

Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

#### Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 23, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03-10513 Filed 4-28-03; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 917

[KY-242-FOR]

#### 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 proposed amendment.

**SUMMARY:** We are announcing the proposed removal of a required amendment to the Kentucky regulatory program (the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The required amendment is found at 30 CFR 917.16(g). This document gives the times and locations that the Kentucky 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 p.m., e.s.t. May 29, 2003. If requested, we will hold a public hearing on the amendment on May 27, 2003. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on May 14, 2003.

**ADDRESSES:** You should mail or hand deliver written comments and requests

to speak at the hearing to Mr. William J. Kovacic at the address listed below.

You may review copies of the Kentucky program, 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.

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 for 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 Program
- II. Description of the Proposed 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 the Act \* \* \* and rules and regulations consistent with regulations issued by the Secretary pursuant to the 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 Required Amendment

Kentucky Administrative Regulations (KAR) currently provide at 405 KAR 16:210 and 18:220 Section 1(1)(a) and (b) the following:

Prior to the final release of performance bond, affected areas shall be restored in a timely manner:

(a) To conditions capable of supporting the uses which the areas were capable of supporting before any mining; or

(b) To conditions capable of supporting higher or better alternative uses as approved by the cabinet [Natural Resources and Environmental Protection Cabinet] under Section 4 of this administrative regulation.

These provisions are substantively identical to their Federal counterparts at 30 CFR 816.133(a) and 817.133(a). The State regulations at Section 2 state, "the premining use of land to which the postmining land use is compared shall be those uses which the land previously supported if the land has not been previously mined." In 1992, when Kentucky submitted Section 2 as a program amendment, OSM stated, "[t]his rule, while similar to the Federal rule at 30 CFR 816.133(b), fails to provide that a postmining land use must be compared to premined land which was properly managed, as set forth in the cited Federal rule." 57 FR 45295, 45306 (October 1, 1992). Thus, in 1992, OSM found the Kentucky rules less effective to the extent Kentucky failed to require a comparison to a premining land use that was properly managed and required an amendment. The required amendment at 30 CFR 917.16(g) requires Kentucky to submit proposed revisions to its regulations to provide that "in determining premining uses of land not previously mined, the land must have been properly managed."

OSM is proposing to remove the required amendment because we believe that, with respect to this issue, the Kentucky program as it currently exists is no less effective than the Federal regulations.

The Kentucky program, like the Federal regulations at 30 CFR 816.133(a) and 817.133(a), requires that all disturbed areas be restored in a timely manner to conditions that are capable of supporting either the (1) uses that they were capable of supporting before any mining or (2) any approved higher or better uses. (The Kentucky program also extends this requirement to all affected areas and does not limit it to disturbed areas.) In general, compliance with this requirement rests on a determination that the site has been restored to a condition capable of supporting the approved postmining land use. This determination consists primarily of two components: Site configuration, which is addressed by the backfilling and grading regulations and is not dependent upon premining land use or management, and revegetation success.

As authorized by 30 CFR 816.116 and 816.117, the Kentucky program (*see* 405 KAR 16:200/18:200 Section 5) relies primarily upon technical standards (ground cover; productivity standards; and tree and shrub stocking standards) to evaluate revegetation success for the various postmining land use categories. These technical standards for ground cover, stocking, and production are not site specific and apply regardless of how the land was used or managed before mining. The technical standards are based on accepted management practices for the land use in question.

Further, Kentucky's rules allow the use of reference areas to evaluate revegetation success. These references must be on unmined areas and as close to the permit area as possible. Under 405 KAR 16:200/18:200 Section 7, reference areas must be managed in accordance with the regional norm for the approved postmining land use. Regional norms would not be considered improper management practices for purposes of determining whether the land has been restored to its premining capability.

For these reasons, we believe that, with respect to the provision at issue in 30 CFR 917.16(g), Kentucky's program is no less stringent than SMCRA and no less effective than the Federal regulations implementing SMCRA. Therefore, we are proposing to remove the required amendment at 30 CFR 917.16(g).

### III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the removal of the required amendment satisfies the applicable program approval criteria of 30 CFR 732.15.

#### 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: SATS No. KY-242-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 May 14, 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 regulation.

#### *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 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. This proposed rule applies only to the Kentucky program and therefore does not affect tribal programs.

*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 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 governmental 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: March 20, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 03-10533 Filed 4-28-03; 8:45 am]

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[CGD05-02-099]

RIN 1625-AA11 (Formerly RIN 2115-AE84)

**Regulated Navigation Area in Hampton Roads, VA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Coast Guard proposes to revise the Regulated Navigation Area in Hampton Roads, Virginia, by imposing vessel reporting requirements and speed limit restrictions in certain areas of the port. These measures are necessary because of the unique physical characteristics and resources contained in the port. These regulations will enhance the safety and security of vessels and property in the Hampton Roads port complex while minimizing, to the extent possible, the impact on commerce and legitimate waterway use. **DATES:** Comments and related material must reach the Coast Guard on or before May 29, 2003.

**ADDRESSES:** You may mail comments and related material to the Marine Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704. The Marine Safety Division of the Fifth Coast Guard District maintains the public docket for this rulemaking. The docket, as well as documents indicated in this preamble as being available in the docket, will be available for inspection or copying at the Coast Guard Fifth District, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Lewis Fisher, Jr., Marine Safety Division, Fifth Coast Guard District, (757) 398-6387, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05-02-099), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches,