

qualified equity investment to make a qualified low-income community investment in Y, and X uses the proceeds of B's qualified equity investment to make a qualified low-income community investment in Z. Y and Z are not CDEs. X controls both Y and Z within the meaning of paragraph (d)(6)(ii)(B) of this section. In 2003, Y and Z are qualified active low-income community businesses. In 2007, Y, but not Z, is a qualified active low-income community business and X does not satisfy the substantially-all requirement using the safe harbor calculation under paragraph (c)(5)(iii) of this section. A's equity investment satisfies the substantially-all requirement of paragraph (c)(1)(ii) of this section using the direct-tracing calculation of paragraph (c)(5)(ii) of this section because A's equity investment is traceable to Y. However, B's equity investment fails the substantially-all requirement using the direct-tracing calculation because B's equity investment is traceable to Z. Therefore, under paragraph (e)(2)(ii) of this section, there is a recapture event for B's equity investment (but not A's equity investment).

(f) *Basis reduction*—(1) *In general.* A taxpayer's basis in a qualified equity investment is reduced by the amount of any new markets tax credit determined under paragraph (b)(1) of this section with respect to the investment. A basis reduction occurs on each credit allowance date under paragraph (b)(2) of this section. This paragraph (f) does not apply for purposes of sections 1202, 1400B, and 1400F.

(2) *Adjustment in basis of interest in partnership or S corporation.* The adjusted basis of either a partner's interest in a partnership, or stock in an S corporation, must be appropriately adjusted to take into account adjustments made under paragraph (f)(1) of this section in the basis of a qualified equity investment held by the partnership or S corporation (as the case may be).

(g) *Other rules*—(1) *Anti-abuse.* If a principal purpose of a transaction or a series of transactions is to achieve a result that is inconsistent with the purposes of section 45D and this section, the Commissioner may treat the transaction or series of transactions as causing a recapture event under paragraph (e)(2) of this section.

(2) *Reporting requirements*—(i) *Notification by CDE to taxpayer*—(A) *Allowance of new markets tax credit.* A CDE must provide notice to any taxpayer who acquires a qualified equity investment in the CDE at its original issue that the equity investment is a qualified equity investment entitling the taxpayer to claim the new markets tax credit. The notice must be provided by the CDE to the taxpayer no later than 60 days after the date the taxpayer makes the investment in the CDE. The notice must contain the amount paid to the

CDE for the qualified equity investment at its original issue and the taxpayer identification number of the CDE.

(B) *Recapture event.* If, at any time during the 7-year period beginning on the date of the original issue of a qualified equity investment in a CDE, there is a recapture event under paragraph (e)(2) of this section with respect to such investment, the CDE must provide notice to each holder, including all prior holders, of the investment that a recapture event has occurred. The notice must be provided by the CDE no later than 60 days after the date the CDE becomes aware of the recapture event.

(ii) *CDE reporting requirements to Secretary.* Each CDE must comply with such reporting requirements to the Secretary as the Secretary may prescribe.

(iii) *Manner of claiming new markets tax credit.* A taxpayer may claim the new markets tax credit for each applicable taxable year by completing Form 8874, "New Markets Credit," and by filing Form 8874 with the taxpayer's Federal income tax return.

(iv) *Reporting recapture tax.* If there is a recapture event with respect to a taxpayer's equity investment in a CDE, the taxpayer must include the credit recapture amount under section 45D(g)(2) on the line for recapture taxes on the taxpayer's Federal income tax return for the taxable year in which the recapture event under paragraph (e)(2) of this section occurs (or on the line for total tax, if there is no such line for recapture taxes) and write *NMCR* (new markets credit recapture) next to the entry space.

(h) *Effective date.* This section applies on or after December 26, 2001.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

**Par. 3.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**Par. 4.** In § 602.101, paragraph (b) is amended by adding an entry to the table in numerical order to read as follows:

**§ 602.101 OMB Control numbers.**

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
(b) * * *	
1.45D-1T .....	1545-1765

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *

Approved: December 17, 2001.  
**Robert E. Wenzel,**  
*Deputy Commissioner of Internal Revenue.*  
**Mark Weinberger,**  
*Assistant Secretary of the Treasury.*  
 [FR Doc. 01-31528 Filed 12-21-01; 8:45 am]  
**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE INTERIOR**  
**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 917**

[KY-221-FOR]

**Kentucky Regulatory Program**

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

**ACTION:** Final rule.

**SUMMARY:** OSM is approving an amendment to the Kentucky regulatory program (Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kentucky is proposing revisions to the Kentucky Administrative Regulations (KAR) pertaining to the general requirements for performance bonds and liability insurance. Kentucky intends to revise its program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** December 26, 2001.

**FOR FURTHER INFORMATION CONTACT:** William J. Kovacic, Field Office Director, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (859) 260-8400. Internet address: bkovacic@osmre.gov.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Kentucky Program
- II. Submission of the Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

**I. Background on the Kentucky Program**

Section 503(a) of SMCRA permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of

surface coal mining and reclamation operations in accordance with the requirements of the SMCRA \* \* \* and "rules and regulations consistent with regulations issued by the Secretary" pursuant to the SMCRA. 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 the conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning the Kentucky program and previous amendments are codified at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

## II. Submission of the Proposed Amendment

By letter dated May 4, 1999 (Administrative Record No. KY-1459), Kentucky submitted a proposed amendment to its program at 405 KAR 10:010 under SMCRA (30 U.S.C. 1201 *et seq.*). By letter dated August 20, 1999 (Administrative Record No. KY-1465), Kentucky advised us it revised section 2(2) of 405 KAR 10:010 by inserting references to sections 5(1)(a) and 5(1)(g) where the new bond forms are incorporated by reference. The final regulation and bond forms were otherwise unchanged. OSM did not reopen the public comment period because the revision did not constitute a substantive change to the original submission.

We announced receipt of the proposed amendment in the June 1, 1999, **Federal Register** (64 FR 29247), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on July 1, 1999. We did not receive any comments and we did not hold a public hearing because no one requested one.

## III. Director's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment. Any revisions that we do not specifically discuss below concern nonsubstantive wording changes.

At section 2(2), Kentucky adds language which clarifies that for surface coal mining operations on non-Federal lands the applicant shall file the bond form designated at section 5(1)(a) and for coal mining operations on Federal lands the applicant shall file the bond

form designated at section 5(1)(g). This amendment does not change the substantive meaning of the rule; rather it further clarifies the intent of the rule by defining which bond form is used for what type of land (non-Federal vs. Federal lands). We therefore find that with this change the State provision is consistent with the Federal provisions at 30 CFR 800.11(a) which requires a permit applicant to file a bond on a form prescribed and furnished by the regulatory authority. The change is therefore approved.

At section 5(1), Kentucky revises the following titles to the documents it incorporates by reference: Irrevocable Standby Letter of Credit—Form SME-72 (July 1994); Certificate of Liability Insurance—Form SME-29; Notice of Cancellation, Non-Renewal or Change of Liability Insurance—Form SME-30; and Escrow Agreement—Form SME-64, (May 1991). The incorporation by reference of these documents was previously approved by OSM on December 17, 1996, at 61 FR 66220-66225. The revisions do not alter the requirements of the previously approved provisions in the Kentucky regulations. Since these revisions are nonsubstantive, we find that they will not make the Kentucky regulations inconsistent with the Federal regulations.

Kentucky also revises the edition date to the Confirmation of Irrevocable Standby Letter of Credit—Form SME-72-A, from April 1991 to July 1994, which is incorporated by reference at section 5(1). Nothing else on the form was changed. The incorporation by reference of this form was also approved by OSM on December 17, 1996. The revision does not alter the requirements of the previously approved provision in the Kentucky regulations. Since this is a nonsubstantive change, we find that it will not make the Kentucky regulation inconsistent with the Federal regulations.

Kentucky is also incorporating by reference and revising the form: Performance Bond—Form SME-42, (June 1999). Revised form SME-42 is a standard performance bond form for Non-Federal Lands as required by KRS 350.060(11) and section 2 of this regulation. It specifies the terms and conditions of the bond, including the obligations of the principal and surety and bond release or forfeiture conditions. It identifies among other things: the permit or application number, the amount and type of bond, and the acreage and location of the bonded land. The following deletions from the original form were made: the requirement that a resident Kentucky

agent countersign a surety bond executed by an out-of-State surety (KRS 304.3-250 originally required it, this section was repealed on July 15, 1998) and the requirement to enter the name of the community near the lands associated with the bond. The June 1999 edition replaces the February 1991 edition. There is no Federal counterpart to either requirement that Kentucky proposes to delete. Therefore, the deletion of both the countersignature and the name of the nearby community do not render the Kentucky program less effective than the Federal rules.

New form SME-42-F is a standard performance bond form for Federal Lands as required by KRS 350.060(11), KRS 350.064(11) and section 2 of this regulation. Pursuant to 523(c) of SMCRA, Kentucky and the Secretary of the Department of the Interior entered into a Cooperative Agreement (the "Agreement") for the regulation of surface coal mining and reclamation operations on Federal lands in Kentucky. See 63 FR 53252 (October 2, 1998). Article IX of the Agreement requires that the performance bond form for Federal lands, state on its face, that in the event the Agreement is terminated, the portion of the bond covering Federal lands shall be assigned to the United States. The Agreement also required the bond form to state that if subsequent to the forfeiture of the bond, the Agreement is terminated, any unspent or uncommitted proceeds of the bond covering the Federal lands shall be assigned and forwarded to the United States. The new form includes these requirements on the form. The new form also specifies the terms and conditions of the bond, including the obligations of the principal and surety and bond release and forfeiture conditions. It identifies, among other things, the permit or application number, the amount and type of bond and the acreage and location of the bonded land.

This form satisfies the requirements in the Agreement and is not inconsistent with the Federal rules since it implements the bonding requirements. The change is therefore approved.

At section 5(2), Kentucky provides for the inspection and reproduction of the above materials. There is no direct Federal counterpart. This amendment makes the bond form available to the public. We therefore find that with this change the State provision is not inconsistent with the Federal rules. The change is therefore approved.

#### IV. Summary and Disposition of Comments

##### Public Comments

We solicited public comments on the amendment. No comments were submitted.

##### Federal Agency Comments

On March 1, 2000, we asked for comments from various Federal agencies who may have an interest in the Kentucky amendment (Administrative Record No. KY-1492) according to 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA. No one responded.

##### Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get a written agreement 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.*). Since none of the proposed amendment provisions relate to air or water quality, we did not ask EPA to agree on the amendment. We did ask EPA to comment but they did not respond.

#### V. Director's Decision

Based on the above findings, we approve the proposed amendment submitted by Kentucky on May 4, 1999, and revised on August 20, 1999.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 917, codifying decisions concerning the Kentucky program. We find that good cause exists under 5 U.S.C. 553(d)(3) of SMCRA to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of SMCRA and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

##### Effect of the 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, we will recognize only the statutes, regulations, and other materials we have approved, together with any consistent implementing policies, directives, and other materials. We will require that Kentucky enforce only such provisions.

#### VI. Procedural Determinations

##### Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

##### Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

##### Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 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.

##### Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with"

regulations issued by the Secretary pursuant to SMCRA.

##### Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule 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 expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

##### National Environmental Policy Act

This rule does not require an environmental impact statement because 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 certifies 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. 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.

##### 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. (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 upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or

tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 917**

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 24, 2001.

**Roger Calhoun,**

*Acting Regional Director, Appalachian Regional Coordinating 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 in the table in paragraph (a) by adding a new entry 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
May 4, 1999 .....	December 26, 2001	KAR 10:010 Sections 2(2), 5(1), 5(2) and bond forms SME-42(6/99 ed.) and SME-42-F(6/99 ed.)

\* \* \* \* \*  
 [FR Doc. 01-31535 Filed 12-21-01; 8:45 am]  
 BILLING CODE 4310-05-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[LA-55-1-7485a; FRL-7121-4]

**Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Louisiana; Redesignation of Lafourche Parish Ozone Nonattainment Area to Attainment for Ozone**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on redesignation of Lafourche Parish from nonattainment to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based on three years of complete, quality-assured, ambient air monitoring data for the 1997 to 1999 ozone seasons that demonstrate that the ozone NAAQS has been attained in the area. On August 9, 2000 the State of Louisiana submitted a request to redesignate the ozone nonattainment area of Lafourche Parish to attainment. Under the Clean Air Act (CAA), nonattainment areas may be

redesignated to attainment if sufficient data are available to warrant the redesignation and the area meets the other CAA redesignation requirements. In this action, EPA will, unless adverse or critical comment is received, approve Louisiana’s request for designation of Lafourche Parish because the request meets the requirements of the CAA.

**DATES:** This direct final rule is effective on February 25, 2002, unless EPA receives adverse comment by January 25, 2002. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202-2733.

Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

**FOR FURTHER INFORMATION CONTACT:** Thomas Diggs at (214) 665-7214.

**SUPPLEMENTARY INFORMATION:**

Throughout this document wherever “we,” “us,” or “our” are used, we mean the EPA.

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- VII. What administrative requirements apply for this action?

**I. What Action Is EPA Taking?**

We have determined that the Lafourche Parish ozone nonattainment area has attained the NAAQS for ozone. EPA has evaluated the State’s redesignation request for consistency with the CAA, EPA regulations and policy. EPA believes that the redesignation request and monitoring data demonstrate that this area has attained the ozone standard. In addition, EPA has determined that the redesignation request meets the requirements and policy set forth in the General Preamble and policy memorandum discussed in this document for area designations. EPA is today approving Louisiana’s redesignation request for Lafourche Parish.

**II. What Is the Background for This Action?**

The CAA as amended in 1977 required areas that were designated