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)(ii) of this section because 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) 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 entitled 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 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 recapture amount under section 45D of the Federal income tax return.


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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 at 405 KAR 10:010 under SMCR (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(b) 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.

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 on 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)(4) 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.

**SUPPLEMENTARY INFORMATION:**

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

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**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