DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 28 and 44

[Docket No. TTB–2009–0005; Notice No. 101; Re: Notice No. 100]

RIN 1513–AB77

Drawback of Internal Revenue Taxes; Extension of Comment Period

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: In response to a request filed on behalf of an industry association, the Alcohol and Tobacco Tax and Trade Bureau is extending the comment period for Notice No. 100, a notice of proposed rulemaking published in the Federal Register on October 15, 2009, for an additional 30 days. The proposed rule sought comments on conforming amendments to our regulations to reflect proposed Customs and Border Protection regulations intended to clarify the relationship between tax payment under the Internal Revenue Code of 1986 and drawback of tax under the Tariff Act of 1930.

DATES: The comment period for the proposed rule published on October 15, 2009 (74 FR 52937), is extended. Written comments on Notice No. 100 must now be received on or before January 14, 2010.

ADDRESSES: You may send comments on Notice No. 100 to one of the following addresses:

- http://www.regulations.gov: Use the comment form for this notice on the Federal e-rulemaking portal, Regulations.gov, to submit comments via the Internet;
- Mail: Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412;

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, Notice No. 100, and the comments we receive on Notice No. 100 within Docket No. TTB–2009–0005 at http://www.regulations.gov. A direct link to this docket is posted on the TTB Web site at http://www.ttb.gov/regulations_laws/all_rules_emark.shtml under Notice No. 100. You also may view copies of those documents by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment.


SUPPLEMENTARY INFORMATION: In Notice No. 100, published in the Federal Register on October 15, 2009 (74 FR 52937), the Alcohol and Tobacco Tax and Trade Bureau (TTB) proposed to amend its regulations to clarify the relationship between tax payment under the Internal Revenue Code of 1986 and drawback of tax under the Tariff Act of 1930. The proposal provides conforming amendments to reflect proposed Customs and Border Protection (CBP) regulations stating that domestic merchandise on which no tax is paid under the Internal Revenue Code may not be substituted for imported merchandise for purposes of claims for drawback of tax under the customs laws and regulations. The proposed CBP amendments to the customs regulations in 19 CFR parts 113 and 191 also were published in the Federal Register on October 15, 2009, as Docket No. USCBP–2009–0021 (74 FR 52928).

On November 8, 2009, TTB received a letter from the American Petroleum Institute (API) requesting a 30-day extension of the comment period for Notice No. 100. The API letter cited the complexity of the proposed regulatory changes since the proposal involved both TTB and CBP regulations, the complexity of the drawback issue, which involves Constitutional issues and various judicial decisions, and the “potential far reaching implication” of the notice “to a wide range of industries and parties.” API also noted that it was submitting a similar request to CBP regarding its October 15, 2009, proposed rule.

Given the factors cited above, TTB agrees that the comment period for Notice No. 100 should be extended by an additional 30 days. Therefore, comments on Notice No. 100 are now due on January 14, 2010.

Drafting Information

Michael Hoover of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.


John J. Manfreda,
Administrator.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917


Kentucky Regulatory Program

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

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

SUMMARY: We are announcing receipt of an amendment to the Kentucky regulatory program (hereinafter, the “Kentucky program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky submitted revisions to its administrative regulations pertaining to the disposal of coal mine waste. Kentucky intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA.

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., December 28, 2009. If requested, we will hold a public hearing on December 22, 2009. We will accept requests to speak until 4 p.m., e.s.t., on December 14, 2009.

ADDRESSES: You may submit comments, identified by “KY–252–FOR/Docket Number OSM–2009–0011” by either of the following two methods:


SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Description of the Amendment
III. Public Comment Procedures

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its 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 Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary’s findings, the disposition of comments and conditions of approval of the Kentucky program in the May 18, 1982 Federal Register (47 FR 21434).

II. Description of the Submission

By electronic mail on March 11, 2009, Kentucky sent us an informal amendment pertaining to coal mine waste disposal (Docket: OSM–2009–0011). We reviewed the informal submittal and by electronic mail dated June 9, 2009, we informed Kentucky that subject to formal review and public comment the revisions proposed at 405 KAR 16:140 and 18:140 were consistent with the counterpart Federal regulations at 30 CFR 816.81(a) and 817.81(a) (OSM–2009–0011). By letter dated September 14, 2009, Kentucky sent us a formal amendment to its program pertaining to coal mine waste disposal under SMCRA (30 U.S.C. 1201 et seq.) (OSM–2009–0011). Kentucky was responding to OSM’s 30 CFR 732.17(d) letter dated March 7, 1977 (OSM–2009–0011). In that letter, OSM referred to its revised regulations at 30 CFR 816/817.81 that required that coal mine waste be “hauled or conveyed” in a controlled manner instead of “placed.” 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.

405 KAR 16:140 Disposal of Coal Mine Waste (surface mining) and 405 KAR 18:140 Disposal of Coal Mine Waste (underground mining). Kentucky proposes to make substantially identical changes to both administrative regulations. The revised regulations reference EQ2009–0538, effective June 12, 2009, which abolishes the Environmental and Public Protection Cabinet and establishes the new Energy and Environment Cabinet. Throughout the regulations, the term “coal processing waste” is replaced by “coal mine waste.” In Section 1, the phrase “transported and placed,” as it refers to coal mine waste, is replaced by “hauled and conveyed in a controlled (manner).” In Section 2, the term “registered professional engineer” is replaced by “professional engineer.” Other minor wording changes are made throughout the regulations.

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 program.
Public Meeting

If there is only limited interest in participating in a public hearing, 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 regulatory programs and program amendments because 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 State submittal, which is the subject of this rule, is based upon SMCRA requirements 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 major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

**Paperwork Reduction Act**

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

**Regulatory Flexibility Act**

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal, which is the subject of this rule, is based 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.


**Thomas D. Shope,**

Regional Director, Appalachian Region.

[FR Doc. E9–28368 Filed 11–25–09; 8:45 am]

BILLING CODE 4310–05–P