(ii) A condition restricting the availability of the transfer to benefits of participants who have a change in employment status to an employment status with respect to which the participant is not entitled to additional allocations under the transferor plan.

(c) *Elective transfers of certain distributable benefits between qualified plans*—(1) *In general.* A transfer of a participant's benefits between qualified plans that results in the elimination or reduction of section 411(d)(6) protected benefits does not violate section 411(d)(6) if—

(i) The transfer occurs at a time at which the participant's benefits are distributable (within the meaning of paragraph (c)(3) of this Q&A–3);

(ii) For a transfer that occurs on or after January 1, 2002, the transfer occurs at a time at which the participant is not eligible to receive an immediate distribution of the participant's entire nonforfeitable accrued benefit in a single-sum distribution that would consist entirely of an eligible rollover distribution within the meaning of section 401(a)(31)(C);

(iii) The voluntary election requirements of paragraph (b)(1)(i) of this Q&A–3 are met;

(iv) The participant is fully vested in the transferred benefit in the transferee plan;

(v) In the case of a transfer from a defined contribution plan to a defined benefit plan, the defined benefit plan provides a minimum benefit, for each participant whose benefits are transferred, equal to the benefit, expressed as an annuity payable at normal retirement age, that is derived solely on the basis of the amount transferred with respect to such participant; and

(vi) The amount of the benefit transferred, together with the amount of any contemporaneous section 401(a)(31) direct rollover to the transferee plan, equals the entire nonforfeitable accrued benefit under the transferor plan of the participant whose benefit is being transferred, calculated to be at least the greater of the single-sum distribution provided for under the plan for which the participant is eligible (if any) or the present value of the participant's accrued benefit payable at normal retirement age (calculated by using interest and mortality assumptions that satisfy the requirements of section 417(e) and subject to the limitations imposed by section 415).

(2) *Treatment of transfer*—(i) *In general.* A transfer of benefits pursuant to this paragraph (c) generally is treated as a distribution for purposes of section 401(a). For example, the transfer is subject to the cash-out rules of section 411(a)(7), the early termination requirements of section 411(d)(2), and the survivor annuity requirements of sections 401(a)(11) and 417. A transfer pursuant to the elective transfer rules of this paragraph (c) is not treated as a distribution for purposes of the minimum distribution requirements of section 401(a)(9).

(ii) *Status of elective transfer as optional form of benefit.* A right to a transfer of benefits from a plan pursuant to the elective transfer rules of this paragraph (c) is an optional form of benefit under section 411(d)(6), the availability of which is subject to the nondiscrimination requirements of section 401(a)(4) and § 1.401(a)(4)–4.

(3) *Distributable benefits.* For purposes of paragraph (c)(1)(i) of this Q&A–3, a participant's benefits are distributable on a particular date if, on that date, the participant is eligible, under the terms of the plan from which the benefits are transferred, to receive an immediate distribution of these benefits (*e.g.*, in the form of an immediately commencing annuity) from that plan under provisions of the plan not inconsistent with section 401(a).

(d) *Effective date.* This Q&A–3 is applicable for transfers made on or after September 6. 20000.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: August 28, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–22668 Filed 8–31–00; 2:25 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–226–FOR]

Kentucky Regulatory Program

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

ACTION: Final rule.

SUMMARY: OSM is announcing its final action to preempt and supersede portions of Kentucky Revised Statute (KRS) 350.060(16). The 1998 Kentucky General Assembly enacted this provision, which pertains to the renewal of expired permits, into law by passing House Bill 593.

It proposed that 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.

Portions of this provision would allow a permittee to continue mining on an expired permit after the permit renewal application has been filed within 30 days of the receipt of the NOV, regardless of whether the application is timely filed, and even if the application is filed after permit expiration.

OSM is taking this action because the provisions are inconsistent with the requirements of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This determination is based on reasons cited in the ''Director's Findings'' section in a separate notice published on May 10, 2000 (65 FR 29949), announcing disapproval of the statutory provision.

EFFECTIVE DATE: September 6, 2000.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (859) 260–8400. E-mail: *bkovacic@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary and Disposition of Comments
III. Director's Findings and Decision
IV. Effect of Director's Decision
V. Procedural Determinations

I. Background

You can find detailed background on the actions proposed in this document in a notice of final rulemaking pertaining to the Kentucky program published on May 10, 2000 (65 FR 29949).

II. Summary and Disposition of Comments

We received one comment supporting the proposed action to preempt.

III. Director's Findings and Decision

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), we preempt and supersede certain portions of KRS 350.060(16). The complete text of KRS 350.060 (16) reads as follows:

Any permit renewal shall be for a term not to exceed the period of the original permit. Application for permit renewal shall be made at least one hundred twenty (120) days prior to the expiration of the valid permit. However, if a permit has expired or if a permit renewal application has not been timely filed, and the operator or permittee desires to continue the surface coal mining operation, the cabinet shall forthwith cause a notice of noncompliance to be issued. The notice of noncompliance shall be deemed to have been complied with, and the permit may be renewed, if the cabinet receives a permit renewal application within thirty (30) days of the receipt of the notice of noncompliance. 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. Failure to comply with the remedial measures of the notice of noncompliance shall result in the cessation of the surface coal mining operation.

The specific wording for preemption and supersession are the phrase ''if a permit has expired or * * *'' and the following sentence:

> 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 taking this action because we have initially determined that these provisions are inconsistent with section 506 of SMCRA and less effective than 30 CFR 843.11 based on the reasons cited under ''Director's Findings'' in a separate notice of final rulemaking as noted above. This will require the State to operate and enforce the approved program as if the preempted and superseded provisions did not exist.

IV. Effect of the Director's Decision

Because 30 CFR 732.17(g) provides that no changes to state laws or regulations can take effect for purposes of a State program until approved as an amendment, it is generally not necessary to use the preemption provision of 30 CFR 730.11(a) and section 505(b) of SMCRA. However, Kentucky has enacted legislation that is clearly less stringent than section 506 of SMCRA and less effective than 30 CFR 843.11.

Therefore, to remove any ambiguity regarding the status of those portions of KRS 350.060(16) described in the ''Director's Findings and Decision '' above, we are preempting that section of the Kentucky law. This action clarifies that this provision cannot be implemented or enforced by any party.

V. Procedural Determinations

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 12630—Takings

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

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.

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, 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

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget 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 counterpart 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 counterpart federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or

the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 17, 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 917.13 is amended by adding a new paragraph (c) to read as follows:

§ 917.13 State statutory and regulatory provisions set aside.

* * * * *

(c) The following portions of the Kentucky Revised Statute at KRS 350.060(16) are inconsistent with section 506 of SMCRA and less effective than 30 CFR 843.11 and are set aside effective September 6, 2000:

The specific wording is the phrase ''if a permit has expired or . . .'' and the following sentence:

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.

[FR Doc. 00–22778 Filed 9–5–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCG–2000–7695]

RIN 2115–AF99

Traffic Separation Scheme: In the Approaches to Los Angeles-Long Beach, California

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the existing Traffic Separation Scheme (TSS) in the Approaches to Los Angeles-Long Beach, California. A recent port access route study, which evaluated vessel routing and traffic management measures, validated the proposed amendments. The study was necessary because of major port improvements made to the Ports of Los Angeles and Long Beach. The amended TSS will route commercial vessels farther offshore, providing an extra margin of safety and environmental protection in the San Pedro Channel area and the entrances to the Ports of Los Angeles and Long Beach.

DATES: This final rule is effective on September 6, 2000.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2000–7695 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, contact Mike Van Houten, Aids to Navigation Section Chief, Eleventh Coast Guard District, telephone 510–437–2968, e-mail MvanHouten@d11.uscg.mil; Lieutenant Patricia Springer, Vessel Traffic Management Officer, Eleventh Coast Guard District, telephone 510–437–2951, e-mail Pspringer@d11.uscg.mil; or George Detweiler, Coast Guard, Office of Vessel Traffic Management (G–MWV), at 202–267–0574, e-mail Gdetweiler@comdt.uscg.mil. For questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Regulatory History

On July 28, 2000, we published a notice of proposed rulemaking entitled ''Traffic Separation Scheme: In the Approaches to Los Angeles-Long Beach, CA'' in the **Federal Register** (65 FR 46378). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Regulatory Information

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. Per our request, IMO suspended the existing TSS effective September 1, 2000. We are making this rule effective on the date of publication so that a TSS is in place on September 1st or as soon thereafter as possible.

Background and Purpose

This rule amends the existing TSS in the approaches to Los Angeles-Long Beach adopted by the International Maritime Organization (IMO) in 1975 (''Ships Routing,'' Sixth Edition 1991, IMO). These amendments—

a. Expand the Precautionary Area approximately 2.2 nautical miles to the south;

b. Shift the western traffic lane approximately 2.2 nautical miles to the south; and

c. Shift the southern traffic lane approximately 3 miles to the west.

In addition, this rule codifies the amended TSS into Title 33 part 167 of the Code of Federal Regulations (CFR).

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The costs and benefits of this rule are summarized below.

Costs

The amendments to the TSS's in the approaches to Los Angeles-Long Beach will result in a slight increase in transit times and operating costs for vessels using the TSS's to call on the Los Angeles-Long Beach Port complex. Most