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(2) Airworthy Product: Use only FAA-approved corrective actions. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent) if that State of Design has an appropriate bilateral agreement with the United States. You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

#### Related Information

(i) Mandatory Continuing Airworthiness Information (MCAI) Transport Canada Airworthiness Directive CF-2007-02R1, dated August 23, 2007, contains related information.

Issued in Fort Worth, Texas, on October 11, 2007.

**David A. Downey,**

Manager, Rotorcraft Directorate, Aircraft Certification Service.

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 917

[KY-251-FOR]

#### Kentucky Regulatory Program

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are announcing the approval of an 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 Tax Relief and Health Care Act of 2006 (SMCRA amendments of 2006).

**EFFECTIVE DATE:** October 22, 2007.

**FOR FURTHER INFORMATION CONTACT:** Joe Blackburn, Acting Field Office Director,

Telephone: (859) 260-8400. Telefax number: (859) 260-8410.

- I. Background on the Kentucky Abandoned Mine Land Reclamation Plan
- II. Submission of the Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
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#### I. Background on the Kentucky Abandoned Mine Land Reclamation Plan

The Kentucky Abandoned Mine Land (AML) Reclamation Plan 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 ton of coal mined 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. Submission of the Amendment

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, Pub. L. 109-432 which included amendments to SMCRA, the Kentucky General Assembly enacted corresponding amendments to the Kentucky Revised Statutes at Chapter 350. It is these statutory changes that Kentucky has submitted as an amendment to its AMLR Plan.

Typically, States do not request that OSM accept changes to AML statutes or regulations as amendments to AMLR Plan, which is a narrative document that usually is not in the form of a statute or regulation. However, there is no provision in SMCRA or the Federal

regulations governing submission and approval of AMLR Plans and amendments thereto that prohibits a State from including statutes or regulations within its AMLR Plan. Therefore, when we approve a change to a statutory provision in this rulemaking, we mean that we are approving that provision as an amendment to the AMLR Plan. However, for the sake of clarity and ease of reference, we recommend that Kentucky submit changes to its actual AMLR Plan narrative document that are consistent with these statutory amendments. The full text of the 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 AML 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; and to amend KRS 350.597 to retain up to 30% of the funds allocated to Kentucky in a special trust fund.

#### III. OSM's Findings

Following are the findings we made concerning the amendment. OSM's standard for comparison of State AMLR amendments with SMCRA and the Federal regulations is found in Directive STP-1, Appendix 11. This policy provides that "in accordance with 30 CFR 884.14(a), the proposed plan must meet all applicable requirements of the Federal statute and rules. That is, a State's statutes, rules, policy statements, procedures, and similar materials must compare, altogether, with applicable requirements of the Federal statute and rules, to ensure that the State's plan, as a whole, meets all Federal requirements." In addition, any amendments to AMLR plans must be approved in accordance with the

procedures set out in 30 CFR 884.14. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes. Kentucky's proposed changes occur at KRS Chapter 350.

*KRS 350 New Section 1.* Kentucky is authorizing the Cabinet to use monies available in grants made annually to the Commonwealth for the reclamation of prioritized eligible land and water. Before the expenditures can occur, the reclamation must be done in conjunction with the expenditure of funds for reclamation projects as prioritized in KRS Chapter 350, Section 3, regardless of when the higher priority project was initially funded.

The new proposed Section 1 is no less stringent than the SMCRA amendments of 2006 that modified sections 403(a)(1)(B) and (a)(2)(B), 30 U.S.C. 1233(a)(1)(B) and (a)(2)(B). Therefore, the new Section 1 is approved.

*KRS 350.550 Section 2(4).* Subsection (d) is deleted which allows monies in the Abandoned Mine Reclamation Fund (Fund) to be used for studies by State agencies conducted for purposes of the AML program. Subsequent subsections are relettered for consistency. The deletion is no less stringent than the deletion of the same provision at Section 401(c)(6) of SMCRA, 30 U.S.C. 1231(c)(6), resulting from the SMCRA amendments of 2006. Therefore, the deletion of subsection (d) is approved.

*KRS 350.555 Section 3.* This Section lists the priorities for expenditures of monies from the Fund. Subsections (1) and (2), which specify priorities 1 and 2 respectively, are amended by adding a new (b) the restoration of land and water resources and the environment that have been degraded by the adverse effects of coal mining practices and situated adjacent to a site that has been or will be remediated under this subsection. Priority (1), as revised, is the protection of public health, safety, and property from extreme danger of adverse effects of coal mining practices, and the new provisions at (b). Priority (2), as revised, is the protection of public health and safety from the adverse effects of coal mining practices, and the new provisions at (b). Subsections (4) through (6) are deleted. They represent priorities 4 through 6 which include research and demonstration projects; protection, repair, replacement, construction, or enhancement of public facilities adversely affected by coal mining practices; and development of publicly-owned land adversely affected by coal mining practices.

We are approving the revisions Kentucky proposes because they are substantively identical to, and therefore

no less stringent than the portion of the SMCRA amendments of 2006 that modified Sections 403(a)(1)(B) and (2)(B) of SMCRA, 30 U.S.C. 1233(a)(1)(B) and (a)(2)(B).

The deletions of subsections (4) through (6) are identical to the deletions of subsections 403(a)(4), (a)(5) and (a)(6) of SMCRA, 30 U.S.C. 1233(a)(4), (a)(5) and (a)(6). These Federal deletions were included in the SMCRA amendments of 2006. Therefore, the deletions of subsections (4) through (6) of Section 3 of KRS 350.555 are approved.

*350.560 Section 4(4).* The 30 percent restriction is removed on the amount of funds allocated to Kentucky through annual grants that can be used to protect, repair, replace, construct, or enhance water supply facilities adversely affected by coal mining practices.

The deletion of the 30 percent restriction is no less stringent than the deletion of the same provision at section 403(b)(1) of SMCRA, 30 U.S.C. 1233(b)(1), resulting from the SMCRA amendments of 2006. Therefore, the deletion is approved.

*KRS 350.575(1).* The lien provisions are revised to prohibit the filing of a lien against the property of any person who neither consented to, participated in, or exercised control over the mining operation that necessitated the reclamation. The limitation of the lien prohibition to property owners who owned the surface prior to May 2, 1977, is removed.

The deletion of the lien prohibition limitation is no less stringent than the deletion of the same provision at Section 408(a) of SMCRA, 30 U.S.C. 1238(a), resulting from the SMCRA amendments of 2006. Therefore, the deletion is approved.

*KRS 350.597.* Subsection (1) is revised to increase the trust fund receipt and retention percentage from the total annual grant from 10 percent to 30 percent pursuant to the SMCRA amendments of 2006. Subsection (2) is revised to authorize expenditures from the trust fund for only acid mine drainage abatement and treatment per Section 402(g)(6). Authorization for expenditures for the priorities specified in KRS 350.555 after September 30, 1995, is removed.

We are approving the revisions Kentucky proposes because they limit the set aside to a maximum of 30 percent rather than mandate that 30 percent be set aside. In doing so, we note that Kentucky will be receiving funds from the U.S. Treasury under Section 411(h) in addition to the funds identified in Section 402(g)(6)(A) of SMCRA, 30 U.S.C. 1232(g)(6)(A). The

question of whether U.S. Treasury funds under Section 411(h) may be used for the 30 percent set aside is being addressed separately and our approval of these revisions should not be viewed as addressing that issue one way or the other. Therefore, there is the possibility that Kentucky will not be authorized to set aside a full 30 percent of total funds received each year.

#### IV. Summary and Disposition of Comments

##### Public Comments

We announced receipt of the proposed amendment in the June 15, 2007, **Federal Register** (72 FR 33177), and in the same document invited public comment and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on July 16, 2007. We received one comment from the Kentucky Resources Council, Inc. who had no objection to approval of the proposed amendment. Because no one requested an opportunity to speak, a hearing was not held.

##### Federal Agency Comments

According to 30 CFR 884.14(a)(2), on June 26, 2007, we solicited comments on this AMLR Plan amendment from various Federal agencies with an actual or potential interest in the Kentucky AMLR Plan (Administrative Record No. KY-74). We received no comments.

##### State Agency Comments

On June 26, 2007, we also solicited comments from the Kentucky State Historic Preservation Office (Administrative Record No. KY-74) on the amendment submitted on April 23, 2007. Kentucky's State Historic Preservation Office responded stating that as the amendment has no bearing on the treatment of archaeological sites or historic structures, it has no comment.

#### V. OSM's Decision

Based on the above findings, we are approving the Kentucky AMLR Plan amendment as submitted by Kentucky on April 23, 2007.

To implement this decision, we are amending the Federal regulations at 30 CFR part 917 which codify decisions concerning the Kentucky AMLR Plan. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately.

## 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 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 or Tribal abandoned mine land reclamation plans and plan amendments because each program 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 405(d) of SMCRA requires that State abandoned mine land reclamation programs be in compliance with the procedures, guidelines, and requirements established under 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 rule does not involve or affect Indian Tribes in any way.

### *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*

No environmental impact statement is required for this rule because agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*) 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 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: August 27, 2007.

**Hugh V. Weaver,**

*Acting Regional Director, Appalachian Region.*

■ For the reasons set out in the preamble, 30 CFR part 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 917.21 is amended by adding paragraph (e) to read as follows:

#### **§ 917.21 Approval of Kentucky abandoned mine land reclamation plan amendments.**

\* \* \* \* \*

(e) The Kentucky AMLR Plan amendment submitted on April 23, 2007, and consisting of revisions to KRS Chapter 350 that correspond to changes to the Federal Surface Mining Control and Reclamation Act of 1977 resulting from the Relief and Health Care Act of 2006, is approved.

[FR Doc. E7–20700 Filed 10–19–07; 8:45 am]

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