

adequate, it will become part of the Kansas 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 Mid-Continent Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

#### *Public Hearing*

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t. on June 19, 1997. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individuals who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

#### *Public Meeting*

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of 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 916**

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 23, 1997.

**Brent Wahlquist,**

*Regional Director, Mid-Continent Regional Coordinating Center.*

[FR Doc. 97-14548 Filed 6-3-97; 8:45 am]

BILLING CODE 4310-05-M

## **DEPARTMENT OF THE INTERIOR**

### **Office of Surface Mining Reclamation and Enforcement**

### **30 CFR Part 917**

[KY-1387]

### **Surface Coal Mining and Reclamation Operations on Federal Lands Under the Permanent Program; State-Federal Cooperative Agreements; Kentucky**

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

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

**SUMMARY:** OSM is proposing to adopt a cooperative agreement between the Department of the Interior and the State of Kentucky for the regulation of surface coal mining and reclamation operations on Federal Lands in Kentucky under the permanent regulatory program. Such a cooperative agreement is provided for in the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This notice of proposed rulemaking provides information on the proposed terms of the cooperative agreement.

**DATES:** Written comments must be received by 4:00 p.m., E.D.T., July 7, 1997. If requested, a public hearing on the proposed amendment will be held on June 30, 1997. Requests to speak at the hearing must be received by 4:00 p.m., E.D.T., on June 19, 1997.

**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) 233-2896.  
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) 233-2896.

**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 May 2, 1997, (Administrative Record No. KY-1387) from the Commissioner of the Natural Resources and Environmental Protection Cabinet (NREPC), Kentucky submitted a proposed amendment to its program pursuant to SMCRA. The purpose of the proposed amendment is to give Kentucky, through a State-Federal Cooperative Agreement (Agreement), primacy in the administration of its approved permanent regulatory program on Federal lands in the State.

Section 523(c) of SMCRA, 30 USC 1201 et seq., and the implementing regulations at 30 CFR Part 745, allow a State and the Secretary of the Interior to enter into a permanent program cooperative agreement if the State has

an approved State program for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands. Permanent program cooperative agreements are authorized under section 523(c) which provides that, "Any State with an approved State program may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that such State has the necessary personnel and funding to implement such a cooperative agreement in accordance with the provision of this Act."

Section 745.11(b) (1) through (8) of OSM's regulations require that certain information be submitted with a request for a permanent program cooperative agreement, if the information has not been previously submitted in the State program. Much of the information relating to the budget, staffing, and equipment necessary for assuring the duties of inspecting surface coal mining and reclamation operations on Federal lands have been previously submitted by Kentucky in the State program. In addition, the State of Kentucky submitted written certification of the Kentucky Attorney General to OSM that no State statutory, regulatory or other legal constraint exists which would limit the capability of NREPC to fully comply with the terms of the proposed cooperative agreement and section 523(c) of SMCRA, as implemented by 30 CFR Part 745.

The full text of the proposed agreement is included as part of this proposed rule making. OSM emphasizes that the proposed cooperative agreement may be subject to further change as a result of public comment and/or further discussion with the State of Kentucky.

The proposed agreement as submitted by Kentucky is comprised of sixteen articles. A brief summary of the articles appears below.

**Article I: Introduction, Purpose and Responsible Agencies**

This article sets forth the legal authority for the Agreement and states that the Agreement provides for State regulation of surface coal mining and reclamation operations on Federal lands in Kentucky. The article also designates the NREPC as the agency responsible for administering the Agreement on behalf of the Governor of Kentucky (Governor) and OSM as the agency responsible for administering the Agreement on behalf of the Secretary of the Department of the Interior (Secretary).

**Article II: Effective Date**

This article provides that on signature by the Secretary and the Governor, the Agreement would become effective 30 days after publication in the **Federal Register** as a final rule.

**Article III: Definitions**

This article provides that the terms and phrases used in the Agreement shall have the same meaning as those set forth in SMCRA, KRS 350 and the rules and regulations promulgated pursuant to those acts. The procedures to be followed in the event the definitions conflict are also specified.

**Article IV: Applicability**

This article states that the laws, regulations, terms and conditions of Kentucky's approved State program are applicable to Federal lands in Kentucky except as otherwise stated in the Agreement, SMCRA, 30 CFR 740.4 and 740.13, or other applicable Federal Laws, Executive Orders or regulations. This article also designates the proper authority for hearings of appealable actions.

**Article V: General Requirements**

This article affirms that NREPC has the authority under State law to carry out this agreement. It also establishes the procedures for funding of NREPC's responsibilities under the Agreement and the right to NREPC to terminate the agreement should OSM be unable to adequately fund the program. This article provides for exchanging of information and reporting between OSM and NREPC, and requires NREPC to have adequate personnel with sufficient equipment and facilities to carry out the requirements of the program. Finally, the article discusses the determination and disposition of funds generated from permit application fees and civil penalties.

**Article VI: Review of Permit Application Package**

Paragraphs A through C of Article VI generally describe the procedures that the State and OSM will follow in the review and analysis of permit application packages (PAP) for operations on Federal lands. The term "permit application package" is defined under 30 CFR 740.5. NREPC will assume primary responsibility for the review of PAP except in the case of leased Federal coal where OSM will prepare a mine plan decision document. OSM will obtain the Secretary's approval for the document.

The article further establishes guidelines for material to be submitted in the PAP and the procedures to be

used by OSM and NREPC in reviewing the PAP. Coordination between NREPC, OSM and other Federal Agencies in conducting the review is spelled out. Finally, the article provides guidelines for making a decision on the permit application and informing the applicable parties of the decision. The review procedures for permit revisions, renewable and the transfer, assignment or sale of permit rights is also discussed.

#### *Article VII. Inspections*

This article specifies that NREPC will conduct inspections of the operation on Federal lands and will prepare and file inspection reports documenting the inspection in accordance with the program. This article provides that NREPC will be point of contact and primary inspection authority in dealing with operators but also specifies that authorized Federal land management agencies will not be prevented from conducting necessary inspections. Procedures for handling citizen complaints of imminent danger to the public health and safety or of significant imminent environmental harm to land, air or water resources received by OSM are also discussed.

#### *Article VIII: Enforcement*

This article deals with the responsibility for issuance of enforcement actions resulting from violations on surface coal mining and reclamation sites on Federal lands. NREPC will have the lead in issuing enforcement actions except in cases where Federal laws and Executive orders reserve such rights to the Secretary. The article provides for the exchange of information concerning enforcement actions and also provides that personnel from NREPC and OSM will be mutually available to serve as witnesses in enforcement actions taken by either party.

#### *Article IX: Bonds*

This article specifies the procedures by which a permittee will secure a performance bond to cover the operator's responsibility under the Act and Program. Assignment of the bond in the event of termination of the Agreement and procedures to be followed for bond release and forfeiture are also discussed. Finally the article provides that OSM or the appropriate Federal Agency is responsible for the collection and maintenance of Federal lease bonds.

#### *Article X. Designating Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities, Valid Existing Rights (VER), and Compatibility Determinations.*

The unsuitably petitions portion of the article reserves authority to designate Federal lands as unsuitable for mining to the Secretary. The article further specifies the procedures to be followed when a petition to designate land areas unsuitable for all or certain types of surface coal mining operations that could impact adjacent Federal or non-Federal lands pursuant to Section 522(c) of the Act is received. The VER and Compatibility Determinations portion of the article require OSM to make VER determinations on Federal lands where proposed operations are prohibited or limited by Section 522(e)(2)(1) of the Act or for determinations of compatibility pursuant to section 522(e)(2) of the Act.

#### *Article XI: Termination of Cooperative Agreement*

This article allows the Agreement to be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

#### *Article XII: Reinstatement of Cooperative Agreement*

This article provides that the Agreement, if terminated in whole or part, may be reinstated under the provisions of 30 CFR 745.14. This article also provides for the reservation of powers and authority to the Secretary as specified in 30 CFR 745.13.

#### *Article XIII: Amendment of Cooperative Agreement*

This article provides that the Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

#### *Article XIV: Changes in State or Federal Standards*

This article describes the procedures to be followed when new or revised performance or reclamation requirements or enforcement and administrative procedures are promulgated.

#### *Article XV: Changes in Personnel and Organization*

Under the terms of this article each party to the Agreement must notify the other of changes in personnel, organization and funding, or other changes that may affect the implementation of the Agreement.

#### *Article XVI: Reservation of Rights*

This article provides that the agreement will not be construed as waiving or preventing the assertion of any rights in this Agreement that the State or Secretary may have under laws other than the Act or their regulations, including but not limited to those listed in Appendix A.

The full text of the Agreement appears below:

#### **Kentucky Cooperative Agreement**

The Governor of the State of Kentucky (the Governor) and the Secretary of the Department of the Interior (the Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

#### **Article I: Introduction, Purpose, and Responsible Agencies**

##### *A. Authority*

This Agreement is authorized by Section 523(c) of the Surface Mining Control and Reclamation Act (Act), 30 U.S.C. 1273 (c), which allows a State with a permanent regulatory program approved by the Secretary under 30 U.S.C. 1253, to elect to enter into an Agreement for the regulation and control of coal exploration operations not subject to 43 CFR Group 3400 and surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation consistent with the Act, the Federal lands program (30 CFR Chapter VII, subchapter D) and the Kentucky State Program (Program) for surface coal mining and reclamation operations on Federal lands.

##### *B. Purposes*

The purposes of this Agreement are to (a) foster Federal-State cooperation on the regulation of surface coal mining and reclamation operations and coal exploration operations not subject to 43 CFR Group 3400, (b) minimize intergovernmental duplication of effort and (c) provide for uniform and effective application of the Program on all lands in Kentucky in accordance with the Act and the Program.

##### *C. Responsible Administrative Agencies*

The Kentucky Natural Resources and Environmental Protection Cabinet (NREPC), acting through the Department for Surface Mining Reclamation and Enforcement (DSMRE), shall be responsible for administering this Agreement on behalf of the Governor. The Office of Surface Mining Reclamation and Enforcement (OSM) shall administer this Agreement on behalf of the Secretary.

#### **Article II: Effective Date**

After being signed by the Secretary and the Governor, this Agreement shall be effective 30 days after publication in the **Federal Register** as a final rule. This Agreement shall remain in effect until terminated as provided for in Article XI.

#### **Article III: Definitions**

The terms and phrases used in this Agreement, which are defined in the Act, 30 CFR Parts 700, 701 and 740 and defined in

the KRS 350 and the rules and regulations promulgated pursuant to that Act, shall have the same meanings as set forth in said definitions. Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the approved State Program will apply except in the case of a term which defines the Secretary's continuing responsibilities under the Act or other laws.

#### **Article IV: Applicability**

In accordance with the Federal lands program, the laws, regulations, terms and provisions of the Program are applicable to Federal lands in Kentucky except as otherwise stated in this Agreement, The Act, 30 CFR 740.4 and 745.13 or other applicable Federal laws, Executive Orders or regulations.

Orders and decisions issued by the NREPC in accordance with the Program that are appealable shall be appealed to the reviewing authority in accordance with the Program. Orders and decisions issued by the Secretary or his authorized agents that are appealable shall be appealed to the Department of the Interior's Office of Hearings and Appeals.

#### **Article V: General Requirements**

The Governor and the Secretary affirm that they will comply with all provisions of this Agreement.

##### **A. Authority of State Agency**

NREPC has and shall continue to have the authority under State law to carry out this agreement.

##### **B. Funding**

Upon application by NREPC, and subject to appropriations, OSM will provide the State with funds to defray the costs associated with carrying out its responsibilities under this Agreement as provided in Section 705(c) of the Act and 30 CFR Part 735. Such funds will cover the full cost incurred by NREPC in carrying out those responsibilities. The amount of the grant will be determined using the procedures specified in the Federal Assistance Manual Chapter 3-10 and Appendix III.

For purposes of this agreement, actual costs of NREPC's administration of its approved program on Federal lands in accordance with this agreement shall be that percentage of NREPC's total program expenditures during any specific grant period that equals the percentage of Federal lands within all lands under permit in the state of Kentucky for that specific grant period.

If NREPC applies for a grant but sufficient funds have not been appropriated to OSM, OSM and NREPC will meet to decide upon appropriate measures that will insure that mining operations on Federal lands located in Kentucky are regulated in accordance with the Program. The NREPC also reserves the right to terminate this agreement should OSM be unable to adequately fund this program.

##### **C. Reports and Records**

NREPC will make annual reports to OSM containing information with respect to compliance with terms of this Agreement pursuant to 30 CFR 745.12(d). Upon request,

NREPC and OSM will exchange information generated under this Agreement, except where prohibited by Federal or State law.

OSM will provide NREPC with a copy of any final evaluation reports prepared concerning State administration and enforcement of this Agreement. NREPC comments on the report will be attached before being sent to the Congress or other interested parties.

##### **D. Personnel**

NREPC shall have the personnel necessary to fully implement this Agreement in accordance with the provision of the Act, applicable regulations, the Federal lands program and the approved Program.

##### **E. Equipment and Facilities**

NREPC will assure itself access to equipment, laboratories and facilities to perform all inspections, investigations, studies, tests and analyses that are necessary to carry out the requirements of this Agreement.

##### **F. Permit Application Fees and Civil Penalties**

The amount of the fee accompanying an application for a permit for operations on Federal lands in Kentucky shall be determined in accordance with KRS 350.060 and Federal law. All permit fees and civil penalties collected from operations on Federal lands will be retained by the State. Permit fees shall be considered Program income. Civil penalties shall not be considered Program income. The financial status report submitted to OSM pursuant to 30 CFR 735.26 shall include the amount of fees and civil penalties collected and attributable to Federal lands during the prior State fiscal year.

#### **Article VI: Review of Permit Application Package**

##### **A. Responsibilities**

NREPC will assume primary responsibility for the analysis, review, and approval, disapproval, or conditional approval of the permit application component of the permit application package (PAP) required by 30 CFR 740.13 for surface coal mining and reclamation operations in Kentucky on Federal lands. NREPC will assume the responsibilities for review of permit applications to the extent authorized in 30 CFR 740.4(c)(1), (2), (3), (4), (6), and (7).

For proposals to conduct surface coal mining operations involving leased Federal coal, OSM is responsible for preparing a mining plan decision document in accordance with 30 CFR 746.13 and obtaining the Secretary's approval.

The Bureau of Land Management (BLM) is responsible for matters concerned exclusively with regulations under 43 CFR Group 3400.

The Secretary reserves the right to act independently of NREPC to carry out responsibilities under laws other than the Act or provisions of the Act not covered by the Program, and in instances of disagreement over the Act and the Federal lands program. The Secretary will make determinations under the Act that cannot be

delegated to the State, some of which have been delegated to OSM.

Responsibilities and decisions which can be delegated to NREPC under other applicable Federal laws may be specified in working agreements between OSM and the State with the concurrence of any Federal agency involved and without amendment to this agreement.

##### **B. Permit Application Package**

NREPC shall require an applicant proposing to conduct surface coal mining and reclamation operations on Federal lands to submit a PAP with an appropriate number of copies to NREPC. NREPC will furnish OSM, the Federal land management agency, and any other agency with jurisdiction or responsibility over Federal lands affected by operations proposed in the PAP with an appropriate number of copies of the PAP. The PAP will be in the form required by NREPC and will include any supplemental information required by OSM, the Federal land management agency, and any other agency with jurisdiction or responsibility over Federal lands affected by operations proposed in the PAP.

At a minimum, the PAP will satisfy the requirements of 30 CFR 740.13 (b) and include the information necessary for NREPC to make a determination of compliance with the Program, and for OSM, the appropriate Federal land management agencies, and any other agencies with jurisdiction or responsibilities over Federal lands affected by operations proposed in the PAP to make determinations of compliance with applicable requirements of the Act, the Federal lands program, other Federal laws, Executive Orders, and regulations for which they are responsible.

##### **C. Review Procedures**

NREPC will be the primary point of contact for applicants regarding the review of the PAP for compliance with the Program and State laws and regulations. OSM will review the applicable portions of the PAP for compliance with the non-delegated responsibilities of the Act and for compliance with the requirements of other Federal laws, Executive Orders, and regulations.

OSM and NREPC will develop a work plan and schedule for PAP reviews that comply with the time limitations established by the state program, and each agency will designate a person as the federal lands liaison. The federal lands liaison will serve as the primary points of contact between OSM and NREPC throughout the review process. Not later than 45 calendar days after receipt of the PAP, unless a different schedule is agreed upon, OSM will furnish NREPC with its review comments on the PAP and specify any requirements for additional data.

OSM and NREPC will coordinate with each other during the review process as needed. NREPC will send to OSM copies of any correspondence with the applicant and any information received from the applicant regarding the PAP. OSM will send to NREPC copies of all OSM correspondence which may have a bearing on the PAP.

OSM will provide technical assistance to NREPC when requested, and will have access

to NREPC files concerning operations on Federal lands. NREPC will keep OSM informed of findings made during the review process which bear on the responsibilities of OSM or other Federal agencies.

#### *D. Coordination Between NREPC, OSM, and Other Federal Agencies*

NREPC will, to the extent authorized, consult with the Federal land management agency and BLM pursuant to 30 CFR 740.4 (c) (2) and (3), respectively. NREPC will also be responsible for obtaining the comments and determinations of other agencies with jurisdiction or responsibility over the Federal lands affected by the operations proposed in the PAP. NREPC will request all Federal agencies to furnish their findings or any request for additional information to NREPC within 45 calendar days of the date of receipt of the PAP. OSM will, upon request, assist NREPC in obtaining such information.

In accordance with 30 CFR 745.12(g)(2), where lands containing leased Federal coal are involved, NREPC will provide OSM, in the form specified by OSM in consultation with NREPC, with written findings indicating that each permit application is in compliance with the terms of the regulatory program and a technical analysis of each permit application to assist OSM in meeting its responsibilities under other applicable Federal laws and regulations.

Where leased Federal coal is involved, OSM will consult with and obtain the concurrences of BLM, the Federal land management agency, and any other agency with jurisdiction or responsibility over the Federal lands affected by the operations proposed in the PAP as required to make its recommendation for the Secretary's decision on the mining plan.

Where BLM contacts the applicant in carrying out its responsibilities under 43 CFR Group 3400, BLM will immediately inform NREPC of its actions and provide NREPC with a copy of documentation of all decisions within 5 calendar days.

#### *E. Permit Application Decision and Permit Issuance*

NREPC will prepare a State decision package, including written findings and supporting documentation, indicating whether the PAP is in compliance with the Program. NREPC will make the decision on approval, disapproval, or conditional approval of the permit on Federal lands.

Any permit issued by NREPC will incorporate any lawful terms or conditions imposed by the Federal land management agency, including conditions relating to post-mining land use, and will be conditioned upon compliance with the requirements of the Federal land management agency.

NREPC may make a decision on approval, disapproval, or conditional approval of the permit on Federal lands in accordance with the Program prior to the necessary Secretarial decision on the mining plan when leased Federal coal is involved, provided that NREPC advises the operator in the permit that Secretarial approval of the mining plan must be obtained before the operator may conduct surface coal mining operations on the Federal lease. NREPC will reserve the

right to amend or rescind any requirements of the permit to conform with any terms or conditions imposed by the Secretary in the approval of the mining plan.

After making its decision on the PAP, NREPC will send a notice to the applicant, OSM, the Federal land management agencies, and any other agency with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. A copy of the permit and written findings will be provided to OSM upon request.

#### *F. Review Procedures for Permit Revisions; Renewals; and Transfer, Assignment, or Sale of Permit Rights*

Any permit revision or renewal for a surface coal mining and reclamation operation on Federal lands will be reviewed and approved, or disapproved, by NREPC after consultation with OSM on whether such revision or renewal constitutes a mining plan modification pursuant to 30 CFR 746.18. OSM will inform NREPC within 10 calendar days of receiving a copy of a proposed permit revision or renewal, whether the permit revision or renewal constitutes a mining plan modification.

Transfer, assignment, or sale of permit rights on Federal lands shall be processed in accordance with the Program and 30 CFR 740.13 (e).

#### **Article VII: Inspections**

NREPC will conduct inspections of all surface coal mining and reclamation operations on Federal lands, in accordance with 30 CFR 740.4(c) (5) and the Program and prepare and file inspection reports in accordance with the Program. NREPC, subsequent to conducting any inspection pursuant to 30 CFR 740.4 (c) (5), and in a timely fashion which will not exceed 45 calendar days, will file with OSM's Lexington Field Office a legible copy of the completed State inspection report.

NREPC will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described hereinafter. Nothing in this Agreement will prevent inspections by authorized Federal or State land management agencies for purposes other than those covered by this Agreement. The Department of the Interior acting through OSM, the Federal land management agency or any other agency with jurisdiction or responsibility over Federal lands to be affected under the proposed PAP, may conduct any inspections necessary to comply with obligations under 30 CFR Parts 842 and 843 and any laws other than the Act.

OSM will give NREPC reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide NREPC inspectors with an opportunity to accompany OSM inspectors. When OSM is responding to a citizen complaint of an imminent danger to the public health and safety, or of significant, imminent environmental harm to land, air or water resources pursuant to 30 CFR 842.11(b)(1)(ii)(c), it will contact NREPC and provide the opportunity for a joint Federal/State inspection. Inability of NREPC to make an immediate joint inspection will not be

cause for OSM to delay a Federal inspection where a citizen has alleged, and OSM has just cause to believe, that an imminent danger to the public health and safety, or significant, imminent environmental harm to land, air or water resources exists. All citizen complaints which do not involve an imminent danger or significant, imminent environmental harm will be referred to NREPC for action.

#### **Article VIII: Enforcement**

NREPC will have primary enforcement authority under the Act concerning compliance with the requirements of this Agreement and the Program in accordance with 30 CFR 740.4(c)(5). Enforcement authority given to the Secretary under other Federal laws and Executive Orders including, but not limited to, those listed in Appendix A (attached) is reserved to the Secretary.

During any joint inspections by OSM and NREPC, NREPC will have primary responsibility for enforcement procedures including issuance of orders of cessation, notices of violation, and assessment of penalties.

NREPC will inform OSM prior to issuance of any decision to suspend or revoke a permit on Federal lands.

During any inspection made solely by OSM or any joint inspection where NREPC and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR Parts 843, 845, and 846. Such enforcement action will be based on the standards in the Program, the Act, or both, and will be taken using the procedures and penalty system contained in 30 CFR Parts 843, 845, and 846.

NREPC and OSM will within 5 calendar days notify each other of all violations of applicable laws, regulations, orders, or approved mining permits subject to this Agreement, and of all actions taken with respect to such violations.

Personnel of NREPC and OSM will be mutually available to serve as witnesses in enforcement actions taken by either party.

This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than the Act.

#### **Article IX: Bonds**

NREPC and the Secretary will require each permittee who conducts operations on Federal lands to submit a performance bond payable to the State of Kentucky for an amount adequate to cover the operator's responsibilities under the Act and Program. Such performance bond will be conditioned upon compliance with all requirements of the Act, the Program, State rules and regulations, and any other requirements imposed by the Department of the Interior. Such bond will state on its face that in the event the Federal Lands Cooperative Agreement between Kentucky and the U.S. Department of Interior is terminated, the portion of the bond covering the federal lands increment(s) shall be assigned to the United States. The bond shall also state that if subsequent to the forfeiture of the bond, the Cooperative Agreement is terminated, any unspent or uncommitted proceeds of the

portion of the bond covering the federal lands increment(s) shall be assigned to and forwarded to the United States. NREPC will advise OSM within 30 calendar days of any adjustments to the performance bond made pursuant to the Program.

Prior to releasing the permittee from any obligation under such bond for surface coal mining operations involving leased Federal coal, NREPC will obtain the concurrence of OSM. OSM concurrence will include coordination with the Federal land management agency and any other agency with jurisdiction or responsibility over Federal lands affected by the surface coal mining and reclamation operation.

Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR Subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by Section 715 of the Act. Where Federal lease bonds or protections are required, OSM or the appropriate federal agency is responsible for the collection and maintenance of such bonds.

**Article X: Designating Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities, Valid Existing Rights (VER), and Compatibility Determinations**

**A. Unsuitability Petitions**

1. Authority to designate Federal lands as unsuitable for mining pursuant to a petition is reserved to the Secretary.

2. When either NREPC or OSM receives a petition to designate land areas unsuitable for all or certain types of surface coal mining operations that could impact adjacent Federal or non-Federal lands pursuant to Section 522(c) of the Act, the agency receiving the petition will notify the other agency of receipt within 5 calendar days and of the anticipated schedule for reaching a decision, and request and fully consider data, information and recommendations of the other agency. OSM will coordinate with the Federal land management agency and any other agency with jurisdiction or responsibility over Federal lands within or adjacent to the petition area and will solicit comments from these agencies.

**B. VER and Compatibility Determinations**

The following actions will be taken when requests for determinations of VER pursuant to Section 522(e) (1) or (2) of the Act or for determinations of compatibility pursuant to section 522(e)(2) of the Act are received:

1. For Federal lands where proposed operations are prohibited or limited by Section 522(e) (1) or (2) of the Act and 30 CFR 761.11(a) or (b), OSM will make the VER determination.

2. OSM will process requests for determinations of compatibility under Section 522(e)(2) of the Act and 30 CFR 761.11(b) and 761.12(c).

**Article XI: Termination of Cooperative Agreement**

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

**Article XII: Reinstatement of Cooperative Agreement**

If this Agreement has been terminated in whole or in part, it may be reinstated under the provisions of 30 CFR 745.16. The Secretary reserves the powers and authority specified in 30 CFR 745.13.

**Article XIII: Amendment of Cooperative Agreement**

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

**Article XIV: Changes in State or Federal Standards**

The Secretary or NREPC may, from time to time, promulgate new or revised performance or reclamation requirements or enforcement and administrative procedures. Each party will, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations or request necessary legislative action.

Such changes will be made under the procedures of 30 CFR Part 732 for changes to the Program and under the procedures of Section 501 of the Act for changes to the Federal lands program.

NREPC and OSM will provide each other with copies of any changes to their respective laws, rules, regulations, policy statements, guidelines or standards pertaining to the enforcement and administration of this Agreement.

**Article XV: Changes in Personnel and Organization**

Each party to this Agreement will notify the other, when necessary, of any changes in personnel, organization and funding, or other changes that may affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

**Article XVI: Reservation of Rights**

This Agreement will not be construed as waiving or preventing the assertion of any rights in this Agreement that the State or the Secretary may have under laws other than the Act or their regulations, including but not limited to those listed in Appendix A.

Approved:

Governor of Kentucky	Date
Secretary of the Interior	Date

**Appendix A**

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations, including 43 CFR Part 3480.

3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR Part 1500.

4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR Part 402.

5. The Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 *et seq.*, 48 Stat 401.

6. The Bald and Golden Eagle Protection Act of 1940, as amended, 16 U.S.C. 668–668d, and implementing regulations.

7. The Migratory Bird Treaty Act, as amended, 16 U.S.C. 701–718h *et seq.*

8. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR Part 800.

9. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

10. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

11. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

12. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1976, 16 U.S.C. 469 *et seq.*

13. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

14. Executive Order 11988 (May 24, 1977), for flood plain protection.

15. Executive Order 11990 (May 24, 1977), for wetlands protection.

16. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

17. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

18. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa *et seq.*, as amended.

19. The Constitution of the United States.

20. The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

21. 30 CFR Chapter VII.

22. The Constitution of the State of Kentucky and State Law.

**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. 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 rule making, 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 rule making or included in the Administrative Record.

**Public Hearing**

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.D.T. on June 19, 1997. The location and time of the

hearing will be arranged with those persons requested the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

#### *Public Meeting.*

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of 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: May 28, 1997.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 97-14549 Filed 6-3-97; 8:45 am]

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### **ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD**

#### **36 CFR Parts 1190 and 1191**

#### **Accessibility Guidelines for Outdoor Developed Areas**

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice of establishment of regulatory negotiation committee and first committee meeting.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) has decided to establish a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered outdoor developed areas covered by the Americans with Disabilities Act and the Architectural Barriers Act. The regulatory negotiation committee will be comprised of organizations who represent the interests affected by the accessibility guidelines for outdoor developed areas. This notice also announces the times and location of the first meeting of the regulatory negotiation committee.

**DATES:** The first meeting of the regulatory negotiation committee is scheduled for June 26 and 27, 1997 beginning at 8:30 a.m. each day. The meeting will end at 5:00 p.m. on June 26, 1997 and at 4:00 p.m. on June 27, 1997.

**ADDRESSES:** The first meeting of the regulatory negotiation committee will be held at the offices of the Paralyzed Veterans of America, 801 18th Street, NW., Washington, D.C. 20006.

**FOR FURTHER INFORMATION CONTACT:** Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004-1111. Telephone number (202) 272-5434 extension 34 (Voice); (202) 272-5449 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disk) upon request. This document is also available on the Board's Internet Site (<http://www.access-board.gov/rules/outdoor.htm>).