premixes prepared therefrom must bear expiration dates for the sealed and open container (established through generally accepted stability testing methods), other information required by §70.25 of this chapter, a statement of the concentration of ethoxyquin contained therein (whole Antarctic krill meal only), and adequate directions to prepare a final product complying with the limitations prescribed in paragraph (c) of this section.

(2) The presence of the color additive in finished fish feed prepared according to paragraph (c) of this section must be declared in accordance with §501.4 of this chapter.

(3) The presence of the color additive in salmonid fish that have been fed feeds containing Antarctic krill meal must be declared in accordance with §§101.22(b), (c), and (k)(2) and 101.100(a)(2) of this chapter.

(e) Exemption from certification. Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the Federal Food, Drug, and Cosmetic Act.


Lauren K. Roth,
Associate Commissioner for Policy.

[FR Doc. 2022–10025 Filed 5–9–22; 8:45 am]

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 50

[Docket No. OAG 177; AG Order No. 5384–2022]

RIN 1105–AB62

Guidelines and Limitations for Settlement Agreements Involving Payments to Non-Governmental Third Parties

AGENCY: Department of Justice.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule ("rule") revokes regulations of the Department of Justice ("Department") that codified a prohibition, subject to limited exceptions, on the inclusion of provisions in settlement agreements directing or providing for a payment or loan, in cash or in kind, to any non-governmental person or entity that is not a party to the dispute. For further information on how the Department intends to approach such settlements going forward, interested parties should consult an Attorney General Memorandum that the Department is issuing on its website in conjunction with this rule. Comments are requested both as to this rule and as to that Memorandum.

DATES:

Effective date: This rule is effective May 10, 2022.

Applicability date: May 5, 2022.

Comments: Comments are due on or before July 11, 2022.

ADDRESSES: To ensure proper handling of comments, please reference Docket No. OAG 177 on all electronic and written correspondence. The Department encourages the electronic submission of all comments through https://www.regulations.gov using the electronic comment form provided on that site. For ease of reference, an electronic copy of this document is also available at that website. It is not necessary to submit paper comments that duplicate the electronic submission, as comments submitted to https://www.regulations.gov will be posted for public review and are part of the official docket record. However, should you wish to submit written comments through regular or express mail, they should be sent to Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Room 4252 RFK Building, 950 Pennsylvania Avenue NW, Washington, DC 20530. Comments received by mail will be considered timely if they are postmarked on or before July 11, 2022. The electronic Federal eRulemaking portal will accept comments until Midnight Eastern Time at the end of that day.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, telephone (202) 514–8059 (not a toll-free number).

Supplementary Information:

I. Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at https://www.regulations.gov. Information made available for public inspection includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this rule. Nevertheless, if you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You must also locate all the personal identifying information that you do not want posted online in the first paragraph of your comment and identify what information you want the agency to redact. Personal identifying information identified and located as set forth above will be placed in the agency’s public docket file, but not posted online.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, the agency may choose not to post that comment (or to post that comment only partially) on https://www.regulations.gov. Confidential business information identified and located as set forth above will not be placed in the public docket file, nor will it be posted online.

If you want to inspect the agency’s public docket file in person by appointment, please see the FOR FURTHER INFORMATION CONTACT section.

II. Discussion

A. Overview

This rule revokes the Department’s regulations at 28 CFR 50.28. Going forward, the Department’s approach to settlement agreements that direct or provide for a payment or loan, in cash or in kind, to a non-governmental person or entity that is not a party to the dispute will be governed by a new Attorney General Memorandum being issued on the Department’s website concurrently with this rule.

B. Background

For decades prior to 2017, Department components had entered into settlement agreements that involved payments to certain third parties as a means of addressing harms arising from violations of Federal law, particularly in the environmental context but in other contexts as well. In 2017, the Attorney General issued a memorandum prohibiting Department attorneys from “enter[ing] into any agreement on behalf of the United States in settlement of federal claims or charges, including agreements settling civil litigation, accepting plea agreements, or deferring or declining prosecution in a criminal
matter, that directs or provides for a payment or loan to any non-
governmental person or entity that is
not a party to the dispute,” subject only
to certain specified exceptions.
Memorandum from the Attorney
General, “Prohibition on Settlement
Payments to Third Parties” at 1 (June 5,
2017) (the “2017 Memorandum”).
Provisions reflecting the 2017
Memorandum were added to the Justice
justice-manual) at sections 1–17.000, 5–
11.105, 9–16.325.
In December 2020, the Department
amended its regulations to add a new 28
CFR 50.28, reflecting the prohibition set
forth in the 2017 Memorandum “with
certain changes . . . to clarify the scope
of the exceptions.” 85 FR 81409. The
Department specified that the
prohibition “applies to all civil and
criminal cases litigated under the
direction of the Attorney General and
includes civil settlement agreements, cy
pres agreements or provisions, plea
agreements, non-prosecution
agreements, and deferred prosecution
agreements.” 85 FR 81410.
C. Revocation of 28 CFR 50.28
After having considered the views of
the Department’s components and their
experience with the regulations at 28
CFR 50.28, the Attorney General has
concluded that the regulations at 28
CFR 50.28 are more restrictive and less
tailored than necessary and should
therefore be revoked.
When used appropriately, agreements
providing for payments to third parties
are lawful and allow the United States
to more fully accomplish the primary
goals of civil and criminal enforcement:
Compensating victims, remedying harm,
and punishing and deterring unlawful
conduct.
For example, the harms caused by
violations of Federal environmental
statutes, including harms to
communities affected by environmental
crime, can be difficult to redress directly
in particular cases. In such
circumstances, the Environment and
Natural Resources Division has
previously relied upon supplemental
environmental projects to help achieve
an enforcement action’s goals. Such
projects further the aims of Federal
environmental laws the Justice
Department is responsible for enforcing
by remedying the harms to the
communities most directly impacted by
violations of those laws. For this reason,
they are particularly powerful tools for
advancing environmental justice.
In revoking 28 CFR 50.28, the
Department is not departing from
the principle that the goals of settlements
include compensating victims,
redressing harms, and punishing and
deterring unlawful conduct. 85 FR
81409. But policies in service of this
principle have traditionally been
addressed through memoranda from
Department leadership rather than
through regulations. The Department is
therefore revoking 28 CFR 50.28 in its
entirety, and the Attorney General is
concurrently issuing a new
Memorandum setting forth the
Department’s policy going forward. That
Memorandum also directs that the
current provisions of the Justice Manual
at sections 1–17.000, 5–11.105, and 9–
16.325 be revised to conform to the new
policy.
Regulatory Certifications
A. Administrative Procedure Act
This rule relates to a matter of agency
management or personnel and is a rule
of agency organization, procedure, or
practice. As such, this rule is exempt
from the usual requirements of prior
notice and comment and a 30-day delay
in effective date. See 5 U.S.C. 553(a)(2),
(b), and (d). The rule is effective upon
signature. In its discretion, the
Department is seeking post-
promulgation public comment on this
rulemaking.
B. Regulatory Flexibility Act
An analysis under the Regulatory
Flexibility Act was not required for this
rule because the Department was not
required to publish a general notice of
proposed rulemaking for this matter.
C. Executive Orders 12866 and 13563—
Regulatory Review
This rule has been drafted and
reviewed in accordance with section
1(b) of Executive Order 12866,
“Regulatory Planning and Review,” and
section 1(b) of Executive Order 13563,
“Improving Regulation and Regulatory
Review.”
This rule is “limited to agency
organization, management, or personnel
matters” and thus is not a “rule” for
purposes of review by the Office of
Management and Budget under section
3(d)(3) of Executive Order 12866.
Accordingly, this rule has not been
reviewed by the Office of Management
and Budget.
D. Executive Order 12988—Civil Justice
Reform
This regulation meets the applicable
standards set forth in sections 3(a) and
3(b)(2) of Executive Order 12988, “Civil
Justice Reform.”
E. Executive Order 13132—Federalism
This rule will not have substantial
direct effects on the States, on the
relationship between the National
Government and the States, or on the
distribution of power and
responsibilities among the various
levels of government. It is a rule of
internal agency practice and procedure.
Therefore, in accordance with Executive
Order 13132, “Federalism,” the
Department has determined that this
rule does not have sufficient federalism
implications to warrant the preparation
of a federalism summary impact
statement.
F. Unfunded Mandates Reform Act of
1995
This rule will not result in the
expenditure by State, local, and tribal
governments, in the aggregate, or by the
private sector, of $100 million or more
(adjusted annually for inflation) in any
one year, and it will not significantly or
uniquely affect small governments.
Therefore, no actions are necessary
under the provisions of the Unfunded
Mandates Reform Act of 1995, 2 U.S.C.
1501 et seq.
G. Congressional Review Act
This rule is not a major rule as
defined by the Congressional Review
Act, 5 U.S.C. 804. This action pertains
to agency management, personnel, and
organization and does not substantially
affect the rights or obligations of non-
agency parties. Accordingly, it is not a
“rule” as that term is used in the
Congressional Review Act, 5 U.S.C.
804(3)(B), (C), and the reporting
requirements of 5 U.S.C. 801 do not apply.
H. Paperwork Reduction Act of 1995
This final rule does not impose any
new reporting or recordkeeping
requirements under the Paperwork
3521.
List of Subjects in 28 CFR Part 50
Administrative practice and
procedure.
Accordingly, for the reasons set forth
in the preamble, and by virtue of the
authority vested in me as Attorney
General, including 5 U.S.C. 301 and 28
U.S.C. 509, 510, part 50 of title 28 of the
Code of Federal Regulations is amended
as follows:

PART 50—STATEMENTS OF POLICY

1. The authority citation for part 50
continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 1162;
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). Based on these criteria, the Secretary of the Interior conditionally approved the Kentucky program effective May 18, 1982. You can find background information on the program, including the Secretary’s findings, the disposition of comments, and conditions of approval 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. The regulatory authority in Kentucky is Kentucky’s Energy and Environment Cabinet (herein referred to as the Cabinet).

II. Submission of the Amendment

By letter dated November 25, 2019 (Administrative Record No. KY 2003), the Cabinet submitted an amendment to its program under SMCRA (30 U.S.C. 1201 et seq.). The amendment revises chapter 10:015 of title 405 of the Kentucky Administrative Regulations (KAR), General bonding provisions. The regulatory provisions at Section 8(7), Bond Rate of Additional Areas, establish new requirements for the calculation of additional bond amounts necessary for the long-term treatment of unanticipated pollutional discharges (hereafter referred to as “discharges”). Other bond requirements of a non-substantive nature were also included. See 405 KAR 10, Bond and Insurance Requirements, subchapter 10:015. The submission is intended to address disapprovals we made in a 2018 decision regarding the Cabinet’s proposed regulations for the long-term treatment of discharges in a final rule designated KY–256–FOR (KY–256), see January 29, 2018, Federal Register (83 FR 3948), and the resultant action we required under the authority of 30 CFR 732.17(e) and (f). The required action is codified in the Kentucky program at 30 CFR 917.16(p), Required regulatory program amendments. The full text of the program submission is available at https://www.regulations.gov.

A. Background of Kentucky Program Amendment KY–256—In May 2012, in accord with 30 CFR 733.12(b), we notified the Cabinet that we had reason to believe it was not implementing, administering, enforcing, and maintaining the reclamation bond provisions of its approved program in a manner that assured “completion of the [applicable] reclamation plan,” as required by section 509(a) of SMCRA, 30 U.S.C. 1259(a), Performance bonds. The Cabinet responded to this section 733 notice with three submissions: One in September 2012, another in July 2013, and a third in December 2013. The first submission was announced in the Federal Register on February 20, 2013 (78 FR 11796). Subsequently, all three submissions were combined (and public comment solicited) in a single Federal Register document, 80 FR 15953 (March 26, 2015), in which the proposed rule was designated State program amendment KY–256. As the document explained, KY–256–FOR was intended to address the deficiencies identified in the section 733 notice.

B. Partial Approval of KY–256—We approved most of the provisions of KY–256–FOR in a final rule published in the Federal Register on January 29, 2018 (83 FR 3948). One of the provisions not approved, and now under consideration in revised form, was subsection 8(7) of 405 KAR 10:015, which consisted of three subsections (8(7)(a), –(b), and –(c)). If approved, subsection 8(7)(a) would have provided that, for permitted sites requiring long-term treatment of discharges, the Cabinet must calculate an additional bond amount based on the estimated annual treatment cost provided by the permittee and multiplied by twenty years. Focusing on this twenty-year multiplier, we disapproved the provision in our January 2018 final rule because the Cabinet had not demonstrated how this provision would assure that adequate bonding would be calculated for the long-term treatment of discharges. In doing so, we reaffirmed that abatement of unanticipated water pollution is an element of reclamation and noted that a permittee’s treatment obligation may extend in perpetuity. As a result, we found the provision less stringent than section 509 of SMCRA, 30 U.S.C. 1259, and less effective than the Federal regulations at 30 CFR part 800 and, on that basis, declined to approve it. We also declined to approve subsection 8(7)(b), which would have operated in conjunction with subsection 8(7)(a) by subjecting the estimate of annual treatment cost specified in subsection