Drafting Information

The principal author of these regulations is Donald Squires, Office of the Assistant Chief Counsel (Disclosure Litigation), IRS. However, other personnel from the IRS, Customs Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by removing the entry for Section 301.6103(l)(14)–1T and adding an entry in numerical order to read as follows:

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

Section 301.6103(l)(14)–1 also issued under 26 U.S.C. 6103(l)(14). * * *

§ 301.6103(l)(14)–1T [Redesignated as § 301.6103(l)(14)–1]

Par. 2. Section 301.6103(l)(14)–1T is redesignated as § 301.6103(l)(14)–1 and the section heading is amended by removing the language ''(temporary)''.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 13, 1996.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 96–31771 Filed 12–16–96; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

28 CFR Part 14

Administrative Claims Under the Federal Tort Claims Act; Delegation of Authority

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This Directive delegates authority to the Postmaster General to settle administrative claims presented pursuant to the Federal Tort Claims Act where the amount of the settlement does not exceed $200,000. The Directive implements the Administrative Dispute Resolution Act. This Directive will alert the general public to the new authority and is being published in the CFR to provide a permanent record of this delegation.

EFFECTIVE DATE: December 17, 1996.

FOR FURTHER INFORMATION CONTACT: Jeffrey Axelrad, Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, D.C. 20530, (202) 616–4400.

SUPPLEMENTARY INFORMATION: This Directive has been issued to delegate settlement authority and is a matter solely related to division of responsibility between the Department of Justice and the Postal Service. It does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). It is not a significant regulation action within the meaning of Executive Order No. 12866.

List of Subjects in 28 CFR Part 14

Authority delegations (Government agencies), Claims.

By virtue of the authority vested in me by part 0 of Title 28 of the Code of Federal Regulations, including §§ 0.45, 0.160, 0.162, 0.164, and 0.168, 28 CFR part 14 is amended as follows:

PART 14—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

1. The authority citation for Part 14 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 2672; 38 U.S.C. 224(a).

2. The Appendix to Part 14 is amended by revising the heading and text for the ''Delegation of Authority to the Postmaster General'' to read as follows:

Appendix to Part 14—Delegations of Settlement Authority

* * * * *

Delegation of Authority to the Postmaster General

Section 1. Authority to compromise tort claims.

(a) The Postmaster General shall have the authority to adjust, determine, compromise and settle a claim involving the Postal Service under Section 2672 of Title 28, United States Code, relating to the administrative settlement of federal tort claims, if the amount of the proposed adjustment, compromise, or award does not exceed $200,000. When the Postmaster General believes a claim pending before him presents a novel question of law or of policy, he shall obtain the advice of the Assistant Attorney General in charge of the Civil Division.

(b) The Postmaster General may redelegate in writing the settlement authority delegated to him under this section.

Section 2. Memorandum.

Whenever the Postmaster General settles any administrative claim pursuant to the authority granted by section 1 for an amount in excess of $100,000 and within the amount delegated to him under section 1, a memorandum fully explaining the basis for the action taken shall be executed. A copy of this memorandum shall be sent to the Director, FTCA Staff, Torts Branch of the Civil Division.

* * * * *

Frank W. Hunger,

Assistant Attorney General, Civil Division.

[FR Doc. 96–31923 Filed 12–16–96; 8:45 am]

BILLING CODE 4410–12–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–208–FOR]

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 proposed revisions to its regulations pertaining to civil penalties, performance bond and liability insurance, contemporaneous reclamation, and revegetation. The amendment is intended to revise the Kentucky program to be consistent with the corresponding Federal regulations and SMCRA.

EFFECTIVE DATE: December 17, 1996.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, OSM, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (606) 233–2894.

SUPPLEMENTARY INFORMATION:

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, 917.15, 917.16, and 917.17.

II. Submission of the Proposed Amendment

By letter dated July 19, 1994 (Administrative Record No. KY–1304), Kentucky submitted a proposed amendment to its program pursuant to SMCRA at its own initiative.

OSM announced receipt of the proposed amendment in the August 9, 1994 Federal Register (59 FR 40503), 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 September 8, 1994.

By letter dated January 11, 1995 (Administrative Record No. KY–1331), Kentucky resubmitted a proposed amendment that completed its regulation promulgation process. The resubmission included changes to 405 KAR 10:010—Requirements for Bond and Liability Insurance, 405 KAR 16:010—General Provisions, 16:020 Contemporaneous Reclamation, 405 KAR 18:010—General Provisions, and a Statement of Consideration.

Based on the revised information, OSM reopened the public comment period in the February 17, 1995 Federal Register (60 FR 9314), and provided the opportunity for a public hearing on the adequacy of the revised amendment. The public comment period closed on March 20, 1995.

During its review of the proposed amendment, OSM identified certain concerns relating to the revegetation provisions at 405 KAR 16:200 and 18:200. OSM notified Kentucky of these concerns by letter dated May 10, 1996 (Administrative Record No. KY–1367). By letter dated June 13, 1996 (Administrative Record No. KY–1369), Kentucky responded to OSM's concerns by submitting additional explanatory information to its proposed program amendment. Because the additional information merely clarified certain provisions of Kentucky's proposed revisions, OSM did not reopen the public comment period.

By letter dated March 2, 1995 (Administrative Record No. KY–1347), Kentucky submitted additional revisions to the proposed amendment pertaining to civil penalty assessment and revegetation. Based on the revised information. OSM reopened the comment period in the April 17, 1995, Federal Register (60 FR 19193). During its review of the proposed revisions, OSM noted that Kentucky did not submit the January 6, 1995, ''Procedures for Assessment of Civil Penalties'' incorporated by reference in the March 2, 1995, amendment. It was subsequently submitted on September 26, 1996. OSM reopened the comment period in the October 25, 1996, Federal Register (61 FR 55247).

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 revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. 405 KAR 7:015—Documents Incorporated by Reference

In section 3, Kentucky proposes to delete the incorporation by reference to the Penalty Assessment Manual. This document is superseded by the addition of procedures for the assessment of civil penalties at 405 KAR 7:095, section 7. The Director finds that the proposed deletion at 405 KAR 7:015(3) will not render the State program less effective than the Federal regulations.

2. 405 KAR 7:095—Assessment of Civil Penalties

At section 5(2), Kentucky proposes to clarify that the provisions of subsection (2) are in addition to the civil penalty provided for in subsection (1). At section 7, Kentucky proposes to incorporate by reference ''Procedures for Assessment of Civil Penalties,'' (January 6, 1995). The document establishes procedures for determining how and when penalties will be assessed, assessing continuing violations, and waiving the point system for calculating penalties. The Federal regulations at 30 CFR part 845 provide procedures for the assessment of civil penalties. The Director finds that the proposed regulations at 405 KAR 7:095 (2) and (7) contain procedural requirements which are the same or similar to those contained in section 518 of SMCRA, and which are consistent with the Federal regulations at 30 CFR part 845.

3. 405 KAR 10:010—General Requirements for Performance Bond and Liability Insurance

At section 2(4), Kentucky proposes to require that a rider to the applicable performance bond confirming coverage of a revision be submitted by the applicant if the acreage of the permit area is unchanged but if the revision: (a) Adds a coal washer, a crush and load facility, a refuse pile, or a coal mine waste impoundment to the existing permit or (b) alters the boundary of a permit area or increment. The Federal regulations at 30 CFR 800.15(d) require that bonds be adjusted to conform to the permit as revised. Kentucky also proposes to add a new section 5 which incorporates by reference the following documents: Performance Bond, SME–42, February, 1991; Irrevocable Standby Letter of Credit; Confirmation of Irrevocable Standby Letter of Credit; Certificate of Liability Insurance; Notice of Change of Liability Insurance; and Escrow Agreement. While there are no direct Federal counterparts, the Director finds that the proposed revisions at 405 KAR 10:010(2)(4) is not inconsistent with the Federal regulations at 30 CFR 800.15(d), which requires a regulatory authority to review the adequacy of a bond for a permit which has been revised. Also, the Director finds that the incorporation by reference of the above-listed forms in 405 KAR 10:010(5) will not render the Kentucky program less effective than the Federal regulations at 30 CFR 800.11, 800.21(b) and 800.60.

4. 405 KAR 16:020—Contemporaneous Reclamation

At section 2, Kentucky proposes to revise its backfilling and grading plan requirements to allow more than one pit per permit if the permittee makes certain demonstrations. If alternative distance limits are approved or additional pits allowed, the applicant is required to provide supplemental assurance in accordance with section 6 of the regulations. Kentucky also proposes to revise the backfilling and grading provisions of sections 2(1)–(6). At section 2(1)—Area Mining, only one pit per permit area is allowed. At section 2(2)—Auger Mining, the deadline for completion of coal removal is proposed to be 60 calendar days after the initial excavation for the purpose of removal of topsoil or overburden, instead of 60 calendar days after the initial surface disturbance. Only one auger mining operation per permit operation is allowed. At section 2(3)—Contour Mining, the phrase ''surface disturbance'' is replaced by ''excavation for the purpose of removal of topsoil or overburden,'' in the same manner as described above for section 2(2). Only one pit per permit area is allowed. At section 2(4)—Multiple-seam Contour Mining, only one multiple seam operation per permit is allowed. At section 2(5)—Combined Contour and Auger Mining, only one contour mining pit and one auger mining operation per

permit area are allowed. At section 2(6)—Mountaintop Removal, if the mountaintop removal operation begins by mining a contour cut around all or part of the mountaintop, the time and distance limits for contour mining shall apply to that cut unless alternative limits are approved. There are no backfilling time and distance limitation, or limits on the number of pits allowed per permit area in the current Federal regulations. States must, however, impose time and distance limitations which ensure that reclamation occurs as contemporaneously as practicable with mining operations, in accordance with 30 CFR 816.100 and 817.100. The Director finds that the proposed revisions at 405 KAR 16:020 section 2, which now more clearly define the deadline for completion of coal removal for area and auger mining operations, are not inconsistent with the general Federal provisions pertaining to contemporaneous reclamation at 30 CFR 816.100.

Kentucky proposes to add new section 6—Supplemental Assurance. If alternative distance limits or additional pits are approved, the applicant is required to submit supplemental assurance in the amounts specified for the purpose of assuring the reclamation of the additional unreclaimed disturbed area. This supplemental assurance is in addition to the performance bond required under 405 KAR Chapter 10. While the bonding requirements of 405 KAR 10:030, 10:035, and 10:050 shall apply to supplemental assurance, the bond release requirements of 405 KAR 10:040 shall not apply. Supplemental assurance amounts are specified for contour, mountaintop removal, and area mining. Supplemental assurance will be returned upon application and after inspection and documentation of the completion of backfilling, grading, or highwall removal, as appropriate. While there are no direct Federal counterparts, the Director finds that the proposed provisions at 405 KAR 16:020 section 6 are consistent with the Federal regulations pertaining to adjustment of bond amounts at 30 CFR 800.15(a). However, the Director notes that additional bond is still required for any proposal to add acreage to the permit area.

Kentucky proposes to add new section 7—Documents Incorporated by Reference. Supplemental assurance and escrow agreement forms are incorporated by reference. Office addresses where the documents may be reviewed are listed. There are no Federal counterparts to these provisions. However, the Director finds that the proposed provisions at 405 KAR 16:020 section 7 are not inconsistent with the requirements of SMCRA and the Federal regulations.

5. 405 KAR 16:200—Revegetation/ Surface Mining Activities

405 KAR 18:200—Revegetation/ Underground Mining Activities

At section 1(4), Kentucky proposes to clarify for cropland or pastureland postmining land use, compliance with sections 16:180 3(2) and 18:180 3(2) for cropland is required. The Director finds that the proposed revisions at 405 KAR 16:200 1(4) and 18:200 1(4) are no less effective than the Federal regulations at 30 CFR 816:97(h) and 817.97(h) and satisfy a portion of the required amendment at 30 CFR 917.16(i), pertaining to Finding number 1 of the June 9, 1993, Federal Register Notice (58 FR 32283, 32284).

At section 1(5)(b), Kentucky is proposing to delete the reference to Technical Reclamation Memorandum (TRM) #20 and incorporate by reference TRM #21 ''Plant Species, Distribution Patterns, Seeding Rates, and Planting Arrangements for Revegetation of Mined Lands,'' (January 6, 1995). In its review dated April 18, 1996, OSM found TRM #21 to be technically sound with certain exceptions relating to stocking standards and soil degradation. Kentucky responded to OSM's concerns pertaining to stocking standards in its letter dated June 13, 1996 (Administrative Record No. KY–1369). Kentucky's regulations at 405 KAR 16:050 and 18:050—Topsoil—provide for the removal, storage, and redistribution of topsoil to sustain the appropriate vegetation. The specific provisions at section 4(1) require that the land be scarified or otherwise treated to promote root penetration. The Director finds that the proposed revisions at 405 KAR 16:200 1(5)(b) and 18:200 1(5)(b) are consistent with the Federal provisions pertaining to revegetation at 30 CFR 816.111 and 817.111, as well as 30 CFR 816.116 and 817.116. The revisions also satisfy a portion of the required amendment at 30 CFR 917.16(i), pertaining to Finding number 1 of the June 9, 1993, Federal Register Notice (58 FR 32284).

At section 5(2) (a)2,3 and (b)(2), Kentucky is proposing to reference the ''Kentucky Agricultural Statistics'' publication as the source of ground cover success standards. The Federal regulation at 30 CFR 816.116(a)(1) and 817.116(a)(1) allow the regulatory authority to select standards for success and valid sampling techniques. The Director finds that the proposed revisions at 405 KAR 16:200 5(2) (a)2,3 and (b)(2) and 18:200 5(2) (a)2,3 and (b)(2) are no less effective than the corresponding Federal regulations, and satisfy two portions of the required amendment at 30 CFR 917.16(i), pertaining to Finding number 5 of the June 9, 1993, Federal Register Notice (58 FR 32287).

At section 6(1), Kentucky is proposing to require a minimum stocking density of 300 trees or trees and shrubs, with tree species comprising at least 75% of the total stock on at least 70% of the area stocked if forest land is the approved postmining landuse. At section 6(2)(b)1, Kentucky is proposing to require that the minimum stocking density be 300 woody plants per acre, including volunteers. At least four species of trees or shrubs listed in Appendix A of TRM #21, including at least one hard mast species, one conifer species, and two soft mast or shrub species, shall be present and the stocking densities of these species shall be at least 90 hard mast plants per acre, 30 conifer plants per acre, and 30 plants per acre for each of the two soft mast or shrub species. Stocking densities shall be determined with a statistical confidence of 90%. Section 6(2)(b)(2) provides that, in place of the requirements of section 6(2)(b)(1), the cabinet may, if requested by the applicant, approve stocking densities and woody plant species that are recommended by the Kentucky Department of Fish and Wildlife Resources for the permit area based upon site-specific considerations.

However, the stocking density of recommended species must still be at least 150 woody plants per acre, including volunteers, with stocking densities determined with a statistical confidence of 90%. Section 6(2)(b)4 provides that this amendment to this paragraph shall apply to original applications for permits and applications for permit amendments submitted after the effective date of this amendment. Permits issued or applications submitted prior to the effective date of this amendment may be revised to comply fully with this paragraph. At section 6(2)(c), Kentucky is proposing to require that the stocking density for woody plants be 300 plants per acre for recreation areas, greenbelts, fence rows, woodlots, or shelter belts for wildlife, or where the planting of trees and shrubs will otherwise facilitate the postmining land use. At section 6(3)(f), Kentucky is proposing to permit the counting of volunteer plants that meet all applicable requirements to determine tree or shrub stocking success. The Federal regulations at 30 CFR 816.116(b)(3)(I) and 817.116(b)(3)(I)

allow the regulatory authority to specify minimum stocking and planting arrangements. By cover letter to OSM dated May 3, 1995, Kentucky submitted letters of approval from the Kentucky Department of Fish and Wildlife Services and the Department for Natural Resources, Division of Forestry, for 405 KAR 16:200 and 18:200, sections 6(1) and 6(2), and for TRM 3521 (Administrative Record No. KY–1353). OSM notified Kentucky, by letter dated May 10, 1996, that it must also provide rationale to support its proposed reduction, at 405 KAR 16:200 and 18:200, section 6(1), in standards for acceptable tree stocking on forestry postmining land use (Administrative Record No. KY–1367). By letter dated June 13, 1996, Kentucky responded to OSM's concern by including an October 20, 1993, memorandum from the Division of Forestry (Administrative Record No. KY–1369). This memorandum specifically recommends the stocking standards for the forestry postmining land use which Kentucky adopted in section 6(1), and which were approved by both the Division of Forestry and the Department of Fish and Wildlife Services. Therefore, based upon the supporting documentation provided by Kentucky, the Director finds that the proposed revisions at 405 KAR 16:200 6(1), 6(2)(b)1 and 2, 6(2)(c), and 6(3)(f) and 18:200 6(1), 6(2)(b)1 and 2, 6(2)(c), and 6(3)(f) are no less effective than the corresponding Federal regulations. In addition, these approved changes satisfy a portion of the required amendments at 30 CFR 917.16(i), pertaining to Finding number 6 of the June 9, 1993, Federal Register Notice (58 FR 32288).

At 405 KAR 16:200 and 18:200, sections 9(3)(c) and 9(6), Kentucky is proposing to delete the productivity test area option as a measurement of vegetation success for cropland where hay is grown that is not prime farmland and for pastureland. Productivity must be measured by either the techniques established by TRM #19 or by determining total yield. The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) allow the regulatory authority to select standards for success and valid sampling techniques. As noted above, Kentucky retains two other options for measuring productivity at sections 9(2)(a) and 9(2)(b). The Director find that the deletion of the provisions at 405 KAR 16:200 and 18:200, sections 9(3)(c) and 9(6) does not render the State program less effective than the Federal regulations. In addition, the deletion satisfies a portion of the required amendment at 30 CFR 917.16(i), pertaining to Finding number 9 of the June 9, 1993, Federal Register Notice (58 FR 32289).

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. Three separate submissions were received from the same commenter. Because no one requested an opportunity to speak at a public hearing, no hearing was held.

The commenter generally supported the revisions to 405 KAR 10:010 which requires a rider to confirm coverage of permit revisions which alter permit areas or boundaries. The commenter also supported the concept of providing a supplemental assurance mechanism in addition to the base bond as provided in 405 KAR 16:020 but stated that Kentucky should clarify that the mechanism is not to be released in a partial manner. The Director notes that section 6(6) provides for return of supplemental assurance funds only upon verification that the area for which it was submitted has been backfilled and graded. Therefore, even if partial release is permitted, only that amount of the supplemental assurance no longer needed to ensure backfilling and grading of a portion of the disturbed area could be returned. Several of the commenter's initial concerns were satisfied by Kentucky's subsequent revisions to its original submission. At 405 KAR 7:095 3(3), the commenter felt that Kentucky should provide further clarification as to whether it would attribute all acts of persons working on the mine site or only attribute violations, in terms of calculating civil penalty points to be assigned for negligence. The Director notes that the section of the regulations to which the commenter refers is not being revised at this time and is, therefore, outside the scope of this rulemaking. With regard to the document, ''Procedures for Assessment of Civil Penalties,'' the commenter stated that it should be stressed to the civil penalty assessor that penalties are imposed to achieve a deterrent effect and to penalize violations of the law and the regulations. While the Director agrees with the commenter that civil penalties are intended to serve as deterrents as well as punishment, he notes that neither SMCRA nor the Federal regulations explicitly state the goals of civil penalty assessment. Therefore, he cannot require Kentucky to make the suggested change. The commenter also believed that the threshold for seriousness points should be lowered to reflect the goal of environmental damage prevention. OSM cannot require that states impose a uniform civil penalty point system [*See In Re Permanent Surface Mining Regulation Litigation,* 14 Env't. Rep. Case 1083, 1089 (D.D.C. February 26, 1980)]. Therefore, the Director cannot require that Kentucky make the suggested change. At 405 KAR 16:200 and 18:200, the commenter opposes the use of undifferentiated average county yields for measurement of productivity of lands with a postmining use of hayland or pastureland. The Director notes that OSM considered this issue in an earlier Kentucky amendment and found Kentucky's productivity standards acceptable and no less effective than the Federal regulations (see 58 FR 32290, June 9, 1993). In addition, the United States District Court for the Eastern District of Kentucky affirmed OSM's decision to approve the use of undifferentiated average county yields, in *KRC* v. *Babbitt*, No. 93–78 (E.D. Ky., March 30, 1995).

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 following agencies concurred without comment: the Department of Agriculture, Natural Resources Conservation Service; the Department of Labor, Mine Safety and Health Administration; and the Department of the Interior, Fish and Wildlife Service and Bureau of Mines.

The Department of Agriculture, Soil Conservation Service, noted that the Soil Survey Manual—Handbook #18 referenced at 405 KAR 7:015 3(4) has been revised and it provided the updated information. The director notes that the section of the regulations referenced is not being revised at this time and is, therefore, outside the scope of this rulemaking. However, Kentucky is aware of the revision and will make the appropriate changes at a later date.

The Department of the Interior, Bureau of Land Management, noted a possible discrepancy in 405 KAR 7:095 3(4) regarding the assessment of good faith points in that Kentucky's point system appears to be less stringent than the Federal regulations. The Director notes that the section of the regulations referenced is not being revised at this time and is, therefore, outside the scope of this rulemaking. The Director also notes that the provisions of OSM Directive REG–5 dated August 31, 1991,

provide that if a State program requires consideration of the four mandatory statutory criteria (history of previous violations, seriousness of violations, negligence of operator, and good faith) in determining whether to assess a penalty and determining the amount, the program meets the requirements of section 518 of SMCRA. The penalty amounts need not be equivalent to those specified at 30 CFR part 845. *See also, In Re Permanent Surface Mining Regulation Litigation,* 14 Env't. Rep. Cas 1083, 1089 (D.D.C., February 26, 1980).

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.*)

On August 3, 1994, OSM solicited EPA's concurrence with the proposed amendment. On August 26, 1994, EPA have its written concurrence (Administrative Record No. KY–1311).

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Kentucky on July 19, 1994, and as revised on January 11, 1995.

The Director's approval herein of the proposed amendments has satisfied a portion of the required amendment codified at 30 CFR 917.16. Therefore, the Director is amending 30 CFR 917.16(i) to refer specifically to those portions of the required amendment which remain unsatisfied.

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.

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 12988

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

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 19, 1996.

Michael K. Robinson,

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 by adding paragraph (aaa) to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(aaa) The following rules, as submitted to OSM on July 19, 1994, and as revised on January 11, 1995, and March 2, 1995, are approved effective December 17, 1996.

405 KAR 7:015 section 3
Documents Incorporated by Reference
405 KAR 7:095 sections 5(2),7
Assessment of Civil Penalties
405 KAR 10:010 section 2(4)
General Requirements for Performance
Bond and Liability Insurance
405 KAR 16:020 sections 2, 6 (new), and 7 (new)
Contemporaneous Reclamation
405 KAR 16:200
Revegetation—Surface Mining
405 KAR 18:200 sections 1(4), 1(5)(b), 5(2)(a)2, 3 and (b)(2), 6(1), 6(2)(b) 1, 2, 6(2)(c), 6(3)(f), 9(2)(c), 9(5).
Revegetation—Underground Mining

3. Section 917.16 is amended by revising (i) to read as follows:

§ 917.161 Required regulatory program amendments.

* * * * *

(i) By December 17, 1996, Kentucky shall submit to the Director either a proposed written amendment or a description of an amendment to be proposed which revises 405 KAR 16:200 and 405 KAR 18:200, sections 1(7)(a) 1 through 5, 1(7)(b) and 1(7)(d), in accordance with the Director's findings published in the June 9, 1993, Federal Register (58 FR 32283), and a timetable for enactment which is consistent with

established administrative and legislative procedures in the State.

* * * * *

[FR Doc. 96–31750 Filed 12–16–96; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF EDUCATION

34 CFR Part 86

RIN 1810–AA83

Drug and Alcohol Abuse Prevention

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations on Drug-Free Schools and Campuses to incorporate changes made by the Improving America's Schools Act of 1994. As a result of that legislation, these regulations no longer apply to State educational agencies (SEAs) and local educational agencies (LEAs). The Secretary amends the regulations to conform them to these revised statutory provisions.

EFFECTIVE DATE: These regulations take effect January 16, 1997.

FOR FURTHER INFORMATION CONTACT: William Wooten, U.S. Department of Education, Office of Elementary and Secondary Education, Room 4000, Portals Bldg., 600 Independence Avenue, SW, Washington, DC 20202–6123. Telephone: (202) 260–1922. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Provisions in 20 U.S.C. 3224a relating to certification of drug and alcohol abuse prevention programs by State and local educational agencies were eliminated by amendments to the Elementary and Secondary Education Act of 1965 contained in the Improving America's Schools Act of 1994, Pub. L. 103–382, enacted October 20, 1994. As a result of this statutory amendment, which became effective July 1, 1995, State and local educational agencies are no longer subject to the certification requirements contained in 34 CFR part 86.

The regulations in part 86 implemented the Drug-Free Schools and Communities Act requirement for a one-time certification by all SEAs and LEAs that they had adopted and implemented drug prevention policies and programs for their students and employees. Virtually all SEAs and LEAs had submitted the required certification by the time the statute was reauthorized, and the certification requirement was no longer needed. Furthermore, by the time the statute was reauthorized as the Safe and Drug-Free Schools and Communities Act, LEAs were developing comprehensive, community-wide prevention strategies in addition to school-based programs, and were beginning to integrate drug prevention with activities designed to prevent other significant problems such as youth violence. Consequently, the Safe and Drug-Free Schools and Communities Act has eliminated the one-time certification requirement and replaced it with the requirement that LEAs adopt and carry out comprehensive drug and violence prevention programs designed for all students and employees. In keeping with this legislative change, the regulations in part 86 pertaining to SEAs and LEAs are no longer necessary and are being eliminated.

The regulations are amended in accordance with the President's Regulatory Reinvention Initiative in order to reflect removal of the statutory requirement and relieve a burden imposed on State and local educational agencies. Part 86 is still applicable to institutions of higher education.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these regulations merely reflect statutory changes and do not establish substantive policy. Therefore, the Secretary has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment is unnecessary and contrary to the public interest.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Assessment of Educational Impact

Based on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 86

Drug abuse, Elementary and secondary education, Grant programs—education, Postsecondary education.

Dated: December 10, 1996.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance numbers do not apply)

The Secretary amends Title 34 of the Code of Federal Regulations by amending part 86 as follows:

Authority: 20 U.S.C. 1145g, unless otherwise noted.

PART 86—DRUG AND ALCOHOL ABUSE PREVENTION

1. The authority citation for part 86 is revised to read as follows:

2. The heading of part 86 is revised to read as set forth above.

3. Part 86 is amended by removing '', SEA, or LEA'' in the following places:

(a) § 86.2(a) and (b);

(b) § 86.3 heading, (a), and (b);

(c) § 86.5 heading, (a), and (b);

(d) § 86.301 heading, (a) introductory text (twice), (a)(2), (b) introductory text (twice), (b)(1), and (b)(2)(i)(B);

(e) § 86.302(a) and (b);

(f) § 86.303(a) introductory text, (b) (twice), (c), (d), and (e) (twice);

(g) § 86.304(a) introductory text, (a)(1), (a)(2)(i), (a)(3) introductory text (twice), (a)(3)(ii), (b) introductory text, (b)(1), and (b)(2) introductory text;

(h) § 86.400(a);

(i) § 86.401(d)(1) and (2);

(j) § 86.402(a);

(k) § 86.407(a) and (d);

(l) § 86.408(a)(1)(ii);

(m) § 86.409(c) introductory text and (e)(2);

(n) § 86.410(a)(1) introductory text and (d); and

(o) § 86.411(a)(1), (a)(2), and (b).

4. Part 86 is amended by removing '', SEA's, or LEA's '' in the following places:

(a) § 86.301(b)(2)(i)(A); and

(b) § 86.304 heading, (a) introductory text, and (a)(3)(ii).

5. Section 86.1 is revised to read as follows:

§ 86.1 What is the purpose of the Drug and Alcohol Abuse Prevention regulations?

The purpose of the Drug and Alcohol Abuse Prevention regulations is to implement section 22 of the Drug-Free Schools and Communities Act Amendments of 1989, which added section 1213 to the Higher Education Act. These amendments require that, as a condition of receiving funds or any other form of financial assistance under any Federal program, an institution of higher education (IHE) must certify that it has adopted and implemented a drug prevention program as described in this part.