foreign insurance corporation controlled by a U.S. shareholder. Company X does not make an election 1 under section 953(d) to be treated as a domestic corporation. The controlling U.S. shareholder is required under sections 953 and 954 to include income earned on the annuity contract in its taxable income under subpart F. However, Company X is not subject to tax under subchapter L with respect to income earned on the annuity contract. Thus, the annuity contract is not excepted from the definition of a debt instrument by section 1275(a)(1)(B)(ii).

Example 5. The facts are the same as in *Example 4,* except that Company X properly elects under section 953(d) to be treated as a domestic corporation. By reason of its election, Company X is subject to tax under subchapter L with respect to income earned on the annuity contract. Thus, the annuity contract is excepted from the definition of a debt instrument by section 1275(a)(1)(B)(ii).

(3) *Effective date.* This paragraph (k) is applicable for interest accruals on or after June 6, 2002. This paragraph (k) does not apply to an annuity contract that was purchased before January 12, 2001. For purposes of this paragraph (k), if any additional investment in a contract purchased before January 12, 2001, is made on or after January 12, 2001, and the additional investment is not required to be made under a binding written contractual obligation that was entered into before that date, then the additional investment is treated as the purchase of a contract after January 12, 2001.

Dated: April 26, 2002.

David A. Mader,

Acting, Deputy Commission of Internal Revenue.

Pamela F. Olson,

Acting, Assistant Secretary of the Treasury

[FR Doc. 02–11035 Filed 5–6–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–229–FOR]

Kentucky Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Kentucky permanent regulatory program (the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky proposed revisions to the State regulations pertaining to subsidence control. The amendment is intended to render the Kentucky program consistent with the corresponding Federal regulations and to provide additional specificity.

EFFECTIVE DATE: May 7, 2002.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Field Office Director Telephone: (859) 260–8400. Address: Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503.

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

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, 917.13, 917.15, 917.16, and 917.17.

II. Submission of the Proposed Amendment

By letter dated January 25, 2001 (Administrative Record No. KY–1502), the Kentucky Department of Surface Mining Reclamation and Enforcement sent us an amendment to the Kentucky program. In its letter, Kentucky noted that on December 22, 1999, we suspended and modified portions of 30 CFR 784.20 and 30 CFR 817.121(c)(4)(i) through (iv) pursuant to an order of the United States Court of Appeals for the District of Columbia Circuit. Kentucky proposed to amend its rules in the same manner that we modified our regulations. The amendment, at Title 405 of the Kentucky Administrative Regulations (KAR) Chapter 18:210, deleted the provision that required presubsidence surveys of structures at Section 1(4) and the rebuttable presumption of causation of subsidence damage at Section 3(4).

Kentucky also submitted changes to Section 2(2) of 405 KAR 18:210, deleting references to the presubsidence survey of structures and adding a provision allowing property owners to waive the 30-day mining moratorium following the emergency notice. With the exception of the deletion of the references to presubsidence structural surveys, the changes to Section 2(2) do not correspond to any federal regulatory changes.

We announced receipt of the proposed amendment in the March 5, 2001, **Federal Register** (66 FR 13275). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. KY–1519). The public comment period ended on April 4, 2001.

By letter dated June 8, 2001 (Administrative Record No. KY–1513), Kentucky submitted the final version of the proposed amendment.

We reopened the public comment period in the August 15, 2001, **Federal Register** (66 FR 42815) and provided an opportunity for a public hearing or meeting on the adequacy of the revised amendment. (Administrative Record No. KY–1515). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on August 30, 2001. We received comments from one industry group, one Federal agency, and two private citizens.

Procedural History of Suspended Federal Rules

The Energy Policy Act was enacted October 24, 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) (hereinafter, The Energy Policy Act or EPAct). Section 2504 of that Act, 106 Stat. 2776, 3104, amends SMCRA, 30 U.S.C. 1201 *et seq.* Section 2504 of EPAct added a new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal-mining operations conducted after October 24, 1992, promptly repair or compensate for material damage to non-commercial buildings and occupied residential dwellings and related structures as a result of subsidence due to underground coal mining operations. Repair of damage includes rehabilitation, restoration, or

replacement of the structures identified by section 720(a)(1), and compensation must be provided to the owners in the full amount of the diminution in value resulting from the subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies, which have been adversely affected by underground coal mining operations. Under section 720(b), the Secretary of the Interior was required to promulgate final regulations to implement the provisions of section 720(a).

On September 24, 1993 (58 FR 50174), OSM published a proposed rule to amend the regulations applicable to underground coal mining and control of subsidence-caused damage to lands and structures through the adoption of a number of permitting requirements and performance standards. We adopted final regulations on March 31, 1995 (60 FR 16722).

The rules were challenged by the National Mining Association in the District Court for the District of Columbia and in the U.S. Court of Appeals for the District of Columbia Circuit. On April 27, 1999, the U.S. Court of Appeals issued a decision vacating certain portions of the regulatory provisions of the subsidence regulations. See *National Mining Association* v. *Babbitt,* 173 F.3d 906 (1999). We suspended those regulatory provisions that are inconsistent with the rationale provided in the U.S. Court of Appeals' decision. The following Federal provisions were suspended.

1. 30 CFR 817.121(c)(4)(i) through (iv)

This regulation provided that if damage to any non-commercial building or occupied residential dwelling or structures related thereto occurred as a result of earth movement within an area determined by projecting a specific angle of draw from the outer-most boundary of any underground mine workings to the surface of the land, a rebuttable presumption would exist that the permittee caused the damage. The presumption typically would have applied to a 30-degree angle of draw. Once the presumption was triggered, the burden of going forward shifted to the mine operator to offer evidence that the damage was attributable to another cause. The purpose of this regulatory provision was to set out a procedure under which damage occurring within a specific area would be subject to a rebuttable presumption that subsidence from underground mining was the cause of any surface damage to non-commercial buildings or occupied residential dwellings and related structures.

The Court of Appeals vacated, in its entirety, this rule that established an angle of draw and that created a rebuttable presumption that damage to EPAct protected structures within an area defined by an ''angle of draw'' was in fact caused by the underground mining operation. 173 F.3d at 913.

In reviewing the regulation, the Court rejected the Secretary's contention that the angle of draw concept was reasonably based on technical and scientific assessments and that it logically connected the surface area that could be damaged from earth movement to the underground mining operation. The angle of draw provided the basis for establishing the surface area within which the rebuttable presumption would apply. The Secretary had explained that the rebuttable presumption merely shifted the burden of document production to the operator in evaluating whether the damage was actually caused by the underground mining operation within the surface area defined by the angle of draw. The Court nevertheless held that the angle of draw was irrationally broad and that the scientific facts presented did not support the logical inference that damage to the surface area would be caused by earth movement from underground mining within the area.

Based on the conclusion that there was no scientific or technical basis provided for establishing a rational connection between the angle of draw and surface area damage, the Court further concluded that the rebuttable presumption failed. In reviewing the rebuttable presumption requirement, the Court held ''an evidentiary presumption is 'only permissible if there is sound and rational connection between the proved and inferred facts, and when proof of one fact renders the existence of another fact so probable that it is sensible and timesaving to assume the truth of [the inferred] fact * * * until the adversary disproves it.' '' That is to say, for the presumption to be permissible, the facts would have to demonstrate that the earth movement from the underground mining operation ''more likely than not'' caused the damage at the surface. See National Mining Association, 173 F.3d at 906–910. In compliance with the Court of Appeals' decision of April 27, 1999, we suspended 30 CFR 817.121(c)(4)(i) through (iv).

Paragraph (v) within this section applies generally to the types of information that must be considered in determining the cause of damage to an EPAct protected structure and is not limited to or expanded by the area defined by the angle of draw. Therefore, paragraph (v) remains in force.

2. Section 784.20(a)(3)

This regulatory provision required, unless the owner denied the applicant access for such purposes, a survey, which identified certain features. First, the survey had to identify the condition of all non-commercial buildings or occupied residential dwellings and related structures, which were within the area, encompassed by the applicable angle of draw and which might sustain material damage, or whose reasonably foreseeable use might be diminished, as a result of mine subsidence. Second, the survey had to identify the quantity and quality of all drinking, domestic, and residential water supplies within the proposed permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. In addition, the applicant was required to notify the owner in writing that denial of access would remove the rebuttable presumption that subsidence from the operation caused any post mining damage to protected structures that occurred within the surface area that corresponded to the angle of draw for the operation. (See discussion of angle of draw above). This regulatory provision was challenged insofar as it required a specific structural condition survey of all EPAct protected structures. The Court of Appeals vacated the specific structural condition survey regulatory requirement in its decision on April 27, 1999. In reviewing the Secretary's requirement, the Court clearly upheld the Secretary's authority to require a pre-subsidence structural condition survey of all EPAct protected structures. The Court accepted the Secretary's explanation that this specific structural condition survey was necessary, among other requirements, in order to determine whether a subsidence control plan would be required for the mining operation. However, because of the Court's ruling on the ''angle of draw'' regulation discussed above, it vacated the requirement for a specific structural condition survey because it was tied directly to the area defined by the ''angle of draw.''

In compliance with the Court of Appeals'' decision, we suspended that portion of 30 CFR 784.20(a)(3) which required a specific structural condition survey of all EPAct protected structures. The remainder of this section continues in force to the extent that it applies to the EPAct protected water supplies survey and any technical assessments or engineering evaluations necessarily related thereto.

III. Director's Findings

Following are the findings we made concerning Kentucky's amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. As discussed below, we are approving the amendment.

Deletion of 405 KAR18:210 Section 1(4)(a)–(d)

Section 1(4)(a) of 405 KAR 18:210 requires presubsidence surveys of the specific structural conditions of protected structures within the projected angle of draw. Section 1(4)(b) provides for filing of written objections to the survey by property owners. Section 1(4)(c) prohibits mining within 1,500 feet horizontally of a structure for which a survey is required, unless the permittee submits the survey or demonstrates that the property owner refused access to the site for purposes of conducting the survey. Section 1(4)(d) allows the permittee to request an alternative to the temporary 1,500-foot buffer zone, based upon the angle of draw.

Paragraph (a) of Section 1(4) is substantively identical to the suspended portion of the Federal regulations at 30 CFR 784.20(a)(3). Paragraphs (b), (c) and (d) of Section 1(4) have no direct Federal counterparts. However, they relate only to the presubsidence structural survey requirement of paragraph (a). Because these State regulations are either substantively identical to or related only to the suspended portion of the Federal regulations at 30 CFR 784.20(a)(3), we find that their deletion will not render the Kentucky program inconsistent with SMCRA or the Federal regulations. Therefore, the deletions are approved.

Deletion of 405 KAR 18:210 Section 3(4)

Section 3(4) of 405 KAR 18:210 establishes a rebuttable presumption that damage to protected structures resulting from earth movement within the projected angle of draw was caused by the permittee. This provision is substantively identical to the suspended Federal regulations at 30 CFR 817.121(c)(4)(i) through (iv). Therefore, we find that its deletion will not render the Kentucky program inconsistent with SMCRA or the Federal regulations. We are approving the deletion.

Revision of 405 KAR 18:210 Section 2(2)

Kentucky also proposes to amend 405 KAR 18:210, Section 2(2), which requires notice to surface owners before mining beneath their property. Section 2(1) requires the permittee to notify, in writing, all residents and occupants of surface properties and structures within the area above underground workings that mining will occur beneath their property or structures. The notification must be by mail, and must be sent to the owners or occupants at least 90 days prior to mining beneath the property or structures. Section 2(2) provides an exception to the minimum notification time in Section 2(1) if ''subsequent emergencies or other unforeseen conditions in underground mining necessitate mining beneath such property or residence sooner than ninety (90) days after such notice.'' If an emergency or other unforeseen condition exists, the State rule requires an additional written notice to the owner or resident that mining will occur. It also provides that ''in no case shall mining be conducted beneath the property or residence sooner than thirty (30) days after such additional notice is given.''

Kentucky proposes to amend Section 2(2) to allow the property owner to waive the 30-day moratorium on mining. The waiver must be expressly given, in writing, and ''shall be granted after the initial notice required under subsection (1) of this section has been given, and shall be separate from any other waiver, lease, deed, easement, agreement, or other conveyance of property or rights.'' Kentucky has stated that both the initial notice under Section 2(1) and subsequent notice under Sections 2(2) are not waivable. Rather, the property owner may waive only the 30-day mining moratorium that commences after the subsequent notice. (See April 11, 2001, Statement of Consideration, Administrative Record No. KY–1513).

The Federal regulations at 30 CFR 817.122 require underground mine operators to provide written notice by mail, at least 6 months prior to mining, to all owners and occupants of surface property and structures above underground workings. The regulatory authority may, however, approve a notice period of less than 6 months after considering whether the chosen notice period is sufficient to ''allow surface owners to take steps to protect their property.'' (48 FR 24638, 24647, June 1, 1983).

Because Kentucky does not propose to allow waiver of either the initial or subsequent, i.e., ''emergency'' notice, a property owner will have at least 30 days warning, if he wants it, of the impending underground mining. As such, the owner will have an opportunity, if he so desires, to take steps necessary to protect that property. Therefore, the allowance of a waiver, so long as it is expressly given in writing, does not frustrate the purpose of this regulation, which is to provide a landowner with sufficient time to protect his property if he wishes to do so. For this reason, the proposed amendment does not render Section 2(2) inconsistent with the Federal regulations at 30 CFR 817.122, and it is therefore approved. However, for the reasons discussed below in our responses to the comments of the National Citizens' Coal Law Project, we are approving the waiver provision only to the extent that, where more than one entity owns the land or mineral resources, all such owners must sign express waivers of the 30-day period before the regulatory authority may grant the waiver.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment. One public comment was received from National Citizen's Coal Law Project in a letter dated August 30, 2001 (Administrative Record No. KY–1517). The commenter stated that the regulation, at 405 KAR 18:210, Section 2(2), is inconsistent with and less effective than the corresponding Federal counterpart requirement at 30 CFR 817.122 because it provides for a 30-day notice period prior to mining in some instances, whereas the federal regulation requires at least 6 months notice. Specifically, the commenter charged that ''Kentucky's regulatory approach has been eroding the timeframe set by Congress from six months to three months, to one month, and now proposes to eliminate entirely the waiting period.'' Therefore, the commenter stated that the amendment must be disapproved.

We disagree. First, we previously approved the 30-day emergency notice period in our original approval of the Kentucky program (47 FR at 21412, Finding 13.21, in which we approved 405 KAR 18:210E, Section 2). Second, Kentucky does not propose to eliminate the notice period entirely, as the commenter alleges, unless the property owner waives his right to use that period to take steps necessary to protect his property from mining. Therefore, as explained in the finding above, the purpose of the regulation is still served.

The commenter also objected to the allowance of a waiver of the 30-day notice period prior to mining. Specifically, the commenter stated the following: (1) Where the landowner who resides in the dwelling refuses to sign a waiver or lease but a non-resident co-tenant signs such a lease and a waiver of the 30-day notice, this regulation

could allow immediate undermining despite the objection of the surface owner; (2) The existence of past fraud in submission of waivers also demands that a time period be allowed to assure that undermining does not occur based on a fraudulent ''waiver'' of the 30-day period and; (3) Once undermined, the aggrieved party who opposed mining cannot be made ''whole.'' Their property and interests are irreparably altered. Allowing the waiver of any time frame based on an ''owner'' waiver, the commenter indicated, invites more mischief and more hardship for co-tenants who are often subject to coal companies purchasing or leasing a minor fractional interest and then mining the property.

We agree that the commenter's concerns have some historical validity. Therefore, our approval of this waiver provision must not be construed to allow the outcomes feared by the commenter. In other words, as noted in the finding above, we are approving the waiver provision only to the extent that, where more than one entity owns the land or mineral resources, all such owners must sign express waivers of the 30-day period before the regulatory authority may grant the waiver. Moreover, we believe that safeguards in the proposal itself may assuage the commenter's concern about fraudulent waivers. For example, the regulation provides that the waiver may be granted only after the permittee has made the initial notice as required, and the waiver must be separate from any other waiver, lease, deed, easement, agreement, or other conveyance of property or rights. These restrictions will help insure that the owner is aware, at the time he grants the waiver, of the current circumstances and the notice to which he is entitled. Moreover, because the regulatory authority will receive copies of the waivers, it can verify the names of the waiving property owners by checking them against the names of surface and mineral owners provided in the permit application. While these safeguards do not guarantee that a fraudulent waiver will never be accepted, such a guarantee simply does not exist. Indeed, regulatory authorities must rely to some degree upon the veracity of the permittee in other instances, such as the acceptance of information provided in a permit application itself. Finally, we note again that the permittee must give the initial 90-day notice and an additional notice as required when it wishes to undermine a property sooner than 90 days after the initial notice. The owner cannot waive the permittee's obligation to provide these notices.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Kentucky program (Administrative Record No. KY–1515). The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded in a letter dated August 27, 2001 (Administrative Record No. KY–1516). The commenter indicated that the proposed changes should have no foreseeable impact concerning MSHA.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued 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.*). This amendment does not pertain to air or water quality standards. Therefore, we did not ask the EPA for concurrence.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. KY–1515). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 22, 2001, we requested comments on Kentucky's amendment (Administrative Record No. KY–1515), but neither entity responded to our request.

V. Director's Decision

Based on the above findings, we approve the Kentucky amendment, as revised on June 8, 2001.

To implement this decision we are amending the Federal regulations at 30 CFR part 917, which codifies decisions concerning the Kentucky program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503 of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

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 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 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. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each 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 the Federal regulations at 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.

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 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 is not expected to 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 because 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 certifies 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. 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; and (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 an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. 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 did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 27, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR 917 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 917.15 is amended by adding a new entry to the table in chronological order to read as follows:

§ 917.15 Approval of Kentucky regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
January 25, 2001	May 7, 2002	405 KAR 18:210, Sections 1(4), 2(2), and 3(4).

[FR Doc. 02–11212 Filed 5–6–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5]

Privacy Act; Implementation

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy deleted the exempt system of records N05527–4, entitled ''Naval Security Group Personnel Security/Access Files'' on April 24, 2002, at 67 FR 20100. This rule will delete the exemption rule for the now non-existent Privacy Act system of records.

EFFECTIVE DATE: April 24, 2002.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.