

#### IV. Procedural Determinations

##### *Executive Order 12630—Takings*

The revisions made at the initiative of the State have been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the deletions, revisions, and additions by the Alabama Surface Mining Commission to the forms listed in 880-X-1B are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry. The same is true for the revisions to 880-X-6A-.06.

##### *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.*). This determination is based on the fact that the deletions, revisions, and additions by the Alabama Surface Mining Commission to the forms listed in 880-X-1B are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry. The same is true for the revisions to 880-X-6A-.06.

##### *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 on the fact that the deletions, revisions, and additions by the Alabama Surface Mining Commission to the forms listed in 880-X-1B are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry. The same is true for the revisions to 880-X-6A-.06.

##### *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 on the fact that the deletions, revisions, and additions by the Alabama Surface Mining Commission to the forms listed in 880-X-1B are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry. The same is true for the revisions to 880-X-6A-.06.

##### **List of Subjects in 30 CFR Part 901**

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 7, 2002.

**Charles E. Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

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#### **DEPARTMENT OF THE INTERIOR**

#### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 916**

**[KS-023-FOR]**

#### **Kansas Regulatory Program and Abandoned Mine Land Reclamation Plan**

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

**ACTION:** Proposed rule; reopening and extension of public comment period on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of an addition to a previously proposed amendment to the Kansas regulatory program and abandoned mine land reclamation (AMLR) plan (Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The addition concerns

abandoned mine land (AML) agency procedures for reclamation projects receiving less than 50 percent government funding. Kansas intends to revise its program to be consistent with the corresponding Federal regulations.

**DATES:** We will accept written comments on this amendment until 4 p.m., c.s.t., January 31, 2003.

**ADDRESSES:** You should mail or hand deliver written comments to John W. Coleman, Mid-Continent Regional Coordinating Center, at the address listed below.

You may review copies of the Kansas program, the amendment, 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 Mid-Continent Regional Coordinating Center.

John W. Coleman, Mid-Continent Regional Coordinating Center, Office of Surface Mining, 501 Belle Street, Alton, Illinois 62002. Telephone: (618) 463-6460. Internet: [jcoleman@osmre.gov](mailto:jcoleman@osmre.gov).

Kansas Department of Health and Environment, Surface Mining Section, 4033 Parkview Drive, Frontenac, Kansas 66763. Telephone: (316) 231-8540.

**FOR FURTHER INFORMATION CONTACT:** John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463-6460. Internet: [jcoleman@osmre.gov](mailto:jcoleman@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

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

**I. Background on the Kansas 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 Kansas regulatory program on January 21, 1981. You can find background information on the Kansas regulatory program and program amendments, including the Secretary's findings, the disposition of comments, and conditions of approval,

in the January 21, 1981, **Federal Register** (46 FR 5892). You can also find later actions concerning the Kansas regulatory program and program amendments at 30 CFR 916.10, 916.12, 916.15, and 916.16.

The AMLR Program was established by title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary of the Interior approved the Kansas abandoned mine land reclamation plan (Kansas plan) on February 1, 1982. You can find background information on the Kansas plan, including the Secretary's findings, the disposition of comments, and the approval of the Kansas plan in the February 1, 1982, **Federal Register** (47 FR 4513). You can find later actions concerning the Kansas plan and amendments to the plan at 30 CFR 916.20 and 916.25.

**II. Description of the Proposed Amendment**

By e-mail dated July 24, 2002 (Administrative Record No. KS-623), Kansas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Kansas sent the amendment in response to a letter dated August 23, 2000 (Administrative Record No. KS-618), that we sent to Kansas, in accordance with 30 CFR 732.17(c), concerning valid existing rights. At its own initiative, Kansas also proposed to revise other provisions in its regulations by adopting by reference portions of the Federal regulations at 30 CFR Part 700 to End that were revised as of July 1, 2001.

We announced receipt of the amendment in the September 23, 2002, **Federal Register** (67 FR 59484) and invited public comment on its adequacy. The public comment period closed October 23, 2002.

During our review of the amendment, we realized that we did not announce receipt of Kansas' proposed regulation at Kansas Administrative Regulations (K.A.R.) 47-16-12 in the proposed rule published on September 23, 2002.

Therefore, we are reopening the comment period in this proposed rule. Kansas proposed to add the following new regulation concerning AML agency procedures for reclamation projects receiving less than 50 percent government funding.

K.A.R. 47-16-12. AML agency procedures for reclamation projects receiving less than 50 percent government funding. This section only applies if the level of funding for the construction will be less than 50 percent of the total cost because of planned coal extraction.

(a) Consultation with the active coal mining portion of the regulatory authority. In consultation with the active mining portion of the regulatory authority, the surface mining section must make the following determinations:

(1) They must determine the likelihood of the coal being mined under an active coal mining permit. This determination must take into account available information such as:

- (i) Coal reserves from existing mine maps or other sources;
- (ii) Existing environmental conditions;
- (iii) All prior mining activity on or adjacent to the site;
- (iv) Current and historic coal production in the area; and
- (v) Any known or anticipated interest in mining the site.

(2) They must determine the likelihood that nearby or adjacent mining activities might create new environmental problems or adversely affect existing environmental problems at the site.

(3) They must determine the likelihood that reclamation activities at the site might adversely affect nearby or adjacent mining activities.

(b) Concurrence with the active mining portion of the regulatory authority. If, after consulting with the active mining portion of the regulatory authority, it has been decided to proceed with the reclamation project, then the abandoned mine land and active mining portions of the regulatory authority must concur in the following determinations:

(1) They must concur in a determination of the limits on any coal refuse, coal waste, or other coal deposits which can be extracted under K.A.R. 47-6-9.

(2) They must concur in the delineation of the boundaries of the AML project.

(c) Documentation. You must include in the AML case file:

- (1) The determinations made under paragraphs (a) and (b) of this section;
  - (2) The information taken into account in making the determinations; and
  - (3) The names of the parties making the determinations.
- (d) Special requirements. For each project, the surface mining section must:

(1) Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic materials, hydrologic balance, and other aml hazards associated with the project;

(2) Ensure that the reclamation project is conducted in accordance with the provisions of K.A.R. 47-16-1 *et. seq.*;

(3) Develop specific-site reclamation requirements, including performance bonds when appropriate in accordance with state procedures; and

(4) Require the contractor conducting the reclamation to provide, prior to the time reclamation begins, applicable documents that clearly authorize the extraction of coal and payment of royalties.

(e) Limitation. If the reclamation contractor extracts coal beyond the limits of the incidental coal specified in paragraph (b)(1) of this section, the contractor must obtain a permit under 47-401 *et. seq.* and K.A.R. 47-1-1 *et. seq.* for such coal.

### III. Public Comment Procedures

We are reopening the comment period on the Kansas program amendment to provide you an opportunity to reconsider the adequacy of the amendment. Under the provisions of 30 CFR 732.17(h) and 884.15(a), we are requesting comments on whether the amendment satisfies the program approval criteria of 30 CFR 732.15 and 884.14. If we approve the amendment, it will become part of the Kansas program.

#### Written Comments

If you submit written or electronic comments on the proposed rule during the 15-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (*see ADDRESSES*).

#### 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: KS-023-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 Mid-Continent Regional Coordinating Center at (618) 463-6460.

#### 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.

### IV. Procedural Determinations

#### Executive Order 12630—Takings

In this rule, the State is proposing 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 takings 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. The provisions in the rule based on other counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

#### 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. These standards are also not applicable to the actual language of State and tribal abandoned mine land reclamation plans and plan amendments because each plan is drafted and promulgated by a specific State or tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and plan

amendments submitted by a State or tribe are based solely on a determination of whether the submittal meets the requirements of title IV of SMCRA (30 U.S.C. 1231-1243) and 30 CFR part 884 of the Federal regulations.

#### 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. Section 405(d) of SMCRA requires State abandoned mine reclamation programs to be in compliance with the procedures, guidelines, and requirements established under 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)). Also agency decisions on proposed State and tribal abandoned mine land reclamation plans and plan amendments are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department

of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

#### *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 916**

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 15, 2002.

**Charles E. Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

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#### **DEPARTMENT OF THE INTERIOR**

#### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 920**

**[MD-049-FOR]**

#### **Maryland 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 announcing the receipt of a proposed amendment to the Maryland regulatory program (the "Maryland program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Maryland proposes revisions to and additions of rules about the definition of "material damage," the definition of "replacement of water supply," survey of structures and renewable resources lands, subsidence control plans, the general requirements for hydrologic balance, the general requirements for subsidence control, surface owner protection related to subsidence control, and deep mine bonding requirements. Maryland intends to revise its program to be consistent with Federal rules promulgated by OSM as a result of the Energy Policy Act of 1992.

This document gives the times and locations that the Maryland 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. February 18, 2003. If requested, we will hold a public hearing on the amendment on February 10, 2003. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on January 31, 2003.

**ADDRESSES:** You should mail or hand deliver written comments and requests

to speak at the hearing to George Rieger at the address listed below.

You may review copies of the Maryland 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 Oversight and Inspection Office.

Mr. George Rieger, Oversight and Inspection Office, Office of Surface Mining Reclamation and Enforcement, Three Parkway Center, Pittsburgh, PA 15220, 412-937-2153, [grieger@osmre.gov](mailto:grieger@osmre.gov).

C. Edmon Larrimore, Program Administrator, Mining Program, Maryland Department of the Environment, 1800 Washington Boulevard, Baltimore, MD 21230, 410-537-3573.

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Telephone: 412-937-2153. Internet: [grieger@osmre.gov](mailto:grieger@osmre.gov).

#### **SUPPLEMENTARY INFORMATION:**

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

#### **I. Background on the Maryland 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 Maryland program on February 18, 1982. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Maryland program in the February 18, 1982 **Federal Register** (47 FR 7214). You can also find later actions concerning Maryland's program and program amendments at 30 CFR 920.12, 920.15, 920.16, 920.20, and 920.25.

#### **II. Description of the Proposed Amendment**

By letter dated October 22, 2002, Maryland sent us a proposed