
SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission published in the Federal Register of November 6, 2002 a Final Rule amending its regulations to update its accounting and financial reporting requirements under its Uniform Systems of Accounts. The effective date is incorrect as published in the Federal Register. In the Federal Register Document 02–26889 published on November 6, 2002 (67 FR 67692) make the following correction: On page 67692, in the second column, correct the EFFECTIVE DATE section to read as follows:

“EFFECTIVE DATE: The rule will become effective December 6, 2002.”

Linwood A. Watson, Jr., Deputy Secretary.
[FR Doc. 02–29571 Filed 11–19–02; 8:45 am]
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DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917
[KY–237–FOR]

Kentucky Regulatory Program

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

ACTION: Final rule; denial of approval of amendment.

SUMMARY: We are not approving a proposed amendment to the Kentucky regulatory program (the “Kentucky program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky proposed to revise its program by creating a new section of KRS Chapter 350 to provide that a mining permit is not required of a landowner if coal extraction is incidental to and a necessary requirement of construction, under 5000 tons, and the coal or proceeds thereof are donated to charitable, governmental, or educational organizations.

EFFECTIVE DATE: November 20, 2002.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859) 260–8400, Internet address: bkovacic@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

II. Submission of the Proposed Amendment

III. OSM’s Findings

IV. Summary and Disposition of Comments

V. OSM’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 Federal Register 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. Submission of the Proposed Amendment

By letter dated April 12, 2002 (Administrative Record No. KY–1529), Kentucky sent us an amendment to its program, under SMCRA (30 U.S.C. 1201 et seq.). Kentucky sent the amendment on its own initiative.

The amendment proposed a new section of the Kentucky Revised Statutes at Chapter 350 and is referenced as Kentucky House Bill 405. In sum, the proposed amendment provides that a mining permit is not required of a landowner if coal extraction on “private land” is incidental to and a necessary requirement of construction, under 5000 tons, and the coal or proceeds thereof are donated to charitable, governmental, or educational organizations. “Private land” is defined as property owned by a not-for-profit organization or by a noncommercial private owner and subject to the construction of improvements. The amendment requires that the landowner seeking the permit exemption notify the cabinet when the coal is first encountered and prior to removal, and requires the cabinet to conduct an inspection and review of site plans, construction contracts, and other relevant information prior to deciding whether to grant the exemption. Finally, the amendment states that the cabinet may require implementation of any best management practices that are necessary to ensure compliance with stormwater discharge limits. The full text of the proposed amendment can be found in the proposed rule notice at 67 FR 38446 (June 4, 2002).

We announced receipt of the proposed amendment in the June 4, 2002 Federal Register (67 FR 38446). 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–1537). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 5, 2002. We received comments from the Kentucky Coal Association, the Mining Safety and Health Administration, the Fish and Wildlife Service, and the Kentucky Resources Council.

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. Based on these findings, we are declining to approve the amendment.

Kentucky’s proposed amendment is inconsistent with and less stringent than SMCRA and less effective than its implementing regulations because it excludes from regulation certain surface coal mining operations specifically regulated under Federal law. Under SMCRA and Federal regulations, all surface coal mining and reclamation operations are subject to regulation unless an exemption applies. SMCRA section 528 and 30 CFR 700.11(a) list such exemptions.

First, SMCRA section 528(2) exempts “the extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction * * *’ ‘Congress’ intent regarding this exemption is clear. As discussed in a March 13, 1979, Federal Register notice, 44 FR 14949, the House/Senate Conference Committee explicitly limited exemptions for incidental coal removal to government-financed construction projects. As originally added by the Senate, the exemption for incidental coal removal was not limited to government-financed construction. The Conference Committee modified the Senate language to ‘limit(s) the exemption to
A person to engage in surface
coal mining incidental to the
development of land for commercial,
residential, or civic use after
development of land for commercial,
residential, or civic use constitutes a
level of coal that Kentucky
s proposed amendment seeks to exempt
without advance planning, bonding, and
reclamation requirements can result in
significant off-site impacts that may not
be remediated. Finally, KRC commented
that the proposed amendment furthers
the potential for “sham” operations
because the exemption would be
granted on the assumption that future
construction would occur.

The second public comment received
was from the Kentucky Coal Association
(KCA). Although KCA urged OSM to
approve the proposed amendment, it did
not provide specific comments or
reasons why the amendment should be
approved. For the reasons set forth in
the above findings, we are not
approving the amendment.

Federal Agency Comments

Under 30 CFR 732.17(h)(1)(ii), we
requested comments on Kentucky
program amendment that relate to air or
water quality standards. None of the revisions that Kentucky
proposed amendment is
consistent with and less effective than this Federal
regulation. Under 30 CFR 732.17(h)(1)(ii), we
required to request comments from the
State Historic Preservation Officer
(SHPO) and the Advisory Council on
Historic Preservation (ACHP). Although KCA urged OSM to
approve the proposed amendment, it did
did not provide specific comments or
reasons why the amendment should be
approved. For the reasons set forth in
the above findings, we are not
approving the amendment.

Federal Agency Comments

Under 30 CFR 732.17(h)(1)(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–1537). We received one comment
from the Fish and Wildlife Service
(FWS) and one from the Mine Safety
and Health Administration (MSHA). In
a letter dated July 9, 2002
(Administrative Record No. KY–1548),
FWS stated that it believed the terms of
the proposed amendment are
appropriate given adequate
implementation of best management
practices to protect water quality. As
discussed in the findings above,
Kentucky’s proposed amendment is
inconsistent with SMCRA and its
implementing regulations. Even given
adequate implementation of best
management practices to protect water
quality, the proposed amendment
would still exceed the Federal
exemption limit of 250 tons. Thus, even
if best management practices are
followed, the amendment cannot be
approved.

Comments from MSHA, submitted in
a letter dated June 17, 2002
(Administrative Record No. KY–1541),
simply stated that MSHA does not have
jurisdiction over incidental coal
removal since the activity would not be
functioning for the purpose of
producing a mineral.

Environmental Protection Agency (EPA)
Concurrence and Comments

Under 30 CFR 732.17(h)(1)(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.).

None of the revisions that Kentucky
proposed to make in this amendment
certain to air or water quality standards.
Therefore, we did not ask EPA to concur
on the amendment.

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 June 12, 2002, we
requested comments on Kentucky’s
amendment (Administrative Record No.
KY–1537), but neither the SHPO nor the
ACHP responded to our request.

V. OSM’s Decision

Based on the above findings, we are
not approving Kentucky’s proposed
amendment. The Federal regulations at
30 CFR Part 917 codifying decisions
concerning the Kentucky program are
being amended to implement this
decision. Consistency of State and
Federal standards is required by
SMCRA.

Effect of OSM’s Decision

Section 503 of SMCRA provides that
a State may not exercise jurisdiction
under SMCRA unless the State program is
approved by the Secretary. Similarly,
30 CFR 732.17(a) requires that any
change of an approved State program be
submitted to OSM for review as a
program amendment. The Federal
regulations at 30 CFR 732.17(g) prohibit
any changes to approved State programs
that are not approved by OSM. In the
oversight of the Kentucky program, we
will recognize only the statutes,
regulations, and other materials we have
approved, together with any consistent
implementing policies, directives, and
other materials. We will require
Kentucky to enforce only approved
provisions.

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 (OMB) 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. Hence, 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; 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: September 17, 2002.

Michael K. Robinson,
Acting 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 917.12 is amended by adding the following paragraph:

§917.12 State regulatory program and proposed program amendment provisions not approved.

* * * * *

(c) The amendment submitted by letter dated April 12, 2002, proposing a new section of the Kentucky Revised Statutes at Chapter 350 and referenced as Kentucky House Bill 405, is hereby not approved, effective November 20, 2002.

[FR Doc. 02–29305 Filed 11–19–02; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52


Approval and Promulgation of Air Quality Implementation Plans for the State of Montana; Revisions to the Administrative Rules of Montana

AGENCY: Environmental Protection Agency (EPA).