

§ 916.15 Approval of Kansas regulatory program amendments.

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| Original amendment submission date | Date of final publication | Citation/description |
|------------------------------------|---------------------------|---|
| October 9, 2001 | February 26, 2002. | Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success dated January 2002. |

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DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

[LA-021-FOR]

Louisiana 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 Louisiana regulatory program (Louisiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Louisiana proposed revisions to and additions of regulations concerning valid existing rights. Louisiana revised its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: February 26, 2002.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6548, Telephone: (918) 581-6430, Internet: mwolfrom@osmre.gov.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Louisiana 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 this Act * * * ; and rules and regulations consistent with regulations issued by the Secretary pursuant to this 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 Louisiana program on October 10, 1980. You can find background information on the Louisiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the October 10, 1980, **Federal Register** (47 FR 23883). You can also find later actions concerning the Louisiana program and program amendments at 30 CFR 918.15 and 918.16.

II. Submission of the Amendment

By letter dated August 3, 2001 (Administrative Record No. LA-366.04), Louisiana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Louisiana sent the amendment in response to an August 23, 2000, letter (Administrative Record No. LA-366) that we sent to Louisiana in accordance with 30 CFR 732.17(c). Louisiana proposed to amend the Louisiana Surface Mining Regulations (LSMR).

We announced receipt of the proposed amendment in the September 20, 2001, **Federal Register** (66 FR 48393). 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. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on October 22, 2001. We received comments from one Federal agency.

During our review of the amendment, we identified concerns about the definition of valid existing rights; areas where mining is prohibited or limited; exceptions for existing operations; procedures for permit application review; general requirements for development operations involving removal of more than 250 tons; valid existing rights determinations; criteria for permit approval or denial; and several cross-reference errors. We notified Louisiana of these concerns by letter dated November 16, 2001 (Administrative Record No. LA-366.08). By letter dated November 20, 2001 (Administrative Record No. LA-366.09), Louisiana sent us revisions to its proposed program amendment.

Based on Louisiana's revisions to its amendment, we reopened the public comment period in the December 26, 2001, **Federal Register** (66 FR 66377). The public comment period ended on January 10, 2002. We received comments from one Federal agency.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. Any revisions that we do not discuss below concern nonsubstantive wording or editorial changes or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

Louisiana's regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations.

| Topic | State regulation | Federal counterpart regulation |
|--|------------------|--------------------------------|
| Definition of valid existing rights | § 105 | 30 CFR 761.5. |
| Areas where mining is prohibited or limited | § 1105 | 30 CFR 761.11. |
| Procedures for permit application review | § 1107.B .. | 30 CFR 761.17(b). |
| Location verification | § 1107.C .. | 30 CFR 761.17(c). |
| Procedures for relocating or closing a public road or waiving the prohibition on surface coal mining operations within the buffer zone of a public road. | § 1107.D .. | 30 CFR 761.14. |
| Procedures for waiving the prohibition on surface coal mining operations within the buffer zone of an occupied dwelling. | § 1107.E .. | 30 CFR 761.15. |
| Procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks and historic places. | § 1107.F ... | 30 CFR 761.17(d). |
| Exception for existing operations | § 1109 | 30 CFR 761.12(a). |
| General requirements for development operations involving removal of more than 250 tons | § 2111.A.8 | 30 CFR 772.12(b)(14). |
| Applications: approval or disapproval of development of more than 250 tons | § 2113.B.4 | 30 CFR 772.12(d)(2)(iv). |
| Valid existing rights determinations | § 2323 | 30 CFR 761.16. |

Because the above State regulations contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

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 Louisiana program (Administrative Record Nos. LA-366.05 and LA-366.10). The U.S. Fish and Wildlife Service (FWS) responded on September 12, 2001 (Administrative Record No. LA-366.06), that it reviewed the amendment and concludes that the proposed changes would not result in significant adverse impacts to fish and wildlife resources within its trusteeship. The FWS also responded on December 21, 2001 (Administrative Record No. LA-366.11), that it reviewed the revisions to the amendment and concludes that the activity is not pertinent to those Federal-trust resources under its charge.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from the 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.*). None of the revisions that Louisiana proposed to make in this amendment pertain to air or water quality standards. Therefore,

we did not ask the EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record Nos. LA-366.05 and LA-366.10). The EPA did not respond to our requests.

State Historical 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 15, 2001, and December 10, 2001, we requested comments on Louisiana's amendment (Administrative Record Nos. LA-366.05 and LA-366.10), but neither responded to our requests.

V. OSM's Decision

Based on the above findings, we approve the amendment as submitted by Louisiana on August 3, 2001, and as revised on November 20, 2001.

We approve the regulations proposed by Louisiana with the provision that they be fully promulgated in identical form to the regulations submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 918, which codify decisions concerning the Louisiana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) 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 rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The taking implications assessment for the Federal valid existing rights rule appears in Part XXIX.E. of the preamble to that rule. See 64 FR 70766, 70822-27, December 17, 1999.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. 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 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 25, 2002.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 918 is amended as set forth below:

PART 918—LOUISIANA

1. The authority citation for Part 918 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 918.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

§ 918.15 Approval of Louisiana regulatory program amendments.

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| Original amendment submission date | Date of final publication | Citation/description |
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| * | * | * |
| August 3, 2001 | February 26, 2002. | LSMR Sections 105, 1105, 1107.B through F, 1109, 2111.A.8, 2113.B.4, and 2323. |

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POSTAL SERVICE

39 CFR PART 111

Price of Semipostal Stamps

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends the *Domestic Mail Manual* (DMM) provisions relating to the pricing of semipostal stamps. This final rule implements legislative changes to the semipostal program and amends the *Domestic Mail Manual* provisions relating to the pricing and use of semipostal stamps.

DATES: This rule is effective on March 23, 2002.

Applicability date: DMM P022.1.6(b) and R000.4.0 (last paragraph) are applicable on the date when the *Heroes* semipostal stamp is made available for purchase.

ADDRESSES: Questions about this rule may be addressed to the Manager, Stamp Services, ATTN: Semipostal Stamp Program DMM Rules, 475