

Signed: May 31, 2002.

David L. Benton,

Deputy Director.

[FR Doc. 02-14132 Filed 6-5-02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY-236-FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed withdrawal of required amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are proposing to reconsider our position on a required amendment to the Kentucky regulatory program (the "Kentucky program") (found at 30 CFR 917.16(d)(2)) under the Surface Mining Reclamation Act of 1977 (SMCRA or the Act). By doing so, we are considering whether the Kentucky program is consistent with the corresponding Federal Regulations at 30 CFR 773.13(a)(1) and 30 CFR 701.5.

This document gives the times and locations that the Kentucky program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., e.s.t. July 5, 2002. If requested, we will hold a public hearing on the amendment on July 1, 2002. We will accept requests to speak until 4 p.m., e.s.t. on June 21, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Kentucky Field Office Director William J. Kovacic at the address listed below.

You may review copies of the Kentucky program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Kentucky Field Office.

William J. Kovacic, Director, Kentucky Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (859) 260-8402. Internet address: bkovacic@osmre.gov.

Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601. Telephone: (502) 564-6940.

FOR FURTHER INFORMATION CONTACT:

William J. Kovacic, Telephone: (502) 564-6940. Internet: bkovacic@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Description of the Proposed Amendment
- III. Public Comment Period
- IV. 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 21426). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.15 and 917.16.

II. Description of the Proposed Amendment

On December 31, 1990, we published, in the **Federal Register** (55 FR 53490), a requirement that Kentucky amend their program to require that public notice shall not be initiated until the cabinet has determined that a permit application is administratively complete. Kentucky was required to respond by January 30, 1991, but by letter of February 1, 1991, requested an extension to February 28, 1991. We granted that extension by letter of February 22, 1991. On March 4, 1991, Kentucky responded by letter indicating

that the existing regulation at 405 KAR 8:010 is as effective as the Federal regulations. In their response, Kentucky reminded OSM that the initial program approval of May 18, 1982, considered these public notice differences but considered them as effective as the Federal regulations. No action was taken on this letter. OSM is proposing to reconsider our position that Kentucky's program needs to be amended.

III. Public Comment Period

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Kentucky Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. KY-236-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Kentucky Field Office at (859) 260-8402.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as

representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on June 21, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. 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 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: May 1, 2002.

Michael K. Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 02-14079 Filed 6-5-02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[WV-096-FOR]

West Virginia Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing a proposed amendment to the West Virginia regulatory program (the "West Virginia program") under the Surface Mining Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the West Virginia Surface Coal Mining and Reclamation Act as contained in House Bill 4163. The amendment provides additional definition of commercial forestry and forestry. It also revises provisions for premining and postmining land use, required infrastructure, water supply, soil, soil placement and grading, bond release, and prime farmlands. Additionally, the amendment alters sections of West Virginia's bonding program performance standards, and Small Operator Assistance Program. Finally, the amendment proposes an entirely new section of the West Virginia program providing an exemption for coal extraction incidental to extraction of other minerals. The amendment is intended to improve the effectiveness of the West Virginia program.

This document gives the times and locations that the West Virginia program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00

p.m., e.s.t. July 8, 2002. If requested, we will hold a public hearing on the amendment on July 1, 2002. We will accept requests to speak until 4:00 p.m., e.s.t. on June 21, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to West Virginia Field Office Director Mr. Roger W. Calhoun at the address listed below.

You may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Charleston Field Office.

Mr. Roger W. Calhoun, Director, West Virginia Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347-7158. Internet address: chfa@osmre.gov.

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143. Telephone: (304) 759-0515.

The proposed amendment will be posted at the West Virginia Department of Environmental Protection's Internet page: <http://www.dep.state.wv.us>.

In addition, you may review copies of the proposed amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507. Telephone: (304) 291-4004. (By appointment only).

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801. Telephone: (304) 255-5265.

FOR FURTHER INFORMATION CONTACT:

Roger W. Calhoun, Telephone: (304) 347-7158. Internet address: chfa@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the West Virginia Program
- II. Description of the Proposed Amendment
- III. Public Comment Period
- IV. Procedural Determinations

I. Background on the West Virginia 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 West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval in the January 1, 1981 **Federal Register** (46 FR 5915-5956). You can also find later actions concerning West Virginia program and program amendments at 30 CFR 948.13, 948.15, and 948.16.

II. Description of the Proposed Amendment

By letter dated December 20, 2000 (Administrative Record Number WV-1191), the West Virginia Department of Environmental Protection (WVDEP) submitted responses to required regulatory program amendments that we, the Office of Surface Mining (OSM) informed them of by letter dated August 15, 2000 (Administrative Record Number WV-1178). WVDEP sent another letter, dated April 9, 2000 (Administrative Record Number WV-1296), indicating that House Bill 4163 had been approved by the West Virginia Legislature. The bill amended 38 Code of State Regulations (CSR) 2 to make several changes to existing rules and created the Coal Related Dam Safety Rule at 38 CSR4. West Virginia submitted the proposed amendment to satisfy the relevant required program amendments.

We are not requesting comments on the amendment at CSR 38-2-12.5.d. The change to that provision will be announced in a separate **Federal Register** notice. As such, this proposed amendment is not part of WV-096-FOR and will not be addressed as such.

You will find West Virginia's program amendment presented below.

Generally

The word "Director" is replaced with "Secretary."

The term "performance bond(s)" is changed to "bond(s)."

The word "Division" is replaced with "Department."