

September 30, 2009) with the exception of Standard 10.3.2.

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## 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](http://www.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.
- *Hand Delivery/Courier in Lieu of Mail*: Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20005.

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\\_rulemaking.shtml](http://www.ttb.gov/regulations_laws/all_rulemaking.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.

#### FOR FURTHER INFORMATION CONTACT:

Gerry Isenberg, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20220; telephone 202-453-2097.

**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.

Signed: November 23, 2009.

**John J. Manfreda,**  
*Administrator.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 917

[KY-252-FOR; OSM-2009-0011]

#### 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:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. The proposed rule has been assigned Docket ID: OSM-2009-0011. If you would like to submit comments through the Federal eRulemaking Portal, go to <http://www.regulations.gov> and follow the instructions.

*Mail/Hand Delivery/Courier:* Joseph L. Blackburn, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section in this document.

*Docket:* In addition to obtaining copies of documents at <http://www.regulations.gov>, you may also obtain information 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.

Joseph L. Blackburn, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503; (859) 260-3900.

Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601; *Telephone:* (502) 564-6940.

**FOR FURTHER INFORMATION CONTACT:** Joseph L. Blackburn, Telephone: (859) 260-3900. E-mail: [jblackburn@osmre.gov](mailto:jblackburn@osmre.gov).

#### **SUPPLEMENTARY INFORMATION:**

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

#### **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).

You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

#### **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 May 27, 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 "hailed 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 EO2009-0538, 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 "hailed 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.

#### *Written or Electronic Comments*

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications. 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 included in the docket for this rulemaking and considered.

#### *Public Availability of Comments*

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments.

#### *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 December 14, 2009. If you are disabled and need reasonable 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, that if possible, 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 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 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 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.

Dated: October 15, 2009.

**Thomas D. Shope,**

*Regional Director, Appalachian Region.*

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