as effective as its Federal counterpart and violates State and Federal law. This comment appears to rest with both 30 U.S.C. 1253(1)-(7), which requires that State laws and regulations be consistent, and in accordance, with Federal requirements, and Kentucky Revised Statutes (KRS) 13A.130, which prohibits agencies in Kentucky from adopting or enforcing any policy that modifies or alters a regulation.

We agree with the commenter that 30 U.S.C. 1253(a)(1)-(7) require laws and regulations consistent with and in accordance with Federal requirements. We also agree with the commenter on what the Federal requirement is regarding service of Conference Officer Reports. However, we have determined that Kentucky's implementation of its program is consistent with the Federal

requirements. The State regulation at issue, 405 KAR 7:092, section 4(5), sets forth that "[t]he Conference Officer's Report shall be promptly served by mail * * *" (Emphasis added.) The regulation does not specify, however, the type of mail delivery required. For example, it does not require the report to be served by "regular" mail. As such, a policy specifying that service be accomplished by "certified" mail is not inconsistent with the State regulatory requirement. Further, since documentation of receipt is an integral part of the certified mail process, a policy that begins the period for appeal upon receipt of the certified mail is not inconsistent with the State regulations even though it may not be expressly mandated by that regulation. Kentucky has been operating in a manner consistent with this policy and the Federal requirements for the past decade. Therefore that policy constitutes ample grounds for removing the required amendment. Nevertheless, if in the future we determine that Kentucky is not implementing its program in a manner consistent with the Federal requirements we will revisit this issue and take whatever action is necessary to ensure the State's administrative handling of Conference Officer's Reports occurs in accordance with Federal requirements.

Regarding the State's law, we believe that any step taken by OSM to analyze and interpret KRS 13A.130 in a manner inconsistent with Kentucky's documented policy and practice in applying that law is clearly outside the scope of our jurisdiction. We believe it is within the discretion of the Kentucky Natural Resources and Environmental Protection Cabinet to determine that it is complying with Kentucky's statutory limits in interpreting its regulation in the above-described way.

Federal Agency Comments

The U.S. Department of the Interior, Fish and Wildlife Service submitted a letter dated October 29, 2003 (Administrative Record No. KY-1605), in which they indicated it has no substantive comments regarding the removal of the required amendment.

The U.S. Army Corps of Engineers submitted a statement dated October 31, 2003 (Administrative Record No. KY-1606), in which it indicated it had no comments on the proposed rule.

V. OSM's Decision

Based on the above findings we have determined that the required amendment at 30 CFR 917.16(k) is no longer needed and will be removed.

VI. 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 exempt 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 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. This determination is based on the fact that the Kentucky program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Kentucky program has no effect on federally-recognized Indian tribes.

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 will not 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