

TABLE II.—ANNUITY VALUATIONS

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for $t=$	i_t	for $t=$	i_t	for $t=$
March 19950730	1–20	.0575	>20	N/A	N/A

Issued in Washington, DC, on this 10th day of February 1995.

Martin Slate,
Executive Director, Pension Benefit Guaranty Corporation.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Kentucky regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kentucky has proposed revisions to the Kentucky Administrative Rules (KAR) at 405 KAR 7:080 concerning the types of assistance provided by Kentucky's Small Operator Assistance Program (SOAP) and the eligibility criteria for that assistance. The amendment is intended to revise the Kentucky program to be consistent with changes in section 507 of SMCRA enacted by Congress as part of the Energy Policy Act of 1992, Public Law 102–486.

EFFECTIVE DATE: February 15, 1995.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Rd, Lexington, Kentucky 40503. Telephone: (606) 233–2896.

SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments

- V. Director's Decision
- VI. Procedural Determinations

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 conditions of approval and program amendments can be found at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Submission of the Proposed Amendment

By letter dated April 26, 1994 (Administrative Record No. KY–1278), Kentucky submitted a proposed amendment to its program on its own initiative. This amendment proposed to revise ten sections of Kentucky's regulations at 405 KAR 7:080 concerning Kentucky's Small Operator Assistance Program (SOAP). The proposed amendment included revisions to the sections pertaining to program services, eligibility for services, information requirements, and applicant liability. It also contained editorial revisions and clarifications of other sections.

OSM announced receipt of the proposed amendment in the May 20, 1994, **Federal Register** (59 FR 26471), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on June 20, 1994.

In the September 1, 1994, **Federal Register** (59 FR 45201), the Director of OSM announced his decision to approve the amendment, with certain exceptions. As part of his decision, the Director required Kentucky to submit a second proposed amendment to further

revise 405 KAR 7:080 sections 5(2) and 11(1) to:

(1) Delete the phrase “the twelve (12) months immediately following the date the permit is issued”;

(2) Provide that an applicant establish that his or her probable total attributed annual production from all locations on which the operator is issued the surface coal mining and reclamation permit will not exceed 300,000 tons; and

(3) Either delete the word “laboratory” in the phrase “The applicant shall reimburse the cabinet for the costs of the laboratory services performed * * *” or otherwise specify that the costs of all services rendered pursuant to 405 KAR 7:080 shall be reimbursed by SOAP recipients.

By letter dated October 3, 1994 (Administrative Record No. KY–1320), Kentucky submitted further rule revisions in an amendment intended to address the requirements in the Director's September 1, 1994, decision and to make other editorial corrections to Kentucky's regulations. OSM announced receipt of the proposed amendment in the November 14, 1994, **Federal Register** (59 FR 56449), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on December 14, 1994.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Kentucky's Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

State regulations (405 KAR 7:080)	Subject	Federal regula- tions (30 CFR part 795)
Section 5(2)	Annual Coal Production	795.6(a)(2).
Section 5(2)(a)	Ownership of the Applicant	795.6(a)(2)(i).
Section 5(2)(b)	Ownership of the Applicant	795.6(a)(2)(ii).
Section 11(1)	Services Performed	795.12(a).
Section 11(1)(e)	Transfer of Permit	795.12(a)(3).

Because the above, proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that these proposed rules are no less effective than the Federal rules.

B. Revisions to Kentucky's Regulations That Are Not Substantively Identical to the Corresponding Provisions of the Federal Regulations

1. 405 KAR 7:080 Section 8. Information requirements

Kentucky proposes to revise 405 KAR 7:080 sections 8(2)(a)(11) and (b)(11) to authorize the use of SOAP assistance to collect and analyze information required by the Kentucky regulations at 405 KAR 8:030 and 040, Section 30; MRP. These regulations concern information necessary for the protection of historically or archaeologically significant sites of public parks and historic places.

The Federal regulations at 30 CFR part 795.9(b)(4) authorize use of SOAP funding to collect historic or archaeological information but do not mention the protection of public parks. The Director finds that 405 KAR 7:080 sections 8(2)(a)(11) and (b)(11), as revised, are no less effective than the corresponding Federal regulations at 30 CFR 795.9(b)(4) with the understanding that Kentucky may authorize the use of SOAP funds to collect and analyze historical or archaeological information required by Kentucky for historic sites but not to collect and analyze any additional information required by Kentucky for public parks.

2. 405 KAR 7:080 Section 11. Applicant liability

Kentucky proposes to revise 405 KAR 7:080 section 11(1)(e) to require that the SOAP applicant reimburse Kentucky for the costs of SOAP-funded services if the permit rights are sold, transferred, or assigned to another person and if that person's coal production exceeds the 300,000 ton annual limit during the twelve months immediately following the date the original permit is reissued in the name of the successor.

The revised Kentucky rules differ slightly from the corresponding Federal regulations at 30 CFR 795.12(a)(3)

which refer to the twelve-month period after the date the permit was originally issued. The Director finds that 405 KAR 7:080 section 11(1)(e), as revised, is no less effective than the corresponding Federal regulations at 30 CFR 795.12(a)(3) for two reasons:

(1) The Kentucky regulations require reimbursement in every instance in which the Federal regulations require reimbursement; and

(2) The additional reimbursement requirements imposed by Kentucky in the event of permit sale, transfer, or assignment would not adversely impact the availability of SOAP assistance to eligible small operators.

C. Revisions to Kentucky's Regulations With no Corresponding Federal Provisions

1. 405 KAR 7:080 Section 6. Filing for assistance

Kentucky proposes to revise 405 KAR 7:080 section 6 by changing the reference date of Kentucky's SOAP application form in the rule from October 1991 to September 1994, with the latter date reflecting Kentucky's most recent revision to that form. Kentucky's SOAP application form date has no equivalent in the corresponding Federal regulations at 30 CFR part 795.7.

The Director finds that the proposed revision is necessary for the accuracy of the Kentucky regulations and is not inconsistent with any requirement of SMCRA or the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No one requested an opportunity to speak at a public hearing, so no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Kentucky program. The U.S. Environmental Protection Agency noted that the

reference in 405 KAR 7:080 section 10(2)(a)(6) to the document "Standard Methods for the Examination of Water and Wastewater," 14th edition, 1975, should be updated to refer to the 18th edition, 1992. The Director concurs with this comment even though the referenced Kentucky regulations was not affected by the program amendment which is the subject of this final rule. OSM has notified Kentucky of this U.S. EPA comment and has requested that the State make this correction in its next revision of 405 KAR 7:080. The U.S. Fish and Wildlife Service, the Mine Safety and Health Administration, the U.S. Forest Service, and the U.S. Bureau of Mines responded that they had no comment on the proposed amendment.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated 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, OSM did not request EPA's concurrence.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Kentucky on October 3, 1994.

The Federal regulations at 30 CFR part 917, codifying decisions concerning the Kentucky program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly,

30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Kentucky program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Kentucky of only such provisions.

VI. 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 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (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 corresponding 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 corresponding Federal regulations.

List of Subjects in 30 CFR 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 7, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

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 paragraph (xx) read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(xx) Revisions to the following rules, as submitted to OSM on October 3, 1994, are approved effective February 15, 1995.

405 KAR 7:080	Small operator assistance
Section 5(2)	Annual Coal Production.
Section 5(2) (a) and (b).	Ownership of the Applicant.
Section 6	SOAP Application Form.
Section 8(2)(a)(11)	Information Requirements.
Section 8(2)(b)(11)	Information Requirements.

405 KAR 7:080	Small operator assistance
Section 11(1)	Services Performed. Sale, Transfer, or Assignment of Permit Rights.
Section 11(1)(e)	

3. Section 917.16 paragraph (1) is removed.
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Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the New Mexico regulatory program (hereinafter referred to as the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*) (SMCRA). New Mexico proposed the addition of rules pertaining to the exemption for extraction of coal incidental to the extraction of other minerals. The amendment revises the New Mexico program to be consistent with the corresponding Federal regulations.
EFFECTIVE DATE: February 15, 1995.
FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmet, Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.13, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated October 26, 1994, New Mexico submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. NM-