

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 917

[KY-239-FOR]

#### Kentucky Abandoned Mine Land Reclamation Plan

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** We are announcing receipt of a proposed amendment to the Kentucky abandoned mine land reclamation plan (Kentucky plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky proposes to revise the Kentucky plan in its entirety to be consistent with the corresponding Federal regulations and SMCRA.

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

**DATES:** We will accept written comments on this amendment until 4 p.m., e.s.t. March 13, 2003. If requested, we will hold a public hearing on the amendment on March 10, 2003. We will accept requests to speak at the hearing until 4 p.m., e.s.t. on February 26, 2003.

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

You may review copies of the Kentucky plan, the 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 Lexington Field Office.

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](mailto: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](mailto:bkovacic@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

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

#### I. Background on the Kentucky Plan

The abandoned mine land (AML) reclamation 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 Kentucky plan on May 18, 1982. You can find background information on the Kentucky plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the May 18, 1982, **Federal Register** (47 FR 21435). You can find later actions concerning the Kentucky plan and amendments to the plan at 30 CFR 917.20 and 917.21.

#### II. Description of the Proposed Amendment

By letter dated April 29, 2002 (Administrative Record No. K-70), Kentucky sent us a proposed amendment to its plan under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky submitted the amendment to propose comprehensive changes to the plan. The formal amendment was preceded by two informal submissions in September 1997, and March 16, 2000 (Administrative Record No. K-67). OSM reviewed the informal submissions and reported findings to Kentucky on March 30, 2001 (Administrative Record No. K-69). It should be noted that Kentucky's formal submission on April 29, 2002, did not identify the specific changes being proposed. We subsequently reviewed the 635 page amendment to determine what revisions were made from the original plan. We completed our review on December 19, 2002. Due to the voluminous nature of the submission, we identified only the major changes in this notice or those that may otherwise be of interest to the public. Any revisions that are not listed concern nonsubstantive wording, organizational, or editorial changes. The full text of the amendment is available for your inspection at the locations listed above under **ADDRESSES**. Kentucky proposes to amend the following sections of the plan. Page numbers pertain to the April 29, 2002, submission.

*Acquisition, Management, and Disposal of Lands (p. 6-9):* the subtitle "Management of Acquired Lands" has been added.

*Organization (p. 10-17):* the subtitle "Environmental Scientist Principal" has been added.

*Coordination with RAMP [Rural Abandoned Mine Land Program], Indian, and Other Reclamation Plans (p. xvi):* "Natural Resources Conservation Service" has been added to clarify the name change from "Soil Conservation Service." This change is reflected throughout the plan.

*Maps of Eligible Lands and Waters (p. xix):* the reference to 30 CFR 884.13(f)(1) has been changed to 30 CFR 884.13(e)(1).

*Problems Occurring on AML Sites (p. xx):* the reference to 30 CFR 884.13(f)(2) has been changed to 30 CFR 884.13(e)(2).

*Relationship to Existing and Planned Land Uses* (p. xx): the reference to 30 CFR 884.13(f)(3) has been changed to 30 CFR 884.13(e)(3).

*Social, Economic, and Environmental Conditions* (p. xx): the reference to 30 CFR 884.13(f)(5) has been changed to 30 CFR 884.13(f)(1), (2), and (3). A reference to Section 19 of the AML Plan has been added after the requirement of a general description of endangered and threatened plants, fish and wildlife, and their habitats.

*Objectives* (pp. 3-1, 3-2): subsections (g), (h), (i), pertaining to noncoal mining, and (j), pertaining to construction of public facilities in communities impacted by coal development, have been deleted. Subsection (f) has been revised to reflect the rules contained in 30 CFR 875.12, pertaining to eligible lands affected by noncoal mining. The last paragraph of the section has been revised to address lower priority sites. This section has also been revised to prohibit the use of AML monies for reclamation of sites designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 and the Comprehensive Environmental Response Compensation and Liability Act of 1980.

*Priority I and II Sites* (p. 3-2): the heading has been revised to include priority II sites.

*Priority III Sites* (p. 3-4): this section has been revised to clarify that problems designated as priority I or II sites may also qualify as priority III problems.

*Environmental Goals* (p. 3-5): this section was added. It states that the Commonwealth of Kentucky (Commonwealth) resources to be protected or enhanced through AML reclamation include, but are not limited to, important wildlife habitats, endangered or threatened plants and animals or their critical habitats, natural areas, wild and scenic rivers, wetlands, floodplains, soil and water, recreational resources, and agricultural productivity.

*Phase II Inventory* (p. 3-6): references to the Abandoned Mine Land Inventory System, and the requirements of 30 CFR 886.23(b), pertaining to reporting of completed AML projects to OSM, have been added.

*Small Operator Goals* (pp. 3-6 to 3-8): this section has been revised to reference the authorizing statute at Kentucky Revised Statutes (KRS) 350.450. Also, it is noted that small operators are now defined as those who are anticipated to mine less than 300,000 tons of coal per year. The principal goal articulated in this section is to maximize the participation of small operators in the bidding for AML

reclamation projects that require some incidental coal removal.

*Marketable Mineral Recovery* (pp. 3-8, 3-9): the next to last paragraph of this section has been revised to allow all contractors, rather than just small operators, to participate in the bidding for AML projects that involve incidental coal removal, although small operators will still receive preference. The change was made because small operators may occasionally lack the expertise, equipment, access, etc., to perform the needed work.

*Bond Forfeiture Projects* (p. 3-9): the heading has been changed from "Supplementation of Eligible Bond Forfeiture Sites" to "Bond Forfeiture Projects." The section was further revised by deleting all but the first paragraph, and by adding a paragraph that states that it is the policy of the Kentucky Division of Abandoned Mine Lands (DAML) that only eligible bond forfeiture sites are covered by the AML plan and that bond forfeiture sites must meet all priority and grant submission requirements that all other AML problem sites meet.

*Water Supply Projects* (p. 3-10): a new section has been added to address the requirements at section 403(b)(1) of SMCRA, which authorizes States and Tribes to use up to 30 percent of their annual AML grants to fund projects for water supply facilities in areas that have suffered coal mining related impacts to drinking water supplies.

*Project Selection* (pp. 4-8 to 4-11): the reference to "supplemental bond forfeiture reclamation" has been deleted. This section has also been revised to reflect the decentralization of the project selection process and the process by which grant application elements are prepared for each project.

*Coordination with RAMP, Indian, and Other Reclamation Programs* (pp. 5-1 to 5-4): all references to the "Soil Conservation Service" and its acronym, "SCS", were replaced with references to the "Natural Resources Conservation Service" or its acronym, "NRCS." On page 5-1, second paragraph, second sentence, the phrase "30 CFR 884.13(f)(5)(v), Flora and Fauna of the Coalfields," was deleted and replaced with the phrase "30 CFR 884.13(f)(3), Endangered and threatened plant, fish and wildlife and their habitat." This change was made because the Federal regulation at 30 CFR 884.13(f)(5)(v) has been repealed.

*Lands for Permanent Facilities* (p. 6-1): this section has been revised to incorporate the language at KRS 350.570(3), which authorizes the Commonwealth to acquire any land adversely affected by past coal mining

practices, if acquisition is necessary for successful reclamation.

*Acquisition of Real Property by Donation* (p. 6-3): subdivision 2(e), which requires itemizations of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered, and subdivision 2(f), which states that a deed of conveyance shall be executed, acknowledged and recorded in the name of the Commonwealth after acceptance of an offer, are being deleted.

*Step-by-Step Procedure for Land Acquisition* (pp. 6-4 through 6-9): names of departments and titles of certain departmental officials have been updated.

*Management of Acquired Lands* (p. 6-9): a new section has been added to comply with the requirements at 30 CFR 884.13(c)(4), which requires a description of policies and procedures regarding land acquisition, management and disposal.

*Disposition of Reclaimed Lands* (p. 6-10): this section has been revised to require that the appraised value of a property be stated in the notice.

*Reclamation on Private Lands* (pp. 7-4 to 7-6): (1) Levy of Lien: this section has been revised to require that the landowner be provided a statement of the increase in market value, an itemized statement of reclamation expenses, and notice that a lien will or will not be filed in accordance with 30 CFR 882.13. (2) Satisfaction of Liens: the reference to "State Abandoned Mine Reclamation Fund" is changed to "Abandoned Mine Reclamation Fund," and Appendix 7-A and Attachment 7-1 have been deleted.

*Rights of Entry* (pp. 8-7 and 8-18): the reference to "Division of Abandoned Lands (DAL)" has been changed here and throughout the document to "Division of Abandoned Mine Lands (DAML)."

*Personnel Staffing Policies* (pp. 11-1 and 11-3): compliance with "Title VII of the Civil Rights Act of 1964 (PL 88-352)" has been added.

*Purchasing and Procurement Systems* (pp. 12-1, 12-4, and 12-6): page 12-1, paragraph 6, is being revised by deleting the reference to Public Law 95-87 (SMCRA) and adding references to Chapter 3 of the AML Plan, pertaining to Small Operator Goals, and to 30 CFR 884.13(c)(1). The subsection pertaining to purchase requisitions is being revised to reflect the current procedure for reviewing and approving requisitions. Specifically, three new paragraphs are added to the beginning of the Purchase Requisition section on page 12-4. These new paragraphs state that project plans are selectively reviewed and revised, if

necessary, by the staff of the Commissioner of the Department for Surface Mining Reclamation and Enforcement (DSMRE) and, if approved are then returned to the DAML, where a purchase requisition is prepared for the Director to review and sign. After they are signed, the plans are sent to the Division of Administrative Services, which reviews the purchase requisition for accuracy and form, and to insure that sufficient funds are available. The following revision is added to the first paragraph on page 12-6: "When an apparent low bidder is identified for any AML reclamation contract, the Division of Abandoned Lands forwards the low bidder's name, federal tax number, social security numbers and other information as required to the Ownership and Control Review section of the Division of Permits of the Kentucky Department of Surface Mining for an Applicant Violator System (AVS) check for permit eligibility, in accordance with 30 CFR 874.16. Before the contract is awarded to the apparent low bidder an AVS confirmation of permit eligibility will be received from the AVS check." Also on page 12-6, the fourth sentence of the first paragraph is revised by deleting the statement that the Commonwealth has the right to "waive all informalities and technicalities of a bid when, in their judgment, the best interest of the Commonwealth of Kentucky may be served." A sentence is then added immediately after the revised fourth sentence. The new sentence states that "[a]ll rejections of bids or waivers will be in accordance with requirements of Office of Management and Budget (OMB) Circular A-102, and applicable State or local law."

*Construction (pp. 12-7 and 12-8):* the subsections, "Monthly Reports for Office of Surface Mining", "Final Report for the Office of Surface Mining" and "Change Orders," have been deleted, as was the phrase, "and change orders," at the end of the first paragraph on page 12-7. The sentence "guidelines pertaining to change orders will be developed by the Division Director as needed" has been inserted as the last sentence of the "Project Inspection" subsection.

*AML Enhancement Rule (p.12-9):* the subsection "AML Enhancement Rule" has been added. In an effort to promote re-mining, Kentucky has incorporated OSM's AML Enhancement Rule at 30 CFR 874.17 by reference. The rule provides guidance and procedures for AML programs when considering an AML project as government-financed construction under 30 CFR part 707. This rule applies only if the level of

funding will be less than 50 percent of the total cost because of planned coal extraction. It will be implemented in conjunction with Kentucky's approved program regulation at 405 KAR 7:030(2)(1)(c).

*Reclamation Agreements (p. 12-10):* this new subsection has been added. It authorizes the DSMRE, through the DAML, to enter into Reclamation Agreements (Agreement) with private coal mining permittees for the reclamation of AML sites adjacent to or near active mining permits. The Agreements will be site-specific, and will allow for excess spoil removal from the permit area and placement of the spoil on the AML site. Guidelines for the Agreements are also provided for use by DAML when assessing the need for entering into an Agreement. These guidelines state that the proposed disposal must be AML eligible, must be inventoried by the State AML program and registered on the National Mine Land Inventory System, and must be of priority III or greater priority status. Other guidelines require the State AML program to develop a reclamation cost estimate, and state that the anticipated total cost to be borne by the company must represent a savings to the AML program. Finally, the area must be causing off-site environmental damage, but be an unlikely candidate for reclamation under the regular (*i.e.* AML funded) State AML program.

*Accounting Systems (p. 13-1):* this section has been revised to update organizational title and office changes.

*Maps of Eligible Lands and Waters (p. 15-1):* the first paragraph is reworded to better clarify AML eligibility by referencing "Section 404 'Eligible Lands and Water' and/or 402(g)(4) of Title IV of Public Law 95-87 and/or KRS 350.560".

*Problems Occurring on Abandoned Mine Land Sites (pp. 16-3, 16-5, 16-9 and 16-12):* on page 16-3, first paragraph (Environmental Damage), line 3, the phrase "including adverse impacts on endangered and threatened species" is added after the phrase "loss of fish and wildlife habitat." Also on page 16-3, in the paragraph entitled "Surface/Groundwater Contamination," the phrase "including adverse impacts on endangered and threatened species" is added after the phrase "aquatic vegetation." On page 16-5, at the end of the paragraph entitled "Erosion," the following sentence is added: "On-site erosion and sediment control techniques will be used wherever practicable and feasible to minimize erosion and retain sediment within the disturbed area or limit the volume of sediment leaving the project site." On

page 16-5, at the end of the paragraph entitled "Reduced Fish and Wildlife Habitat," the following sentence was added: "Unvegetated areas may also cause adverse impacts on endangered and threatened species." On pages 16-6 and 16-7, a new section, entitled "Abandoned Highwalls," was added. This section enumerates and discusses problems generally associated with abandoned highwalls on AML sites. These problems include, but are not limited to, threats to life, health and safety, reduced wildlife habitat, attractive nuisances for children or hikers, and adverse impact on aesthetic, historical, cultural, or recreational resources. The new section also discussed certain reclamation techniques to correct or abate these problems, including highwall reduction by bench reconstruction, re-establishment of wildlife routes by pulling down highwall sections, or screening or covering the highwall with appropriate plant species to enhance wildlife values and reduce aesthetic degradation. On page 16-9, in the paragraph entitled "Limitation of loss of habitat," the sentence has been changed by adding at the end the phrase "and runoff from burned areas may impede or prevent utilization of water resources by aquatic life." Also, a second sentence is added, which states that "[s]uch [forest] fires can have adverse impacts on endangered or threatened species." On page 16-12, at the end of the paragraph entitled "Limitation or loss of fish and wildlife habitat," the following sentence was added: "This [limitation or loss of fish and wildlife habitat] problem is especially serious for those endangered or threatened species, such as federally listed bats, which inhabit caves or mine shafts subject to subsidence."

*Relationship to Existing and Planned Land Use (pp. 17 B1, 17-6, and 17-7):* this section has been revised to recognize the presence of endangered or threatened species during reclamation and land use planning. A sentence has been added on page 17-6, stating that the Big South Fork National River and Recreation Area has been adversely affected by erosion, sedimentation and acid mine drainage from AML sites. On pages 17-6 and 17-7, it is noted that commercial forest land in the Eastern Kentucky Coalfield includes 670,000 acres of the Daniel Boone National Forest.

*Quantities of Land and Water Affected by A.M.L. (p. 18-1):* on page 18-1, at the end of the first paragraph, the following two sentences are being added: "Not all of the acres listed are priority I or II sites. The acreages represent an approximation of the total

mined acres in each coalfield, some of which may be determined to be acceptable in their current state or may require limited efforts to correct remaining problems.”

*Socio-Economic and Cultural Profile of the Coalfields (p. 19-23)*: the first sentence of “The Redbird Purchase Unit” paragraph has been changed to make it clear that the unit is not purely a recreational area.

*Flora and Fauna of the Coalfields (Chapter 21)*: numerous changes have been made to include: references to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C., 4321 *et seq.*) and Executive Orders 11988 and 11990 on page 21-77; a requirement to consult with the Kentucky Department of Fish and Wildlife Resources regarding the existence of federally endangered or threatened species during the NEPA review process on page 21-79; the current title of the “Natural Resources and Environmental Protection Cabinet”; and the incorporation of the NEPA compliance measures into the plan. Thirty-five changes described in the “Errata of the currently approved AML Plan,” pages 21-150 to 21-157, have also been incorporated. These changes are composed mostly of additional references to various species of flora and fauna. The currently approved AML Plan, including the Errata changes, can be viewed at the OSM and DSMRE offices referred to above. Two changes of note are found on page 21-78, first paragraph, fourth sentence and on page 21-79, first paragraph, first sentence, wherein references to “environmental assessment” were replaced with requirements to comply with NEPA.

*Commercially Minable Coal Seams and Projects Methods of Extraction (pp. 22-5, 22-14, 22-24, and 22-26)*: the Figure 22-1, “Preliminary Correlation Chart of Coal Beds and Key Beds of the Pennsylvanian Rocks of Eastern Kentucky,” has been added and the section has been revised to present options in determining remining feasibility, and to eliminate references to Site Score Sheets and matrices to rank AML sites. These references to be deleted are found on page 22-22 of the currently approved AML plan. The sentences inserted to provide options in determining remining feasibility are found on page 22-14 of this amendment, and state that “Kentucky may use different systems to analyze the consideration for probability for remining. In 1980, the Kentucky Geological Survey developed a system of moderate complexity for ranking probability of remining.” On page 22-26, pertaining to non-coal minerals, the

reference to the Site Score Sheet is being deleted, but the potential for non-coal mineral recovery remains a factor to be considered when ranking AML sites. In that same paragraph, the following four sentences are being added: “Extraction of these non-coal minerals in the Commonwealth may take place by any of several methods. Petroleum and natural gas are extracted through the sinking of wells. Clay, rock, asphalt, sand and gravel are commonly extracted through methods of surface mining. Limestone, fluorspar, and oil shale, in addition to methods of surface mining, are also commonly extracted through deep mining.”

### III. Public Comment Procedures

Under the provisions of 30 CFR 884.15(a), we are requesting comments on whether the amendment satisfies the applicable State reclamation plan approval criteria of 30 CFR 884.14. If we approve the amendment, it will become the Kentucky plan.

#### 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: [KY-239-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. on February 26, 2003. 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 regulations.

#### 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 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 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian lands.

*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 abandoned mine reclamation programs. 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 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 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 corresponding 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: January 7, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 03–3365 Filed 2–10–03; 8:45 am]

**BILLING CODE 4310–05–P**

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 934**

**[ND–046–FOR, Amendment No. XXXII]**

**North Dakota 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 North Dakota regulatory program (hereinafter, the “North Dakota program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). North Dakota proposes revisions to its revegetation policy document. North Dakota intends to revise its program to clarify ambiguities and improve operational efficiency.

This document gives the times and locations that the North Dakota 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