



4310-05-P

DEPARTMENT OF INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

**KY-260-FOR; Docket ID: OSM-2018-0008
S1D1S SS08011000 SX064A000 190S180110
S2D2S SS08011000 SX064A000 19XS501520**

Kentucky Regulatory Program

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

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

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Kentucky regulatory program, (herein referred to as ‘the Kentucky program’), under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Through this proposed amendment, Kentucky seeks to revise its program to include statutory changes that

involve civil penalty escrow accounts, civil penalty fund distributions, self-bonding, and major permit revisions related to underground mining.

This document gives the times and locations that the Kentucky program and this 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 4:00 p.m., Eastern Standard Time (e.s.t.), [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If requested, we will hold a public hearing on the amendment on [INSERT DATE 25 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by SATS No. KY-260-FOR, Docket ID: OSM-2018-0008, by any of the following methods:

- Mail/Hand Delivery: Mr. Michael Castle, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503.

- Fax: (859) 260-8410
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Kentucky program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE’s Lexington Field Office or the full text of the program amendment is available for you to read at www.regulations.gov.

Mr. Michael Castle, Field Office Director, Lexington Field Office

Office of Surface Mining Reclamation and Enforcement

2675 Regency Road, Lexington, Kentucky 40503.

Telephone: (859) 260-3900

Email: mcastle@osmre.gov

In addition, you may review a copy of the amendment during regular business hours at the following location:

Mr. John D. Small, Acting Commissioner

Kentucky Department for Natural Resources

300 Sower Boulevard, Frankfort, Kentucky 40601

Telephone: (502) 564-6940

Email: *johnd.small@ky.gov*

FOR FURTHER INFORMATION CONTACT:

Mr. Michael Castle, Field Office Director, Lexington Field Office

Office of Surface Mining Reclamation and Enforcement

2675 Regency Road, Lexington, Kentucky 40503.

Telephone: (859) 260-3900

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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 State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. 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 effective May 18, 1982. You can find additional background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval 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 Proposed Amendment

By letter dated September 19, 2018, Kentucky sent OSMRE an amendment to its program under SMCRA (30 U.S.C. 1201 et seq.) that includes changes to statutory provisions of the Kentucky Revised Statutes (KRS) (Administrative Record No. KY-2003-01). The General Assembly of the Commonwealth of Kentucky enacted statutory

changes through House bill 261 and the changes became effective on July 14, 2018. The statutory changes involve civil penalty escrow accounts, civil penalty fund distributions, self-bonding, and major permit revisions related to underground mining. These changes are codified at KRS Chapter 350, Surface Coal Mining, sections 350.0301, 350.064, 350.070, 350.519, and 350.990. The Kentucky Department for Natural Resources was not required to promulgate administrative regulations as a result of the bill. The revised statutory provisions of 350 KRS are described below.

A. KRS 350.0301, *Petition Challenging the Determination of the Cabinet – Conduct of Hearings – Administrative Regulations – Secretary may Designate Deputy Secretary to Sign Final Orders*. Kentucky seeks to revise KRS 350.0301(5) by removing language requiring civil penalty funds to be placed in escrow prior to a formal hearing on the amount of the assessment of the civil penalties. A provision allowing a waiver of the escrow amount for individuals demonstrating an inability to pay the proposed civil penalty assessment into escrow is also being removed.

B. KRS 350.064, *Reclamation Bond to be filed by Applicant*. Kentucky seeks to revise KRS 350.064(2) by removing language that allows self-bonding in the State. A self-bond is backed only by the company's name and overall financial health, not by sureties or specific pledges of collateral. Currently, in order to qualify and receive state approval for self-bond, the applicant must successfully demonstrate a history of financial

solvency and continuous operation and the existence of a suitable agent to receive service of process.

C. KRS 350.070, *Permit Revisions*. Kentucky seeks to revise 350.070(1) by removing language that requires operators to submit a major permit revision application, for an extension of underground mining areas if certain conditions are met (area extension is not considered an incidental boundary revision and does not include planned subsidence or other new proposed surface disturbances). Kentucky also seeks to remove section (6)(b) that defines the maximum acres for a revision to be considered an incidental boundary revision involving underground mining.

D. KRS 350.518, *Permittee to submit permit-specific bond under KRS 350.060(11) – Tonnage Fees - Assignment of Mine Type Classification - Inclusion of Future Permits of Existing Classification – Inclusion of Future Permits of Existing Voluntary Bond Pool Members - , Permit-specific Penal Bond - Administrative Regulations - Suspension of Permit for Arrearage in Fees, Rights and Remedies.* Kentucky seeks to delete 350.518(11), which allows penalty funds in excess of \$800,000 to be equally divided between the AML supplemental fund and the Kentucky Reclamation Guaranty Fund, herein referred to as “the Fund.”

E. KRS 350.990, *Penalties.* Kentucky seeks to revise 350.990(1) by removing the requirement to allocate 50% of the civil penalties deposited in excess of \$800,000 to the Fund for the purposes set forth in KRS 350.500 to 350.521, and 350.595 (which involve definitions, the Fund Commission, and other matters related to the Fund such as mandatory participation in the Fund, permit-specific bond requirements, forfeiture of bonds for permits covered by the Fund, and Fund coverage for the AML Enhancement Program) and 50% to the AML supplemental fund established under KRS 350.139(1),

F. *Deposit of Funds to State Treasury – Exceptions – Amount to be Transferred to Fiscal Courts – Remainder for Division of Mine Permits.* Kentucky seeks to add new language that requires civil penalty funds collected over \$800,000 to be redistributed to any mining program authorized by KRS Chapters 350, *Surface Mining*, 351, *Department*

for Natural Resources, and 352, *Mining Regulations*. Chapters 351 and 352 includes, among other things, mine safety provisions.

In addition to the changes noted above, minor changes such as renumbering and grammatical edits are also included.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at www.regulations.gov.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of Kentucky's State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, 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 State 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 sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can 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.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. 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 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 12866 - Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We will conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 13, 2018.

Thomas D. Shope, Regional Director

Appalachian Region

Editorial note: This document was received for publication by the Office of the Federal Register on May 6, 2019.

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