

conditions that could potentially result in hazards to miners.

For all the reasons stated herein, this proposed rule is withdrawn.

Signed at Arlington, VA, this 8th day of July 2002.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY-240-FOR]

Kentucky Regulatory Program

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

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

SUMMARY: We are proposing the removal of two instructions to the State of Kentucky pertaining to required amendments to the Kentucky regulatory program (the "Kentucky program"). The Kentucky program was established under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) and authorizes Kentucky to regulate surface coal mining and reclamation operations in Kentucky. We are proposing to remove the instructions because the actions we required have either been satisfied or are no longer applicable and nothing further is required by the state. This document gives the times and locations that the Kentucky program is available for your inspection, the comment period during which you may submit written comments on the proposed actions, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on these proposed actions until 4 p.m., e.s.t. August 14, 2002. If requested, we will hold a public hearing on the proposed actions on August 9, 2002. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on July 30, 2002.

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

You may review copies of the Kentucky program, 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.

William J. Kovacic, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859)260-8400. E-mail: 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: (859)260-8400. Internet: bkovacic@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Description of the Proposed Actions
- III. Public Comment Procedures
- 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 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 of the Kentucky program 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, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Actions

At 30 CFR 917.16(c)(2), we required Kentucky to submit proposed regulations to implement the program changes contained in Senate Bill (SB) 374. SB 374 added a new section to Kentucky's statutes pertaining to the issuance of special permits for the remining of previously affected mined areas. However, SB 374 specifically

prohibits its own implementation until implementing regulations are promulgated by Kentucky and approved by OSM. In addition, 30 CFR 732.17(g) prohibits States from implementing proposed amendments to their programs until OSM approves the amendments. Because OSM determined that SB 374 could not be implemented without accompanying regulations, SB 374 is not a functioning part of the approved State program until promulgation of such regulations. See 51 FR 26002, 26005 (July 18, 1986). For these reasons, the requirement codified at 30 CFR 917.16(c)(2) is unnecessary and should be removed.

At 30 CFR 917.16(o), we required Kentucky to submit a program change to the Kentucky Revised Statutes at 350.060 to: (1) clarify that a person may not continue to conduct surface coal mining operations under an expired permit unless the permittee filed a complete application for renewal at least 120 days before the permit expired and the regulatory authority had not yet approved or disapproved the application when the permit expired, and (2) require the issuance of an imminent harm cessation order to any person conducting surface coal mining operations under an expired permit unless the permittee filed a complete application for renewal at least 120 days before the permit expired and the regulatory authority had not yet approved or disapproved the application when the permit expired. On September 6, 2000, we announced the preemption and supersession of KRS 350.060(16) because it was inconsistent with the requirements of SMCRA (65 FR 53909). Because both our disapproval and subsequent supersession of the quoted provisions of the statute prevent Kentucky from implementing those provisions, and because the Kentucky program otherwise requires issuance of imminent harm cessation orders to persons conducting surface coal mining operations under expired permits, we believe that the requirements codified at 30 CFR 917.16(o) are no longer necessary and should therefore be removed.

III. Public Comment Procedures

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 Lexington 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-231-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 Lexington Field Office at (859) 260-8400.

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., July 30, 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. 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 governmental 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: June 10, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 02-17654 Filed 7-12-02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SPATS No. MT-023-FOR]

Montana 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 receipt of a proposed amendment to the Montana regulatory program (hereinafter, the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana proposes revisions, additions, and deletions to rules and statutes about the definitions, ownership and control, baseline information, maps, prime farmland, reclamation plan, ponds and embankments, transportation facilities plan, coal processing plants and support facilities, permit application, permit conditions, permit revisions, permit renewal, backfilling and grading requirements, small depressions, burial and treatment of exposed mineral seams, storage and final disposal of garbage, disposal of offsite-generated waste and fly ash, contouring, buffer zones, thick overburden and excess spoil, thick overburden and disposal of excess spoil, permanent cessation of operations, roads and railroad loops, soil removal, blasting schedule, permanent sealing of drilled holes, water quality performance standards, reclamation of drainages, sedimentation ponds and other treatment facilities, discharge structures and outflow structures, permanent and temporary impoundments, groundwater monitoring, surface water monitoring, wells and underground operations, redistribution and stockpiling of soil, establishment of vegetation, soil amendments and other management techniques, other revegetation comparison standards, vegetation production, cover, diversity, density, and utility requirements, measurement standards for trees, shrubs, and half-shrubs, postmining land use, alternate reclamation, general performance standards, subsidence controls, disposal of underground development waste, disposal of coal processing waste, information and monthly reports, renewal and transfer of permits, drill holes, roads and other transportation facilities, removal of equipment, test pits, bond release procedures, notice of

intent to prospect, bonding, reassertion of jurisdiction, areas upon which coal mining is prohibited, designation of lands unsuitable, small operator assistance program, certification of blasters, and blaster training courses. Montana also proposes to recodify the Administrative Rules of Montana from ARM 26.4 to ARM 17.24. Montana intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, provide additional safeguards, clarify ambiguities, and improve operational efficiency.

This document gives the times and locations that the Montana 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., [m.d.t.] August 14, 2002. If requested, we will hold a public hearing on the amendment on August 9, 2002. We will accept requests to speak until 4 p.m., [m.d.t.] on July 30, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Guy Padgett at the address listed below.

You may review copies of the Montana 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 Office of Surface Mining Reclamation and Enforcement's (OSM) Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 100 East B Street, Casper, WY 82601-1918, (307) 261-6550, guypadgett@osmre.gov. Neil Harrington, Chief, Industrial and Energy Minerals Bureau, Montana Department of Environmental Quality, 1520 E. Sixth Ave., PO Box 200901, Helena, MT 59620-0901, (406) 444-4964, nharrington@st.mt.us.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261-6550. Internet: guypadgett@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Montana Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations