

gauging station, then west to the 400 foot contour line on the west side of Dry Creek, then northwesterly along the 400 foot contour line to the point where the contour intersects the north line of Section 10. T6N, R5W, MDM, immediately adjacent to Dry Creek on the Rutherford, CA map;

(13) Then northwesterly along Dry Creek approximately 6,500 feet to BM503, then northeasterly approximately 3,000 feet to the peak denoted as 1478, then southeasterly approximately 2,300 feet to the beginning of the creek known locally as Hopper Creek, then southeasterly along Hopper Creek approximately 2,300 feet to the point of beginning.

Signed: August 19, 1998.

**John W. Magaw,**

*Director.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 917

[KY-216-FOR]

#### Kentucky Regulatory Program

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

**ACTION:** Proposed rule; reopening of public comment period.

**SUMMARY:** OSM is reopening the public comment period on a proposed amendment to the Kentucky regulatory program (hereinafter the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Kentucky regulations pertaining to subsidence and subsidence control, water replacement, impoundments, definitions, sedimentation ponds, hydrology, and permits. The amendment is intended to revise the Kentucky program to be consistent with the corresponding Federal regulations.

**DATES:** Written comments must be received by 4:00 p.m., [E.S.T.], September 10, 1998.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to William J. Kovacic, Director, at the address listed below.

Copies of the Kentucky program, the proposed amendment, a listing of any scheduled public hearings, and all

written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (606) 233-2494.

Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940.

#### FOR FURTHER INFORMATION CONTACT:

William J. Kovacic, Director, Lexington Field Office, Telephone: (606) 233-2494.

#### SUPPLEMENTARY INFORMATION:

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

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

##### II. Description of the Proposed Amendment

By letter dated July 30, 1997 (Administrative Record No. KY-1410), Kentucky submitted a proposed amendment to its program revising section 405 of the Kentucky Administrative Regulations (KAR) at 8:001, 8:030, 8:040, 16:001, 16:060, 16:090, 16:100, 16:160, 18:001, 18:060, 18:090, 18:100, 18:160, and 18:210. The proposed amendment was announced in the September 5, 1997, **Federal Register** (62 FR 46933).

On November 14, 1997, a Statement of Consideration of public comments received by Kentucky was filed with the Kentucky Legislative Research Committee. As a result of the comments, by letter dated March 4, 1998, Kentucky made changes to the original submission (Administrative Record No. KY-1422). The revisions were made at 405 KAR 8:040, 16:060, 18:060, and 18:210. By letter dated July 14, 1998 (Administrative Record No. KY-1431), Kentucky submitted the final version of

the proposed amendments. Following are the changes to 405 KAR made in the final submission and not previously described in the September 5, 1997, **Federal Register** notice. Deletions of previously proposed language will not be described in this notice nor will revisions concerning nonsubstantive wording, format, or organizational changes.

Kentucky deleted the phrase or a variation of the phrase, "but not limited to," in the definitions of "Coal Processing Plant," "Community or Institutional Building," "Sedimentation Pond," "Surface Blasting Operations," and "Significant Imminent Environmental Harm." The phrase was also deleted at 405 KAR 8:030: 3(3), 11(2)(a), 13(1)(b), 13(3), 14(5), 15(5), 23(1)(g), 24(4)(e), 27(2)(e), 34(6), 37(1)(b); at 405 KAR 8:040: 3(3), 11(2)(a), 13(1)(b), 13(3), 14(5), 15(5), 24(4)(e), 26(3)(e), 34(6), 37(1)(b); at 405 KAR 16:060: 1(4)(b), 2(2), 8(2)(a); and at 405 KAR 18:060 1(1)(b) and 2(2).

At section 8:001—Definitions (405 KAR Chapter 8), Kentucky cites the Kentucky Revised Statutes (KRS) at 350.028 (1), (5), and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground coal mining operations. Kentucky defines the following terms:

*Acquisition* means purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease, or option, the conduct of surface coal mining and reclamation operations.

The definition of *Community or Institutional Building* is slightly revised from the original submission to clarify "for another public service" as a possible use. The word "primarily" is also deleted to described the listed uses.

*Historically Used for Cropland* means land that: (a) Has been used for cropland for any of five years or more of the ten years immediately preceding the application or acquisition of the land for the purpose of conducting a surface coal mining and reclamation operation; (b) would likely have been used for cropland for any five of the ten years immediately preceding the acquisition or application, but for some fact of ownership or control of the land unrelated to the productivity of the land; (c) falls outside the five of ten years criteria, but the cabinet determines is clearly cropland on the basis of additional cropland history of (1) surrounding land, and (2) the land under consideration.

The definition of *Material Damage* is revised from the original submission to delete the reference to 405 KAR 18:210.

Kentucky is also adding a new section 2 (Incorporation by Reference) to incorporate. "ASTM Standard D 388-77, Standard Specification for Classification of Coals by Rank," (1977), American Society for Testing and Materials. The address where the document may be inspected, copied, or obtained is provided.

At section 8:030—Surface Coal Mining Permits, Kentucky cites KRS 350.028(1),(5), 350.060(3), and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground coal mining operations.

Kentucky is deleting subsection 4(3) which states, "Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes."

At subsection 12(4), Kentucky is requiring that water quality analysis and sampling be conducted according to: "Standard Methods for the Examination of Water and Wastewater," or 40 CFR Parts 136 and 434.

At subsection 20(3), Kentucky is requiring that wetlands delineations be conducted in accordance with: Corps of Engineers Wetlands Delineation Manual and Regulatory Guidance Letter #90-7, "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary", and "List of Hydric Soils of the U.S."

At subsection 32(3)(e), Kentucky is modifying its original submission language to state, "The determination shall include a finding on whether the proposed surface mining activities may proximately result in contamination, diminution or interruption of an underground or surface source of water within the permit area or adjacent area that is used for domestic, agricultural, industrial or other legitimate use."

Kentucky is adding new subsection 38 (Incorporation by Reference) to incorporate the documents referenced in subsections 12(4) and 20(3). The address where the documents may be inspected, copied, or obtained is also provided.

At section 405 KAR 8:040—Underground Coal Mining Permits, Kentucky cites KRS 350.028 (1), (5), 350.151(1), and 350.465(2) as the authorization to promulgate the administrative regulations for surface and underground coal mining operations.

Kentucky is deleting subsection 4(3) which states, "Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes."

At subsection 20(3), Kentucky is requiring that wetlands delineations be conducted in accordance with: The

Corps of Engineers Wetlands Manual and Regulatory Guidance Letter #90-7, "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary," and "List of Hydric Soils of the U.S."

At new subsection 26(1)(d) 1 and 2, Kentucky is requiring that a permit application include a survey of the quantity and quality of each water supply for domestic, agricultural, industrial, or other legitimate use within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the applicant shall include documentation of the denial of access. The applicant shall pay for its technical assessment or engineering evaluation used to determine the quantity and quality of a water supply for domestic, agricultural, industrial, or other legitimate use. The applicant shall provide copies of the survey and any technical assessment or engineering evaluation to the property owner and the cabinet. If the owner or his/her representative is present at the time a survey, technical assessment, or engineering evaluation is conducted, the report shall include the name of the person. If the owner disagrees with the results, he/she may submit in writing to the cabinet and permittee, a detailed description of the specific areas of disagreement. The cabinet may require additional measure to ensure that adequate and accurate information is included and to ensure compliance with 405 KAR 18:210.

At subsection 32(3)(e), Kentucky is modifying its original submission language to state, "The determination shall include a finding on whether the proposed underground mining activities conducted after July 16, 1994, may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the permit area or adjacent areas that is used for domestic, agricultural, industrial, or other legitimate use."

Kentucky is adding a new subsection 39 (Incorporation by Reference) to incorporate the same documents specified at subsection 38 above.

At section 405 KAR 16:001—Definitions (405 KAR Chapter 16), Kentucky cites KRS 350.028(1) and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground coal mining operations. Kentucky defines the following terms:

*Acquisition* is defined in the same manner as in section 8:001 above.

*Durable Rock* means rock that: (a) Doesn't slake in water; (b) is not reasonably expected to degrade to a size or condition that will block, cause failure of, impair or restrict the effectiveness of the internal drainage system; (c) has been demonstrated to have a slake durability index value of 90 or greater as determined by: the "Method for Determination of Slake Durability (Kentucky Method 64-513-79)," or a test method that yields an equivalent measure of durability based upon correlation of results with Kentucky Method 64-513-79.

*Historically Used for Cropland* is defined in the same manner as in section 8:001 above.

*In Situ Process* means: (a) in situ gasification, (b) in situ leaching, (c) slurry mining, (d) solution mining, (e) borehole mining, (f) fluid recovery mining, or (g) another activity conducted on surface or underground in connection with: in-place distillation, retorting, leaching, or chemical or physical processing of coal.

Kentucky is adding new section 2 (Incorporation by Reference) to incorporate: "ASTM Standard D 388-77, Standard Specification for Classification of Coals by Rank and "Method for Determination of Slake Durability Index, Kentucky Method 64-513-79." The address where the documents may be inspected, copied, or obtained is also provided.

At section 405 KAR 16:060—General Hydrologic Requirements, Kentucky cites KRS 350.028(1),(5), 350.151(1), and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground coal mining operations.

At subsection 4(1), Kentucky is requiring that acid drainage and toxic drainage be avoided by identifying, burying, and treating materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and treated.

At subsection 8(1)(a), Kentucky is requiring that if it receives a citizen's complaint under 405 KAR 12:030 that the person's water supply has been adversely impacted by the activities of a permittee named in the complaint, the cabinet shall promptly notify the permittee of the complaint. At subsection 8(2)(a), Kentucky is clarifying that the notice referred to is the notice from the cabinet.

At section 405 KAR 16:090—Sedimentation Ponds, Kentucky cites KRS 350.028(1),(5), 350.151(1), and 350.465(2) as the authorization to promulgate administrative regulations

for surface and underground coal mining operations.

At section 405 KAR 16:100—Permanent and Temporary Impoundments, Kentucky cites KRS 350.028(2), (5), 350.51(1), and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground coal mining operations. Only minor, nonsubstantive wording changes were made.

At section 405 KAR 16:160—Coal Mine Waste Dams and Impoundments, Kentucky cites KRS 350.028(2), (5), 350.15(1), and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground mining operations.

At subsection 3(1)(a), Kentucky is specifying that it may require a duration longer than a 6-hour precipitation event if safety concerns warrant a longer time period.

At section 405 KAR 18:001—Definitions (405 KAR Chapter 18), Kentucky defines the following terms:

*Acquisition, Community or Institutional Building, Historically Used for Cropland, and Sedimentation Pond* are defined in the same manner as in section 8:001 above.

*Durable Rock and In Situ Process* are defined in the same manner as in section 16:001 above.

Kentucky is adding new section 2 (Incorporation by Reference) to incorporate the same documents listed in 16:001, section 2 above.

At 405 KAR 18:060—General Hydrologic Requirements, Kentucky cites KRS 350.028(1), (5), 350.151(1), and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground coal mining operations.

At subsection 4(1), Kentucky is making the same changes described in subsection 16:060 4(1) above.

At subsections 12(1)(a) and 2(a), Kentucky is making the same changes described in subsections 16:060 8(1)(a) and 2(a) above.

At 405 KAR 18:090—Sedimentation Ponds, Kentucky cites KRS 350.028(1), (5), 350.151(1), and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground coal mining operations.

At subsection 5(7), Kentucky is making the same changes described at 16:090 5(5) above.

At 405 KAR 18:100—Permanent and Temporary Impoundments, Kentucky cites KRS 350.028(2), (5), 350.151(1), and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground coal

mining operations. Only minor, nonsubstantive wording changes were made.

At 405 KAR 18:160—Coal Mine Waste Dams and Impoundments, Kentucky cites KRS 350.028(2), (5), 350.151(1), and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground coal mining operations.

At subsection 3(1)(a), Kentucky is making the same changes described in section 16:160 3(1)(a) above.

At section 405 KAR 18:210—Subsidence Control, Kentucky cites KRS 350.028(2), (5), 350.151(1), and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground coal mining operations.

At subsection 1(4)(a), Kentucky is requiring the permittee to conduct and submit to the cabinet a survey of the condition of each noncommercial building or occupied residential dwelling and related structures that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence within the area encompassed by the applicable angle of draw.

At subsection 1(4)(b), Kentucky is clarifying that if an owner disagrees with the survey described in this section and chooses to submit a written description of the areas of disagreement, he/she must do so within 30 days after receiving a copy of the survey. The cabinet is then required to promptly notify the permittee.

At subsection 1(4)(c), Kentucky is prohibiting underground operations within 1,500 feet horizontally of a structure for which a survey is required unless the permittee has submitted the survey or documentation that he cannot perform it because the owner will not allow access to the site and the time period for written disagreement by the owner has expired without a written disagreement being received. If a dispute arises over the adequacy of the survey, the cabinet shall establish, based upon site specific conditions, a horizontal distance of 1,500 feet or less which the cabinet deems adequate to ensure the structure will not be damaged by subsidence, and underground operations shall not be conducted within that distance until a determination has been made on the dispute. The cabinet shall make a determination within 30 days after receiving the written disagreement.

At subsection 1(4)(d), Kentucky is requiring that if requested in writing by the permittee and approved in writing by the cabinet, the permittee shall comply with the requirements of this

paragraph instead of paragraph (c). The numerical magnitude of the angle of draw shall not be established under this paragraph. The permittee's request for approval under this paragraph shall include a map or maps that show the horizontal separation between the underground workings and each structure that is necessary to ensure that the structure is outside the surface area encompassed by the angle of draw. The request shall also include drawings, calculations, and other relevant supporting information to demonstrate, to the satisfaction of the cabinet, the validity of the permittee's map information. Underground operations shall not be conducted closer to a structure than the horizontal distance established under this paragraph based upon the angle of draw unless the permittee has submitted the required presubsidence survey or documentation that he cannot perform the survey because the owner will not allow access to the site and the time period for written disagreement by the owner has expired without a written disagreement being received. If a dispute arises over the adequacy of the survey, underground operations shall not be conducted within the horizontal distance established under this paragraph until the cabinet has made a determination on the dispute. The cabinet shall make a determination within 30 days after receiving the written disagreement.

At subsection 1(4)(e), Kentucky clarifies that this subsection applies: (1) to extraction of coal under a permit, permit amendment, and permit revision issued after the effective date of this regulation, and (2) 180 days after the effective date of this regulation, to extraction of coal under a permit, permit amendment, and permit revision issued prior to the effective date of this regulation.

At subsection 2(1), Kentucky is changing the 3-month notification requirement to 90 days.

At subsection 2(2), Kentucky is requiring that if notice has been properly given and subsequent emergencies or other unforeseen conditions in underground mining necessitate mining beneath the property or structure sooner than 90 days after the notice, the permittee shall immediately provide additional written notice to the owner or occupant that the mining will be conducted sooner than 90 days if approved by the cabinet. The permittee shall submit a written request for approval, including a description of the emergency or other unforeseen conditions that necessitate mining sooner than 90 days after the initial

notice. If the cabinet determines that conditions necessitate mining sooner than 90 days after the initial notice, and if the required presubsidence condition survey of structures, or documentation of denial of access to conduct the survey, has been submitted, and the cabinet has made a determination on a dispute, if any, that has arisen over the adequacy of the survey, the cabinet may approve the request. The cabinet shall promptly notify the permittee in writing of its determination. However, in no case shall mining be conducted beneath the property or structure sooner than 10 days after the additional notice is given, unless the 10-day notice period is expressly waived by the owner in writing.

At section 2(3)(b), Kentucky is requiring that the notification include dates that specific areas are anticipated to be undermined.

At section 3(2), Kentucky is adding "occupied residential" to modify "dwellings" as they pertain to repair of damage.

At subsection 3(4)(d), Kentucky provides that presumption may be rebutted if the evidence establishes that the damage: (1) predated the mining, (2) was proximately caused by another factor and not the subsidence, (3) occurred outside the surface area within which subsidence was actually caused by the mining in question.

At subsection 4(1), Kentucky provides that under specified conditions, the cabinet may limit the percentage of coal extracted under or adjacent to the feature, facility, aquifer, or body of water.

### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. Specifically, OSM is seeking comments on the revisions described above to the original submission. If the amendment is deemed adequate, it will become part of the Kentucky program.

#### Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

### IV. Procedural Determinations

#### Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

#### Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed 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 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.

#### National Environmental Policy Act

No environmental impact statement is required for this rule since 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 has determined 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. Accordingly, this rule will ensure that

existing requirements previously promulgated by OSM will be implemented by the State. 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.

#### Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 19, 1998.

**Michael K. Robinson,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Part 1202

RIN 3095-AA66

#### Privacy Act Regulations

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would streamline NARA regulations implementing the Privacy Act of 1974 by revising and simplifying policies for release of medical information, clarifying whom in NARA individuals contact with Privacy Act requests and appeals, and removing detailed internal NARA operating procedures that do not belong in the regulation. NARA is taking this action after conducting a review of its existing Privacy Act regulations in accordance with Executive Order 12866.

**DATES:** Comments must be received by October 26, 1998.

**ADDRESSES:** Comments must be sent to Regulation Comment Desk, Policy and Communications Staff (NPOL), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001.

**FOR FURTHER INFORMATION CONTACT:** Nancy Allard at (301) 713-7360, extension 226, or Mary Ronan at (301) 713-6025, extension 226.

**SUPPLEMENTARY INFORMATION:** This rule is a significant regulatory action for the purposes of Executive Order 12866, and has been reviewed by OMB. As required by the Regulatory Flexibility Act, it is