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I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * * and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act" See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Submission of the Proposed Amendment

On March 15, 2002, the Kentucky General Assembly enacted House Bill No. 556 (HB 556), which established the Pine Mountain Trail State Park in southeastern Kentucky. The bill provides that HB 556 and its implementing regulations are to be administered by the Kentucky Department of Parks. On October 31, 2002, we requested that Kentucky submit HB 556 as an amendment to the Kentucky regulatory program. The State submitted its response to our request on March 27, 2003, sending HB 556 to us for processing as a State program amendment (Administrative Record No. 1574).

We announced our intent in the June 27, 2003 **Federal Register** (68 FR 38255) to determine whether HB 556 required us to issue a decision on the submission as an amendment to the Kentucky regulatory program and whether, if it is an amendment, HB 556 is consistent with Federal unsuitability provisions contained in the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Because we are answering the first

question in the negative, we will not reach the second question.

In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the submission. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 28, 2003. We received comments from two Federal agencies (the U.S. Department of the Interior, Fish and Wildlife Service, and the U.S. Department of Labor, Mine Safety and Health Administration). We also received comments from the Kentucky Resources Council, Inc. and the Kentucky Coal Association.

III. OSM's Findings

Federal regulations at 30 CFR 732.17 establish procedures and requirements for processing and requiring State program amendments. That section of the regulations applies to any proposed changes which affect implementation of the approved regulatory program. We have reviewed HB 556 in the context of these criteria and have determined that HB 556 does not require OSM's approval as an amendment to the Kentucky regulatory program as discussed below.

HB 556 establishes the Pine Mountain Trail State Park in Southeastern Kentucky. The bill provides that HB 556 and its implementing regulations are to be administered by the Kentucky Department of Parks. Thus, the bill does not amend or alter the State's law or regulations that constitute the approved program in Kentucky. They remain intact. For this reason, we have determined that HB 556 does not meet any of the criteria contained in 30 CFR 732.17, and, therefore, does not qualify as a program amendment. Although HB 556 refers to the Kentucky regulatory program, it does not change the Kentucky Surface Mining Law or its implementing regulations.

We recognize that this notice leaves unanswered the question of whether or not HB 556 is consistent with SMCRA. However, in not answering this question, we are acting in a manner consistent with our June 27, 2003, **Federal Register** notice, which stated that we would address this question only if we determined that HB 556 constituted a program amendment. In any event, that question would need to be addressed through a separate rulemaking under 30 CFR 730.11, if we should initially determine that HB 556 is inconsistent with SMCRA or the Federal regulations. We have not made such an initial determination, nor do we

conclude that we need to address the issue at this time.

Nevertheless, we recognize that the filing of a surface coal mining application for lands within boundaries of the Pine Mountain Trail State Park, or the filing of a petition to declare lands adjacent to or visible from the park unsuitable for surface coal mining operations, could raise the question of whether or not HB 556 adversely affects the implementation of the approved Kentucky regulatory program, with respect to the Pine Mountain Trail State Park. In the event of such an occurrence, we will address the question of whether any portion of HB 556 is inconsistent with SMCRA or the Federal regulations. If we make a preliminary determination in the affirmative, we will subsequently initiate a rulemaking wherein we will announce that preliminary determination and will propose that any offending portions of HB 556 be set aside and thereby rendered unenforceable by the State, in accordance with Section 505(b) of SMCRA, 30 U.S.C. 1255(b), and 30 CFR 730.11(a) of the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The Kentucky Coal Association submitted comments dated July 24, 2003, (Administrative Record No. KY-1592) in which it indicated that HB 556 should not be considered an amendment to the Kentucky regulatory program because it does not revise the Kentucky law or regulations related to surface coal mining operations.

OSM agrees with this comment, for the reasons stated above in the findings.

The Kentucky Resources Council, Inc. (KRC) submitted comments dated July 28, 2003 (Administrative Record No. KY-1593). KRC stated that HB 556 must be considered a program amendment, because it "dramatically affects the administration and enforcement of the unsuitability and buffer zone provisions of the approved state program." For the reasons stated in our findings, above, we have concluded that HB 556 does not constitute a State program amendment. Therefore, we disagree with KRC on this point.

KRC further stated that HB 556 is inconsistent with Section 522 of SMCRA because it: (1) Mandates that the Department of Parks waive the 300 foot buffer zone provisions; and (2) precludes the filing of a petition to designate areas as unsuitable for mining within the viewshed of the park.

In response, we note that because we have determined that HB 556 is not a