

additional KPDES permit requirements. Section 8(2) of 405 KAR 18:060 requires that the entries and accesses of drift mines used after May 18, 1982, must be located to prevent any gravity discharge from the mine when it is located in acid or iron producing coal seams. Therefore, Kentucky's regulations are designed to prevent acid mine drainage from occurring in the situation described by the commenter.

The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) had three comments concerning 405 KAR 16:010 section 8. Its first comment was that the phrase "unmined barrier of coal left by an underground mine" be replaced with "outcrop barrier" to add specificity to the proposed revisions. It was also concerned that a misinterpretation of the term "unmined barrier of coal left by an underground mine" could mean that barrier pillars could be left in place as operations retreat from mining causing stress in the overlying strata. Its second comment was that the method of mining be specified. Finally, MSHA was concerned about subsection (2)(b) of 405 KAR 16:010 section 8, which allows the removal of the barrier if the removal will completely eliminate or significantly reduce existing underground workings. It was concerned that subsection (2)(b) could allow the removal of the outcrop barrier even if it caused the collapse of the overlying strata. It recommended that if the removal of the barrier is done by augering or highwall mining then an adequate amount of the barrier should be left in place to support the highwall during mining because the overburden would cave in after the barrier was removed, thereby increasing the hazard of highwall collapse to miners.

In response to the first comment, the Director finds the meaning of the term "unmined barrier of coal left by an underground mine" sufficiently clear from the context of its use in the proposed regulation because it specifically refers to those underground workings that dip toward and approach the land surface. Also any concern about the retention of barrier pillars during the retreat phase of mining is misplaced. The removal of barrier pillars during the retreat phase of mining occurs during underground mining. Chapter 16 applies to surface coal mining operations. In response to the second comment, the Director again notes that Chapter 16 of Title 405 of the Kentucky Regulations only applies to surface coal mining operations. Therefore, no clarification is necessary since Chapter 16 deals exclusively with surface activities.

Finally, the Director disagrees with MSHA's concerns that section 8(2)(b) may create a hazard to miners. Kentucky's statute at KRS 350.028(5) prevents the Kentucky SMCRA from superseding, amending, modifying or repealing the Federal Coal Mine Health and Safety Act of 1969 and its amendments. In addition, to eliminate or significantly reduce the existing underground workings the coal pillars and outcrop barrier would have to be removed. Augering and highwall mining could not be used to remove coal pillars left in the underground workings and it could only remove a portion of the coal outcrop barrier. Remining would be the method of surface mining used to eliminate or significantly reduce the existing underground workings, not augering or highwall mining. To completely eliminate or significantly reduce underground workings by surface mining methods, the operator must remove the area which includes removing the overburden (thus eliminating the possibility of a collapsing highwall) and then mining by conventional strip mining methods.

#### *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.*).

On August 11, 1994, OSM solicited EPA's concurrence with the proposed amendment. On August 25, 1994, EPA gave its written concurrence (Administrative Record No. KY-1310).

#### *V. Director's Decision*

Based on the above finding(s), the Director approves the proposed amendment as submitted by Kentucky on August 2, 1994, and revised on January 11, 1995.

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.

#### *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 12778*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (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