

hours, and 4 hours, respectively, during the Taxpayer's taxable year. On Flight 1, there are four passengers, none of whom are specified individuals. On Flight 2, passengers A and B are specified individuals traveling for entertainment purposes and passengers C and D are not specified individuals. Taxpayer treats \$1,200 as compensation to A, and B reimburses Taxpayer \$500. On Flight 3, all four passengers (A, B, E, and F) are specified individuals traveling for entertainment purposes. The Taxpayer treats \$1,300 each as compensation to A, B, E, and F. Taxpayer incurs \$56,000 in expenses for the operation of the aircraft for the taxable year. The aircraft is operated for 56 occupied seat hours for the period (four passengers times 5 hours or 20 occupied seat hours for Flight 1, plus four passengers times 5 hours or 20 occupied seat hours for Flight 2, plus four passengers times 4 hours or 16 occupied seat hours for Flight 3). The cost per occupied seat hour is \$1,000 (\$56,000/56 hours).

(ii) For purposes of determining the amount disallowed (to the extent not treated as compensation or reimbursed), \$5,000 (\$1,000 × 5 hours) each is allocable with respect to A and B for Flight 2, and \$4,000 (\$1,000 × 4 hours) each is allocable with respect to A, B, E, and F for Flight 3.

(iii) For Flight 2, because Taxpayer treats \$1,200 as compensation to A, and B reimburses Taxpayer \$500, Taxpayer may deduct \$1,700 of the cost of Flight 2 allocable to A and B. The deduction for the remaining \$8,300 cost allocable to entertainment provided to A and B on Flight 2 is disallowed (with respect to A, \$5,000 less the \$1,200 treated as compensation, and with respect to B, \$5,000 less the \$500 reimbursed).

(iv) For Flight 3, because Taxpayer treats \$1,300 each as compensation to A, B, E, and F, Taxpayer may deduct \$5,200 of the cost of Flight 3. The deduction for the remaining \$10,800 cost allocable to entertainment provided to A, B, E, and F on Flight 3 is disallowed (\$4,000 less the \$1,300 treated as compensation to each specified individual).

**Example 2.** (i) G, a specified individual, is the sole passenger on an aircraft on a two-hour flight from City A to City B for business purposes. G then travels on a three-hour flight from City B to City C for entertainment purposes, and returns from City C to City A on a four-hour flight. G's flights have resulted in nine occupied seat hours (two for the first segment, plus three for the second segment, plus four for the third segment). If G had returned directly to City A from City B, the flights would have resulted in four occupied seat hours.

(ii) Under paragraph (e)(2)(iii) of this section, five occupied seat hours are allocable with respect to G's entertainment (nine total occupied seat hours minus the four occupied seat miles that would have resulted if the travel had been a roundtrip business trip without the entertainment segment). If Taxpayer's cost per occupied seat hour for the year is \$1,000, \$5,000 is allocated with respect to G's entertainment use of the aircraft (\$1,000 × five occupied seat hours). The amount disallowed is \$5,000 minus any amount the Taxpayer treats as compensation to G or that G reimburses Taxpayer.

(3) *Flight-by-flight method*—(i) *In general.* The flight-by-flight method determines the amount of expenses allocated to a particular entertainment flight of a specified individual on a flight-by-flight basis by allocating expenses to individual flights and then to a specified individual traveling for entertainment purposes on that flight.

(ii) *Allocation of expenses.* A taxpayer using the flight-by-flight method must aggregate all expenses (as defined in paragraph (d)(1) of this section) for the taxable year for the aircraft or group of aircraft (as determined under paragraph (d)(4) of this section), as applicable, and divide the total amount of expenses by the number of flight hours or miles for the taxable year for that aircraft or group of aircraft, as applicable, to determine the cost per hour or mile. Expenses are allocated to each flight by multiplying the number of miles or hours for the flight by the cost per hour or mile. The expenses for the flight are then allocated to the passengers on the flight per capita. Thus, if three of five passengers are traveling for business and two passengers are specified individuals traveling for entertainment purposes, and the total expense allocated to the flight is \$10,000, the expense allocable to each specified individual is \$2,000.

(f) *Special rules*—(1) *Determination of basis.* If an amount disallowed is allocable to depreciation under paragraph (f)(2) of this section, the rules of § 1.274-7 apply. In that case, the basis of an aircraft is not reduced for the amount of depreciation disallowed under this section.

(2) *Pro rata disallowance.* The expense disallowance provisions of this section are applied on a pro rata basis to all of the expenses disallowed by this section.

(3) *Deadhead flights.* (i) For purposes of this section, an aircraft returning without passengers after discharging passengers or flying without passengers to pick up passengers (deadheading) is treated as having the same number and character of passengers as the leg of the trip on which passengers are aboard for purposes of the allocation of expenses under paragraphs (e)(2) or (e)(3) of this section. For example, when an aircraft travels from point A to point B and then back to point A, and one of the legs is a deadhead flight, for determination of disallowed expenses, the aircraft is treated as having made both legs of the trip with the same passengers aboard for the same purposes.

(ii) When a deadhead flight does not occur within a roundtrip flight, but occurs between two unrelated flights involving more than two destinations (such as an occupied flight from point

A to point B, followed by a deadhead flight from point B to point C, and then an occupied flight from point C to point A), the allocation of passengers and expenses to the deadhead flight occurring between the two occupied trips is based on the number of passengers on board for the two occupied legs of the flight, the character of the passengers on board (entertainment or nonentertainment purpose) and the length in hours or miles of the two occupied legs of the flight.

(g) *Effective/applicability date.* This section applies to taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

**Kevin M. Brown,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. E7-11445 Filed 6-14-07; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 917

[KY-251-FOR]

#### Kentucky Abandoned Mine Land Reclamation (AMLR) Plan

**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 receipt of a proposed amendment to the Kentucky Abandoned Mine Land Reclamation (AMLR) Plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment makes several revisions to Kentucky's AMLR Plan and is intended to update and improve the effectiveness of the AMLR plan. Kentucky submitted the amendment in response to the passage of the Surface Mining Control and Reclamation Act Amendments of 2006. This document gives the times and locations that the Kentucky program and this submittal are available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments until 4 p.m., e.s.t., July 16, 2007. If requested, we will hold a public

hearing on July 10, 2007. We will accept requests to speak until 4 p.m., e.s.t., on July 2, 2007.

**ADDRESSES:** You may submit comments, identified by "KY-251-FOR/Administrative Record No. K-74" by any of the following methods:

- *E-mail:* [bkovacic@osmre.gov](mailto:bkovacic@osmre.gov).
- *Mail/Hand Delivery:* William J.

Kovacic, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (859) 260-8400.

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency docket number "KY-251-FOR/Administrative Record No. K-74" for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" section in this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

*Docket:* You may review copies of the Kentucky program, this submission, a listing of any scheduled public hearings, and all written comments received in response to this document at OSM's Lexington Field Office at the address listed above during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the submission by contacting OSM's Lexington Field Office. In addition, you may receive a copy of the submission during regular business hours at the following location: Department for Natural Resources, 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 Program
- II. Description of the Submission
- III. Public Comment Procedures
- IV. Procedural Determinations

#### **I. Background on the Kentucky Program**

The Abandoned Mine Land (AML) Reclamation Program was established by Title IV of SMCRA (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 active coal mine 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 (Secretary) 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 approved the Kentucky AMLR Plan on May 18, 1982. You can find background information on the 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 AMLR Plan and amendments to the plan at 30 CFR 917.20 and 917.21.

#### **II. Description of the Submission**

By letter dated April 23, 2007, Kentucky sent us a proposed amendment to its AMLR Plan under SMCRA (30 U.S.C. 1201 *et seq.*) at its own initiative ([KY-251-FOR], Administrative Record No. K-74). With the passage of the Tax Relief and Health Care Act of 2006, Public Law 109-432 containing amendments to SMCRA, the Kentucky General Assembly enacted corresponding amendments to the Kentucky Revised Statutes at Chapter 350. The full text of the program amendment is available for you to read at the location listed above under **ADDRESSES**. A summary of the proposed changes follows.

Kentucky enacted Senate Bill 187 on February 21, 2007, to create a new section of the Kentucky Revised Statutes (KRS) Chapter 350 to allow the Environmental and Public Protection Cabinet (Cabinet) to do the following: expend for reclamation projects which are of a lower priority, if done in conjunction with a project assigned a higher priority; amend KRS 350.550 to delete use of Abandoned Mine Land funds for studies conducted by state agencies; amend KRS 350.555 to allow for expenditure on a reclamation project located adjacent to one already assigned a priority by the cabinet; delete research and development, work on public facilities, and development of publicly owned lands as a priority; amend KRS 350.560 to delete restriction on the use of funds allocated to the Commonwealth by the Secretary of the Interior; amend KRS 350.575 to prohibit a lien filed against a property owner who did not consent to mining operations requiring reclamation; amend KRS 350.597 to retain up to 30% of the funds allocated to Kentucky in a special trust fund; and

to include the 2006 amendments to the Surface Mining Reclamation and Control Act in the citation.

#### **III. Public Comment Procedures**

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Kentucky AMLR Plan. We cannot ensure that comments received after the close of the comment period (see **DATES**) or at locations other than those listed above (see **ADDRESSES**) will be considered or included in the Administrative Record.

##### *Written Comments*

Send your written 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.

##### *Electronic Comments*

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: KY-251-FOR/Administrative Record No. KY-74" 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 July 2, 2007. 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 the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a 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 submission, 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, to the extent allowable by law, 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 since each such 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 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 Tribes.

##### *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 a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

##### *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 that is the subject of this rule is based on 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, geographic regions, or Federal, State or local governmental agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

##### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector

of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

#### List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 4, 2007.

Michael K. Robinson,

Acting Regional Director.

[FR Doc. E7-11586 Filed 6-14-07; 8:45 am]

BILLING CODE 4310-05-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 285

[DoD-2007-OS-0041]

[RIN 0790-AI21]

#### DoD Freedom of Information Act (FOIA) Program

AGENCY: Department of Defense.

ACTION: Proposed rule.

**SUMMARY:** The Department of Defense is proposing to update current policies and procedures to reflect the DoD FOIA Program as prescribed by Executive Order 13392. The proposed changes will ensure appropriate agency disclosure of information, and offer consistency with the with the goals of section 552 of title 5, United States Code.

**DATES:** Comment must be received on or before August 14, 2007. Do not submit comments directly to the point of contact or mail your comments to any address other than what is shown below. Doing so will delay the posting of the submission.

**ADDRESSES:** You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submission from members of the public

is to make these submissions available for public viewing on the Internet at <http://regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Hogan (703) 696-4699.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 13132, "Federalism"

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

##### Executive Order 12630, "Government Actions and Interference With Constitutionally Protected Property Rights"

It has been certified that this rule does not:

- (1) Place a restriction on a use of private property;
- (2) Involve a permitting process or any other decision-making process that will interfere with, or otherwise prohibit, the use of private property; or
- (3) Regulate private property use for the protection of public health or safety.

##### Executive Order 12866, "Regulatory Planning and Review"

It has been certified that this rule does not:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribunal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

##### Executive Order 13045, "Protection of Children From Environmental Health Risks and Safety Risks"

It has been certified that this rule does not present any environmental health or safety effects on children.

##### Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4)

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribunal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

##### National Environmental Policy Act

It has been certified that this rule does not significantly affect the quality of the human environment.

##### Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

##### Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that this rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. The reporting and recordkeeping requirements have been submitted to OMB for review.

##### List of Subjects in 32 CFR Part 285

Freedom of information.

Accordingly, 32 CFR part 285 is proposed to be revised to read as follows.

#### PART 285—DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

Sec.

- 285.1 Purpose.
- 285.2 Applicability and scope.
- 285.3 Policy.
- 285.4 Responsibilities.
- 285.5 Information requirements.

Authority: 5 U.S.C. 552.

##### § 285.1 Purpose.

This part:

- (a) Update policies and responsibilities for implementing the DoD FOIA Program in accordance with 5 U.S.C. 552 (commonly known as the "FOIA").
- (b) Continues to authorize 32 CFR part 286 to implement the FOIA Program.
- (c) Implements E.O. 13392 within the Department of Defense.
- (d) Continues to delegate authorities and responsibilities for the effective administration of the FOIA Program consistent with DoD Directive 5105.53.<sup>1</sup>

##### § 285.2 Applicability and scope.

This part applies to:

<sup>1</sup> Copies of DoD Directives, Instructions, and Publications may be obtained at <http://www.dtic.mil/whs/directives/>.