

Issued in Washington, DC, on August 2, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024-17485 Filed 8-7-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[SATS No. KY-264-FOR; Docket ID: OSM-2022-0008; S1D1S SS08011000 SX064A000 245S180110; S2D2S SS08011000 SX064A000 24XS501520]

Kentucky Regulatory Program

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

ACTION: Final rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Kentucky regulatory program (hereinafter, the Kentucky program), under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). We are approving Kentucky's revision to its regulations regarding the qualifications of members of the Kentucky Reclamation Guaranty Fund Commission.

DATES: The effective date is September 9, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Castle, Field Office Director, Telephone 859-260-3900, Email: mcastle@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Submission of the Amendment
- III. OSMRE's Findings
- IV. Summary and Disposition of Comments
- V. OSMRE's Decision
- VI. Statutory and Executive Order Reviews

I. Background on the Kentucky Program

Subject to OSMRE's oversight, section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, 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 background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning the Kentucky program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

On July 18, 1986, we approved the creation of Kentucky's bond pool commission, which from 1986 to 2013 oversaw Kentucky's initial alternative bonding system known as the voluntary bond pool fund. 51 FR 26002 (July 18, 1986). In May 2012, we concluded that the State regulatory authority was not effectively implementing, administering, enforcing, and maintaining its reclamation bond program, and we initiated the regulatory process to correct the identified regulatory program issues. See 30 CFR part 733. In response to our part 733 letter, Kentucky submitted various amendments. One amendment, which we approved in large part in 2018, repealed the voluntary bond pool fund and replaced it with the Kentucky Reclamation Guaranty Fund. See 83 FR 3948 (Jan. 29, 2018). Those amendments also replaced the bond pool fund commission with the Kentucky Reclamation Guaranty Fund Commission (KRGFC or commission). *Id.* The purpose of the KRGFC is to review membership applications and ratings; notify members of tonnage fees required; revoke or reinstate membership; employ a certified public accountant to audit the bond pool fund; authorize necessary expenditures from the fund; and report the financial status of the fund to the governor annually. The KRGFC provisions also specified the composition of the KRGFC membership and qualifications that those members must meet.

II. Submission of the Amendment

By letter dated April 18, 2022 (Administrative Record No. KY-2008), Kentucky sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). This submission proposes to revise the qualifications for members appointed to the seven-member KRGFC. Currently, the governor appoints three members to the KRGFC that are representatives of the coal industry. The coal industry representatives are permittees that participate in the fund and are selected based on the amount of coal produced and subsequently sold annually. Three tiers were created, based on tons of coal sold, to represent

a large, a medium, and a small operator. One member from each tier was to be selected. The revision would allow the governor to appoint a member from a lower tier when no permittee that participates in the fund meets the production level of an upper tier. Kentucky's submission also removes requirements that are no longer relevant to the operation of the KRGFC and makes minor revisions.

We announced receipt of the proposed amendment in the May 23, 2023, **Federal Register** (88 FR 33016) (Administrative Record KY-2008). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting as neither was requested. The public comment period ended on June 22, 2023. We received two comments from concerned individuals that are addressed below in the PUBLIC COMMENTS section.

III. OSMRE's Findings

We made the following findings concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below. The full text of this program amendment is available at www.regulations.gov.

We are approving the following changes to KRS 350.506:

A. Section 1. Kentucky deleted the date by which the Governor was to appoint the first six appointed member of the commission, which was "July 1, 2013."

B. Section 1(a). Kentucky revised this provision to require that the three members of the commission who are representative of the coal industry must be permittees that participate in the fund and to reinforce that they are tiered to represent the size of the operator measured in tons of coal sold.

C. Section 1(a)(3). Kentucky deleted subparagraph (b), which specified that if no operator from the largest tier is available to sit on the commission, a member shall be selected from the middle tier. Kentucky replaced subparagraph (b) with the following coda to subsection (a)(3): "If no permittee that participates in the fund meets the qualifications stated in subparagraph 2 or in subparagraph 3 of this paragraph, then a qualified permittee shall be selected in a lower tier."

D. Section 2(a). Kentucky deleted this provision, which dictated the term of years for the Governor's initial appointments to the commission and

renumbered subsequent paragraphs accordingly.

E. Section 1(5). Kentucky revised this provision to delete the requirement that the commission meet monthly during the first year, leaving in place the requirement that it meet every three months thereafter.

OSMRE Finding: As we noted in our initial approvals of both the voluntary bond pool commission and the KRGFC, no comparable Federal regulations exist addressing the creation or management of alternative bonding programs. Section 509(c) of SMCRA provides for alternative bonding systems stating that “the Secretary may approve as part of a State or Federal program an alternative system that will achieve the objectives and purposes of the bonding program pursuant to this section.” The Federal rules at 30 CFR 800.11(e) provide that OSMRE may approve an alternative bonding system if the system assures that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas in default at any time and provides an economic incentive for the permittee to comply with all reclamation provisions. We find that the proposed changes, which affect minor aspects of commission make-up and governance, some of which are now obsolete, are not inconsistent with section 509(c) of SMCRA or with the Federal regulations at 30 CFR 800.11(e) and are hereby approved.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment and received two. The first was from a private citizen recommending the qualifications of the board members to consist of only scientists studying fossil fuel consumption and its effects. As we discussed above, should a State elect to establish an alternative bonding system, its means of implementing the alternative bonding system is at the State’s discretion so long as it complies with the general requirements of section 509 of SMCRA and 30 CFR 800.11(e). Therefore, the specific qualifications of the KRGFC members are beyond the scope of this rulemaking.

The second public comment was from the Kentucky Resources Council, Inc. (Council). The Council agrees that the proposed revisions to the commission membership qualifications are acceptable in efforts to support changing coal industry demographics. Further, the Council recommends that an annual review of the Kentucky Permanent

Regulatory Program, which would include the assurance of adequate funding in the event of bond forfeiture or permittee bankruptcy, fall under OSMRE’s oversight function. Oversight of Kentucky’s bonding program has always been and will continue to be one of our responsibilities.

Federal Agency Comments

On July 13, 2022, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various agencies with an actual or potential interest in the Kentucky program (Administrative Record KY–2008–1). The Natural Resources Conservation Service sent a “no comment letter”; and we did not receive any comments from other agencies.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*) None of the revisions that Kentucky proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on July 13, 2022, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. KY–2008–1). EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On July 13, 2022, we requested comments on the Kentucky amendments (Administrative Record No. KY–2008–1). We did not receive comments from the SHPO or ACHP.

V. OSMRE’s Decision

Based on the above findings, we are approving KY–264 submitted to us on April 18, 2022 (Administrative Record No. KY–2008). To implement this decision, we are amending the Federal regulations at 30 CFR part 917 that codify decisions concerning the Kentucky program. In accordance with the Administrative Procedure Act (5 U.S.C. 533), this rule will take effect 30 days after the date of publication.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule would not effect a taking of private property or otherwise have taking implications that would result in private property being taken for government use without just compensation under the law. Therefore, a taking implication assessment is not required. This determination is based on an analysis of the Federal regulations that set minimum performance standards for alternative bonding systems.

Executive Orders 12866—Regulatory Planning and Review, 13563—Improving Regulation and Regulatory Review, and 14094—Modernizing Regulatory Review

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance dated October 12, 1993 (OMB Memo M–94–3), the approval of State program amendments are exempted from OMB review under Executive Order 12866, as amended by Executive Order 14094. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by section 3 of Executive Order 12988. The Department determined that this **Federal Register** document meets the criteria of section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency’s legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program amendment that Kentucky drafted.

Executive Order 13132—Federalism

This rule has potential Federalism implications as defined under section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to “grant the States the maximum administrative discretion possible” with respect to Federal statutes and regulations administered by the States. Kentucky, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the state level. This rule approves an amendment to the Kentucky program submitted and drafted by the State, and thus is consistent with the direction to provide maximum administrative discretion to States.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department’s consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on the distribution of power and responsibilities between the Federal Government and Tribes. The basis for this determination is that our decision on the Kentucky program does not include Indian lands as defined by SMCRA or other Tribal lands and it does not affect the regulation of activities on Indian lands or other Tribal lands. Indian lands under SMCRA are regulated independently under the applicable approved Federal Indian program. The Department’s consultation policy also acknowledges that our rules may have Tribal implications where the State proposing the amendment encompasses ancestral lands in areas with minable coal. We are currently working to identify and engage appropriate Tribal stakeholders to devise a constructive approach for consulting on these amendments.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is

(1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

National Environmental Policy Act

Consistent with sections 501(a) and 72(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), State program amendments are not 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 include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

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 the Federal regulations that set minimum performance standards for alternative bonding systems for which an economic analysis was prepared, and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations. The Federal regulations were also promulgated to provide flexibility to ensure the availability of surety bonding to small operators.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business

Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local or Tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the Federal regulations that set minimum performance standards for alternative bonding systems, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Thomas D. Shope,
*Regional Director, North Atlantic—
Appalachian Region.*

For the reasons set out in the preamble, 30 CFR part 917 is amended as follows:

PART 917—KENTUCKY

■ 1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 917.15 is amended by adding a new entry to the table in paragraph (a) in chronological order by “Date of final publication” to read as follows:

§ 917.15 Approval of Kentucky regulatory program amendments

(a) * * *

| Original amendment submission date | Date of final publication | Citation/description |
|------------------------------------|---------------------------|----------------------|
| April 18, 2022 | August 8, 2024 | KRS 350.506 |

[FR Doc. 2024-17333 Filed 8-7-24; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[SATS No. PA-167-FOR; Docket ID: OSM-2017-0009; S1D1S SS08011000 SX064A000 234S180110; S2D2S SS08011000 SX064A000 23XS501520]

Pennsylvania Regulatory Program

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

ACTION: Final rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Pennsylvania regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment authorizes and implements a land reclamation financial guarantee program as a new alternative bonding option for operators that meet certain requirements. The amendment also authorizes and implements a bioenergy crop bonding program to provide financial guarantees to re-mining operators that grow bioenergy crops as a post-mining land use. Finally, the amendment standardizes certain terms and corrects citations in statutory and regulatory provisions affected by the addition of a new section to the Pennsylvania regulatory program or changed for other reasons.

DATES: This rule is effective September 9, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Owens, Acting Field Office Director, Pittsburgh Field Office, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937-2827, Email: bowens@osmre.gov, Fax: (412) 937-2177.

SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program
- II. Submission of the Amendment
- III. OSMRE's Findings
- IV. Summary and Disposition of Comments
- V. OSMRE's Decision
- VI. Statutory and Executive Order Reviews

I. Background on the Pennsylvania 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 approved 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 Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15, and 938.16.

II. Submission of the Amendment

By letter dated July 26, 2017 (Administrative Record No. PA 900.00), the Pennsylvania Department of Environmental Protection (PADEP) sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment included the following proposed changes to the Pennsylvania Surface Mining Control and Reclamation Act (PASMCR), 52 P.S. 1396.1-1396.19b, title 25 of the Pennsylvania Code, and Pennsylvania's approved program.

Statutory Changes

Mining Permit and Bioenergy Crop Bonding, Act 95 of 2012, House Bill 608

Pennsylvania adopted an amendment to PASMCR (52 P.S. 1396.1-1396.19b), Act 95, entitled Mining Permit and Bioenergy Crop Bonding, on July 5, 2012, Public Law 918, No. 95, and designated it as becoming effective on September 3, 2012 (pending OSMRE approval). In addition to standardizing references to "department" and "secretary" throughout PASMCR, Act 95 amended section 4(a) to "encourage and promote" the use of bioenergy crops

for revegetation during reclamation of remined lands. See 52 P.S. 1396.4(a)(2)(c) (referring to remined lands as "areas previously disturbed by mining activities that were not reclaimed to the standards of this act"). In addition, the provisions added section 4.14 to PASMCR, 52 P.S. 1396.4(n), which provides for sum-certain financial guarantees to qualifying operators for stage III reclamation liability at re-mining sites, among other things.

Mining Permit, Reclamation Plan, and Bond and Land Reclamation Financial Guarantees, Act 157 of 2012, House Bill 1813

Pennsylvania adopted an amendment to PASMCR (52 P.S. 1396.1-1396.19b), Act 157, entitled Mining Permit, Reclamation Plan, and Bond and Land Reclamation Financial Guarantees, on October 24, 2012, Public Law 1276, No. 157, and designated it as becoming effective on December 23, 2012 (pending OSMRE approval). Act 157 amended section 4 of PASMCR and added section 19.2 (52 P.S. 1396.19b). In conjunction, these provisions authorize and direct PADEP to establish a program to provide "land reclamation financial guarantees" (LRFGs) to qualified operators to ensure reclamation of certain mining lands. An LRFG is a form of bond or collateral that may be available to qualified surface coal mining operators engaged in surface mining activities. Pennsylvania provides the financial guarantee to qualified operators to satisfy, in part, the required bond obligation.

The LRFG program provides for the assessment and collection of premiums from operators for such guarantees in an amount sufficient to assure the financial stability of the financial guarantee program and to cover Pennsylvania's cost to administer the program. This program replaces Pennsylvania's Conversion Assistance Program (CAP) of 2001. The CAP was a temporary program intended to assist existing mine operations in transitioning to Pennsylvania's newly established full cost bonding requirements. The statutory provisions address site and operator eligibility, establish an account for a new program in the Surface Mining Conservation and Reclamation Fund (referred to as the LRFG Account), and