

prunes are prunes which pass through openings as follows: for French prunes, $2\frac{4}{32}$ of an inch in diameter; for non-French prunes, $3\frac{0}{32}$ of an inch in diameter.

Dated: May 4, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00-11640 Filed 5-9-00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY-218-FOR]

Kentucky Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with one exception, a proposed amendment to the Kentucky regulatory program (Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kentucky is proposing revisions to the Kentucky Revised Statutes (KRS) pertaining to bonding and permits. The amendment is intended to revise the Kentucky program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: May 10, 2000.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the May 18, 1982 **Federal Register** (47 FR 21404). You can find

subsequent actions concerning conditions of approval and program amendments at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Submission of the Proposed Amendment

By letter dated April 23, 1998 (Administrative Record No. KY-1425), Kentucky submitted a proposed amendment to its program. House Bills (HB) 354, 498, and 593 (effective July 15, 1998) revise KRS sections 350.990(11), 350.131(2), 350.139(1), 350.990(1), and 350.060(16).

We announced receipt of the proposed amendment in the May 20, 1998, **Federal Register** (63 FR 27698), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on June 19, 1998.

III. Director's Findings

Following, according to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the proposed amendment.

Any revisions that we do not specifically discuss below concern nonsubstantive wording changes or revised cross-references and paragraph notations to reflect organizational changes that result from this amendment.

Reorganization—HB 354 confirms Executive Order 97-714 (June 11, 1997) which changed the name of the Division of Abandoned Lands to the Division of Abandoned Mine Lands. At KRS 350.990(11), Kentucky proposes to correct the name in this section. While there are no corresponding Federal provisions, we are approving the revision because it does not alter the authority or responsibility of the Division of Abandoned Mine Lands, and is not, therefore, inconsistent with the requirements of SMCRA and the Federal regulations.

Forfeited Bonds—HB 498 completes the bonding reforms recommended in the 1993 joint study of the adequacy of reclamation bonds in Kentucky. At KRS 350.131(2), Kentucky proposes to return any unused bond funds, less any accrued interest, to the party from whom they were collected when the forfeited amount is more than the amount needed for reclamation.

The Federal regulations at 30 CFR 800.50(d)(2) provide that, where the amount of the performance bond forfeited exceeds the cost of reclamation, "the unused funds shall be returned * * * to the party from whom they were collected." However, both SMCRA and the Federal regulations are

silent as to the disposition of any interest proceeds generated by the bond while it is in the possession of the regulatory authority. Therefore, while Kentucky's proposed requirement is not specifically authorized by SMCRA, it is nonetheless well within the discretion provided to the states by section 505 of SMCRA to propose more stringent regulation of surface coal mining and reclamation operations than do the provisions of SMCRA and its implementing regulations. Therefore, the Director finds the Kentucky proposal to be not inconsistent with the requirements of SMCRA or the Federal rules at 30 CFR part 800.

At KRS 350.139(1), Kentucky proposes to establish a bond forfeiture supplemental fund. All funds from the forfeiture of bonds will be placed in an interest-bearing account. The interest will become a supplemental fund and may be used to supplement forfeited bonds that are inadequate to complete the reclamation plan. The interest may be expended on lands other than those for which the bond was given. No more than 25 percent of the supplemental fund may be expended on any single site, unless a larger expenditure is necessary to abate an imminent danger to public health or safety.

At KRS 350.990(1), Kentucky proposes to establish a potential second source of money for the supplemental fund. The first \$800,000 of the civil penalties Kentucky collects each year for coal mining violations goes to the State Treasury's General Fund. Any proceeds in excess of the first \$800,000, collected in any fiscal year, go to the Kentucky Bond Pool Fund. Kentucky proposes to direct one-half of the excess that currently goes to the Bond Pool Fund to the new bond forfeiture supplemental fund, but only when the balance in the Bond Pool Fund is above the maximum of the operating range necessary to ensure its solvency. Currently, the maximum amount of money necessary to ensure the solvency of the Bond Pool Fund is \$16 million. Accordingly, the amendment proposes no diversion of excess penalty income from the Bond Pool Fund to the bond forfeiture supplemental fund until the Bond Pool Fund reaches \$16 million, or a larger amount established by the most recent actuarial study. The excess money collected will be deposited 50 percent to the Bond Pool Fund and 50 percent to the supplemental fund. If the Bond Pool Fund falls below \$16 million (or a higher amount established by the actuarial study), all excess moneys will be deposited in the Bond Pool Fund until it reaches \$16 million (or a higher amount).

In its submittal letter dated April 23, 1998 (Administrative Record No. KY-1425), Kentucky clarified that the interest generated becomes a supplemental fund that can be used to reclaim lands where a forfeited bond is insufficient to complete necessary reclamation. Because no moneys may be diverted away from the Bond Pool Fund except for proceeds in excess of the amount necessary to guarantee its solvency, Kentucky has stated that any such transfer of moneys into the supplemental fund will not endanger the solvency of the Bond Pool Fund.

We hereby approve the amendments to KRS 350.139(1) and 350.990(1), contained in House Bill 498, to the extent that the supplemental fund will be used as a supplement to the conventional, site specific performance bonds that must be furnished by permittees. The approval of these amendments in no way compromises the requirement that each such site specific performance bond must initially be determined to be sufficient in amount to assure completion of the reclamation plan and the satisfaction of all permit and Kentucky program requirements. Moreover, our approval of these amendments does not authorize Kentucky to use the supplemental fund as another alternative bonding program pursuant to section 509(c) of SMCRA. Rather, the supplemental fund may only be used for those sites for which the site specific performance bond, although initially determined to be sufficient to assure completion of reclamation, nevertheless is later found to be insufficient.

Permit Renewal—HB 593 revises KRS 350.060(16), pertaining to the renewal of expired permits. If a permit has expired or a permit renewal application has not been timely filed and the operator or permittee wants to continue the surface coal mining operation, Kentucky will issue a notice of noncompliance (NOV). The NOV will be considered complied with, and the permit may be renewed, if Kentucky receives a permit renewal application within 30 days of the receipt of the NOV. Upon submittal of a permit renewal application, the operator or permittee will be deemed to have timely filed the application and can continue, under the terms of the expired permit, the mining operation pending issuance of the permit renewal. Failure to comply with the remedial measures of the NOV will result in the cessation of the operation.

Section 506(a) of SMCRA precludes surface coal mining operations without a valid permit. Section 506(d)(3) requires that permit renewal

applications be made 120 days prior to the permit expiration date.

We are approving the provisions at KRS 350.060(16) to the extent that they pertain to permit renewal applications that have not been timely filed, for permits that have not yet expired. Section 506(d)(3) of SMCRA does not specify that a cessation order must be issued if a permit renewal application is not filed timely. Therefore, while it has no Federal counterpart, this proposed provision is not inconsistent with SMCRA or the Federal regulations, to the extent that it requires a notice of noncompliance, which is the Kentucky equivalent of a Federal notice of violation (NOV), to be issued to a permittee who fails to file a timely application for a renewal. However, we are not approving Kentucky's proposal to issue a notice of noncompliance, instead of an Imminent Harm Cessation Order (IHCO) or its Kentucky equivalent, to a person who has not yet filed a renewal application when his permit expires, and who continues to mine on the expired permit. In such a case, an IHCO must be issued, in accordance with 30 CFR 843.11(a)(2), since surface coal mining operations conducted without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources. Simply put, where a permittee has not yet filed a renewal application at the time his permit expires, it must cease mining operations, and begin or continue all necessary reclamation activities, upon permit expiration. Because it would allow a person to continue mining in this situation, this portion of HB 593 is less stringent than Section 506 of SMCRA and less effective than the Federal regulations at 30 CFR 843.11. Specifically, we are not approving the phrase "if a permit has expired or," contained in KRS 350.060(16). OSM will announce its intention to set aside this portion of HB 593 in a future **Federal Register** notice.

In addition, we find that the amendment is less stringent than section 506 of SMCRA and less effective than the Federal regulations at 30 CFR 843.11 insofar as it allows an operator to continue mining on an expired permit after it has filed the permit renewal application within 30 days of the receipt of the notice of noncompliance, regardless of whether the application is filed before or after permit expiration. Federal law and regulations prohibit mining without a permit, and require that any such mining be immediately ceased.

Therefore, we are also disapproving the following portion of KRS 350.060(16):

Upon the submittal of a permit renewal application, the operator or permittee shall be deemed to have timely filed the permit renewal application and shall be entitled to continue, under the terms of the expired permit, the surface coal mining operation, pending the issuance of the permit renewal.

OSM will announce its intention to set aside this portion of HB 593 in a future **Federal Register** notice.

We are also requiring Kentucky to amend its program to make it clear that a person may not continue to mine on an expired permit, except where the permittee has filed a timely and complete application for renewal (*i.e.*, the application is filed at least 120 days before permit expiration) and the regulatory authority has not yet approved the renewal application at the time of permit expiration. Kentucky must also amend its program to require the issuance of an IHCO to any person mining on an expired permit, except as described in the preceding sentence.

IV. 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 April 23, 1998. Because no one requested an opportunity to speak at a public hearing, none was held.

Two members of the public submitted comments. One commenter supported the amendment in its entirety. The second commenter supported the provisions of HB 354 and 498 but requested clarification that the supplemental bond fund will function as a supplemental source of money and not a SMCRA section 509(c) alternative bonding program. As discussed in section III above, Kentucky clarified that the interest generated becomes a supplemental fund that can be used to reclaim lands where a forfeited bond is insufficient to complete necessary reclamation. The approval of these amendments in no way compromises the requirement that each such site specific performance bond must initially be determined to be sufficient in amount to assure completion of the reclamation plan and the satisfaction of all permit and Kentucky program requirements. Moreover, our approval of these amendments does not authorize Kentucky to use the supplemental fund as another alternative bonding program pursuant to section 509(c) of SMCRA. Rather, the supplemental fund may only be used for those sites for which the site specific performance bond, although

initially determined to be sufficient to assure completion of reclamation, nevertheless is later found to be insufficient.

The second commenter opposes the provisions of HB 593, on several grounds. Each comment is summarized below, followed by our response.

First, the commenter contends that the bill violates the plain language of Section 506(d)(3) of SMCRA, which requires that "[a]pplication for permit renewal shall be made at least one hundred and twenty days prior to the expiration of the valid permit." (Emphasis added) "Shall", according to the commenter, "is the language of command, and is not to be read to allow filing of a permit renewal after the 120 day time frame, since the statute clearly demands "at least" 120 days."

We agree that the word "shall" is commonly used to denote a mandatory duty. As such, a fair reading of Section 506(d)(3) of SMCRA leads to the conclusion that permittees are under a compulsion to submit permit renewal applications at least 120 days prior to permit expiration. Failure to file, therefore, could bring some adverse consequence to bear upon the permittee. Section 506(d)(3) does not, however, state that the consequence of failure to comply with the 120 day deadline *must* be that the renewal cannot be granted under any circumstance, such as after the permittee submits an untimely application. Therefore, we believe that Kentucky may appropriately issue a notice of noncompliance, which is the State's counterpart to a Federal NOV, for failure to file a renewal application in a timely fashion. If the permittee then submits the renewal application, Kentucky may properly rule on it, employing the permit renewal criteria contained in its approved program.

The commenter also contends that:

Approval of the state program amendment would be contrary to a long-standing interpretation of the Federal Act by the Secretary as prohibiting any reduction in the timetable for filing renewal applications. OSMRE has acknowledged this time frame to be binding on the agency, rejecting a request that the application filing deadline of 120 days be reduced to 60 days "because the 120-days are required by Section 506(d) of the Act." 44 FR 15016 (March 13, 1979). Thus the final regulation retained the 120 day requirement. 30 CFR part 771.21(b)(2), recodified at 30 CFR 774.15(b).

Clearly, if reduction of the 120-day advance filing requirement to 60-days advance filing is inconsistent with Section 506(d), elimination of any advance filing and allowing post-expiration filings to relate back to the expired permit date is all the more inconsistent with the federal law.

We disagree, because the 120 day advance filing requirement is not being altered or compromised by the Kentucky amendment. Failure to comply with this requirement can constitute a violation of the Kentucky program, thereby resulting in issuance of a notice of noncompliance, along with the possible imposition of civil penalties. (Presumably, Kentucky could elect not to issue a notice of noncompliance for failure to file a timely renewal application, where the permittee has stated his intention to discontinue mining, and continue with reclamation activities only, upon expiration of the permit. Of course, Kentucky would be required to issue a cessation order to such a person, if the person continued to mine on the expired permit.)

Next, the commenter argues that the amendment violates Section 506(a) of SMCRA, which states that "no person shall engage in or carry out on lands within a State any surface coal mining operations unless such person has first obtained a permit * * *." The commenter contends that this amendment violates Section 506(a) because it:

Would allow continued operations after the expiration of a valid permit, merely upon the filing of a renewal application. Thus, an individual could file a renewal application and continue to mine and remove coal, even where (i) the person might not be eligible for approval of a renewal application because the criteria for renewal are not met; (ii) the person does not follow through with the permitting.

Section 506(a) demands that a permit be issued before surface coal mining operations occur. 30 CFR 773.11(a) likewise requires that a permit first be obtained, except where only reclamation activities remain to be accomplished on a site with a permit that has expired, in which case no renewal is necessary.

To allow mining under an expired permit after the date of expiration of the permit violates Section 506(a) and 30 CFR 773.11(a), just as allowing the filing of a permit renewal application after the 120-day advance deadline or after the permit expiration, violates Section 506(d)(3).

As noted in our response above, we agree with the commenter that the untimely filing of a renewal application can constitute a violation of SMCRA Section 506(d)(3), but we believe Kentucky has sufficiently acknowledged this fact in its amendment, because it requires the issuance of a notice of noncompliance in such an instance, assuming the permittee wishes to continue mining after expiration of the current permit. We do *not* agree, however, that *allowing* the filing of a late renewal application violates Section

506(d)(3). Instead, we believe this provision is sufficiently flexible to allow consideration of untimely applications, so long as the permit renewal procedures, which include public participation, are properly followed.

We also agree that the allowance of continued mining operations after the permit has *expired* presents a different question. Generally, the Federal regulations state that mining without a valid surface coal mining permit constitutes a "condition or practice which causes or can reasonably be expected to cause significant imminent environmental harm * * *" for which the Regulatory Authority must issue an Imminent Harm Cessation Order (IHCO). As noted in Section III., above, we are therefore disapproving the Kentucky amendment to the extent that it requires the issuance of a notice of noncompliance, rather than an IHCO, to any person mining on an expired permit, where that person has not submitted an application for renewal. We are also disapproving that portion of the amendment that would allow an operator to continue mining under an expired permit after filing a permit renewal application within 30 days of issuance of the notice of noncompliance.

The commenter also argues that the amendment violates the requirements for permit renewal, and allows continued operations in derogation of public participation and advance agency review, insofar as it allows continued coal removal under an expired permit so long as the renewal application has been filed. The commenter states that SMCRA's legislative history makes clear that a right of renewal is limited "to any valid permit issued pursuant to this act * * * with respect to areas within the boundaries of the existing permit and upon written finding by the regulatory authority that terms of the existing permit are being met [* * *]." H.R. Rept. No. 95-218, 95th Cong., 1st Sess. 92 (1977). According to the commenter, a permit that has expired is no longer existing, and cannot be renewed, since renewal findings must be met for the current, not former, permit.

In response, we note that, under Section III., above, we are disapproving the amendment to the extent that it authorizes the issuance of a noncompliance order, rather than an IHCO, to an operator who continues to mine under an expired permit, and to the extent that it would allow the operator to continue mining under an expired permit if it submits a renewal application within 30 days of issuance of the notice of noncompliance.

However, the commenter apparently also contends that an expired permit cannot be renewed, under any circumstances. We do not believe a finding is required on this question, since our disapprovals require removal of all language pertaining to expired permits. However, we expect that we could approve a state program amendment that allows expired permits to be renewed, assuming all other renewal requirements are met, and assuming that mining is not permitted to resume until the renewal application is granted.

Next, the commenter argues that the amendment violates the state program obligation to administer and implement the state enforcement program in a manner consistent with Federal law and regulations, in that it directs the state to issue an enforcement action allowing continued mining under an expired permit, provided the renewal application is filed. The commenter contends that Kentucky must, in its enforcement of the approved program, issue a cessation order to a permittee that continues to mine on an expired permit, since Kentucky is bound to conform its enforcement authority to 30 CFR part 843.

In response, we note that, under Section III., above, we are disapproving the amendment to the extent that it authorizes the issuance of a noncompliance order, rather than an IHCO, to an operator who continues to mine under an expired permit, and to the extent that it would allow the operator to continue mining under an expired permit if it submits a renewal application within 30 days of issuance of the notice of noncompliance.

The commenter also opposes the amendment because it allows either the operator or the permittee to submit a permit renewal application. It is inappropriate, the commenter contends, to allow an operator to submit an application, unless the entity has power of attorney or other clear authority to bind the permittee. Otherwise, the operator could frustrate the intent of the permittee, in instances where the permittee does not desire to renew the permit. In response, we note that we are disapproving the sentence that implies that an operator may file a renewal application. Moreover, KRS 350.060(14), which is part of Kentucky's approved program, states that the "holders of the permit" may apply for renewal. We construe the word "holder" to be synonymous with "permittee."

Finally, the commenter believes the amendment violates the requirement of 30 CFR 843.11(f) and 30 CFR 840.13(b) that a cessation order may not be

terminated until it is determined that all conditions, practices or violations listed in the order have been abated. The violation, which would be mining without a permit, is considered abated under the state law upon mere filing of the renewal application. Assuming *arguendo*, that all of the other legal infirmities with the state law were resolved, this mandated termination of an unresolved violation violates the state's enforcement obligation. The commenter argues that a state which has sought and obtained approval of a state regulatory program under SMCRA is under a mandatory, non-discretionary obligation to maintain, administer and enforce that program in a manner consistent with the Secretary's regulations and the federal Act. 30 CFR 733.11.

In response, we note that, under Section III., above, we are disapproving the amendment to the extent that it would allow the operator to continue mining under an expired permit if it submits a renewal application within 30 days of issuance of the notice of noncompliance.

The commenter also demands that the amendment be set aside by OSM. In response, we note that under Section III., above, OSM will announce its intention to set aside the disapproved portions of HB 593 in a future **Federal Register** notice.

Federal Agency Comments

According to 30 CFR 732.17(h)(11)(i), we solicited comments on the proposed amendment submitted on November 3, 1997, from various Federal agencies with an actual or potential interest in the Kentucky program. No comments were received.

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.*).

None of the revisions that Kentucky proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

V. Director's Decision

Based on the above findings, we approve, with the following exceptions, the proposed amendment as submitted by Kentucky on April 23, 1998.

We are not approving the phrase "if a permit has expired or," contained in

KRS 350.060(16). Also, we are not approving the following portion of KRS 350.060(16):

Upon the submittal of a permit renewal application, the operator or permittee shall be deemed to have timely filed the permit renewal application and shall be entitled to continue, under the terms of the expired permit, the surface coal mining operation, pending the issuance of the permit renewal.

We are also requiring Kentucky to amend its program to make it clear that a person may not continue to mine on an expired permit, except where the permittee has filed a timely and complete application for renewal (i.e., the application is filed at least 120 days before permit expiration) and the regulatory authority has not yet approved the renewal application at the time of permit expiration. Kentucky must also amend its program to require the issuance of an IHCO to any person mining on an expired permit, except as described in the preceding sentence.

The Federal regulations at 30 CFR part 917, codifying decisions concerning the Kentucky program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of the Director'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 alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Kentucky program, we will recognize only the statutes, regulations, and other materials approved by OSM, together with any consistent implementing policies, directives, and other materials. We will require that Kentucky enforce only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, 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 since each such 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 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.

National Environmental Policy Act

No environmental impact statement is required for this rule since 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 has determined 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 corresponding 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. 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 corresponding Federal regulations.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not produce a Federal mandate of \$100 million or greater in any given year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 28, 2000.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal

Regulations 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 added to read as follows:

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

(a) The Director does not approve the following provisions of the proposed program amendment concerning permit renewals that Kentucky submitted on April 23, 1998:

(1) The phrase “* * * if a permit has expired or * * *” in KRS 350.060(16).

(2) The following sentence in KRS 350.060(16): “Upon the submittal of a permit renewal application, the operator or permittee shall be deemed to have timely filed the permit renewal application and shall be entitled to continue, under the terms of the expired permit, the surface coal mining operation, pending the issuance of the permit renewal.”

(b) [Reserved]

3. The table in § 917.15 is amended by revising the table headings and adding a new entry in chronological order by “Date of Final Publication” to read as follows:

§ 917.15 Approval of Kentucky regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description of approved provisions
* * * * *	* * * * *	* * * * *
April 23, 1998	05/10/00	KRS 350.060(16) [partial approval]; 350.131(2); 350.139(1); 350.990 (1), (3), (4), (9), and (11).

* * * * *

4. Section 917.16 is amended by adding paragraph (o) to read as follows:

§ 917.16 Required regulatory program amendments.

* * * * *

(o) By July 10, 2000, Kentucky must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, 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.

(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.

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