to allow them. We will allow answers in such special situations on a discretionary case-by-case basis, consistent with current practice.

Finally, EEI and NHA reiterate on rehearing NHA's suggestion in its comments that violation of a Commission order issued on delegated authority should not constitute the basis for imposition of civil penalties under section 31 of the Federal Power Act.[5] EEI and NHA suggest that the Commission's orders are somehow slightly less legitimate or authentic if they are issued on delegated authority, and that parties should not be required to treat them as seriously. NHA characterizes the matter as a "Hobson's choice," *i.e.*, a choice of whether to comply with the order or to risk imposition of civil penalties.

We categorically reject these arguments. Orders issued by the Commission on authority delegated to its office directors are orders of the Commission. In some instances, particularly in the area of hydropower regulation, those orders involve issues of environmental impact or safety such that disregard of the order might result in imminent environmental harm, property damage, personal injury, or death. We fully expect regulated entities within our jurisdiction to comply promptly and fully with all of our orders, including those that are issued on delegated authority.

If a party believes that an order issued on delegated authority is in error, and that compliance with the order will impose a burden that outweighs the benefit sought to be achieved in the order, and that the burden is more likely and more imminent than the perceived problem to be ameliorated, the party should bring those matters to the attention of the Commission in the form of a request for an extension of any deadlines imposed in the order,[6] or a motion for a stay, and the Commission will evaluate the matter on its merits. Holding all office directors' orders in abeyance pending rehearing is not a reasonable or responsible alternative procedure for either the Commission or the parties.

In any event, the implementation of section 31 of the FPA is beyond the scope of this rulemaking. Those matters were considered and resolved in our civil penalties rulemaking.[7] The elimination of the duplicative layer of appellate review of Commission orders issued by office directors does not in any way justify altering the applicability of section 31 to those orders.

The Commission Orders

For the reasons stated above and in Order No. 530, the requests for rehearing of the Final Rule adopted in Order No. 530 are denied.

By the Commission. Commissioner Moler dissented with a separate statement attached.

Lois D. Cashell,

Secretary.

Moler, Commissioner, *dissenting*:

For the reasons discussed in my dissent to the original order,[1] I dissent here.

Elizabeth Anne Moler

Commissioner.

[FR Doc. 91-2746 Filed 2-5-91; 8:45 am]

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[5] 16 U.S.C. 823b(1) (1986).

[6] As we noted in Order No. 530, slip op. at p. 6, under our present practice licensees frequently request extensions of license article deadlines pending further legal proceedings, and under the circumstances described by NHA such extensions are routinely granted.

[7] See Procedures for the Assessment of Civil Penalties Under Section 31 of the Federal Power Act, Order No. 502, III FERC Stats. & Regs. ¶ 30,828 (1988) at p. 31,218; Order No. 502-A, 45 FERC ¶ 61,407 (1988) at p. 62,274. The Commission's delegation of authority to its office directors to issue Commission orders was resolved in the rulemakings by which that authority was delegated. See, *e.g.*, Regulations Delegating Authority, Order No. 492, III FERC Stats. & Regs. ¶ 30,814 (1988).

[1] Order No. 530, FERC Stats. & Regs. ¶ 30,906 at pp. 31,871-31,873 (Dec. 10, 1990) (Moler, Commissioner, dissenting in part).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 230

RIN 2125-AC70

Equal Employment Opportunity on Federal and Federal-Aid Construction Contracts; Summary of Employment Data

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendments.

SUMMARY: This document makes technical amendments to a form used to supply employment data on Federal-aid highway construction projects. The FHWA is changing the submission date for employment statistics from August 25 to September 25 for States to provide this information to the FHWA Division Offices. This amendment responds to the States' concerns that the August 25 date is not conducive for obtaining 100 percent submission of employment data from contractors with active Federal-aid highway construction contracts. Additionally, a typographical error is corrected. By changing the submission date, States will have adequate time to avoid being cited for not obtaining 100 percent submission of the reports as required by OMB Circular A-128, "Single Audits of State and Local Governments."

EFFECTIVE DATE: February 6, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Linda J. Brown, Office of Civil Rights, (202) 366-0471, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 23 CFR 230, subpart A, contractors are required to report employment data on FHWA Form PR-1391, entitled Federal-Aid Highway Construction Contractors Annual EEO Report. The employment data contained in the report includes the work force on board during all or part of the last payroll period preceding the end of the month of July. The information contained in this report is submitted to State Highway Agencies (SHA's). After receiving the data from all active contractors and subcontractors the SHA's complete Form PR-1392, entitled Federal-Aid Highway Construction Summary of Employment Data, summarizing the data from Form PR-1391. Three copies of the completed form PR-1392 are to be forwarded to the FHWA division office no later than August 25.

The FHWA has been notified of the problems the States are having obtaining 100 percent, timely submissions of the annual EEO report Forms PR-1391 from contractors. Consequently, this has hindered the States' timely preparation and submittal of the summary report Form PR-1392. The States have suggested and the FHWA has agreed to extend the reporting due date to September 25 to allow ample time to submit the reports.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The amendment in this document is technical in nature and needed solely to extend a reporting date. For these reasons and since this rule imposes no additional burdens on the States or other Federal agencies, the FHWA finds good cause to make this regulation final without prior notice and opportunity for comments and without a 30-day delay in effective date under the Administrative Procedure Act. For the same reasons, notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information.

Since the changes in this document are technical in nature, the anticipated economic impact, if any, is minimal. Therefore, a full regulatory evaluation is not required. For the above reasons and under the criteria of the Regulatory Flexibility Act (Pub. L. 96-354), the FHWA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 230

Equal employment opportunity, Grant programs—transportation, Highways and roads, Minority businesses, and Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

In consideration of the foregoing, the FHWA hereby amends title 23, Code of Federal Regulations, chapter I, part 230, subpart A, as set forth below.

Issued on: Janaury 30, 1991.

T.D. Larson,

Administrator.

PART 230—EXTERNAL PROGRAMS

Subpart A—Equal Employment Opportunity on Federal and Federal-Aid Construction Contracts (Including Supportive Services)

1. The authority citation for part 230 continues to read as follows:

Authority: 23 U.S.C. 140 and 315; E. O. 11246; 49 CFR 1.48(b)(24), unless otherwise noted.

Appendix D—[Amended]

2. Part 230, subpart A, appendix D is amended by correcting a typographical error in the table of sections for the word "Date" to read "Data." In the table of sections, the title of appendix D now reads "Federal-Aid Highway Construction Summary of Employment Data (Form PR-1392)".

3. In appendix D, under the heading "General Information and Instructions," in the fourth paragraph, the date "August 25" is amended to read "September 25". The fourth paragraph now reads "It is requested that States submit this information annually to the FHWA Divisions no later than September 25."

[FR Doc. 91-2734 Filed 2-5-91; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Regulatory Program; 1990 Legislation

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with certain exceptions, of proposed amendments to the Kentucky regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Addressed in this rulemaking are the amendments contained in Kentucky House Bill 519, House Bill 676, Senate Bill 141, Senate Bill 149, Senate Bill 154, Senate Bill 202, Senate Bill 205, Senate Bill 249, Senate Bill 255, and Senate Bill 256, that impact the regulation of surface mining and reclamation under the Kentucky program.

EFFECTIVE DATE: February 6, 1991.

FOR FURTHER INFORMATION CONTACT: William Kovacic, Director, Lexington Field Office, Telephone (606) 233-7327.

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

The Secretary of the Interior conditionally approved the Kentucky regulatory program effective May 18, 1982. Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 30 CFR 917.13, 30 CFR 917.15, 30 CFR 917.16 and 30 CFR 917.17.

II. Submission of the Amendment

By letter dated May 8, 1990 (Administrative Record No. KY-983), Kentucky submitted program amendments to modify its statute to conform to changes in Kentucky law enacted by the 1990 Kentucky General Assembly. OSM announced receipt of the proposed amendments in the June 14, 1990, **Federal Register** (55 FR 24113), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The public comment period ended on July 16, 1990.

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 amendments to the Kentucky program. Only substantive changes will be discussed in detail. Revisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal regulations.

1. KRS Chapter 350 Permit and Bond Liability

The amendment contained in the House Committee Substitute for SB-255 creates a new section of Kentucky Revised Statutes (KRS) chapter 350 The new section directs the Natural

Resources and Environmental Protection Cabinet (NREPC) to promulgate regulations to clearly establish the limits of a permittee's liability to reclaim permit areas on which parties or forces not controlled by the permittee have disturbed the reclamation previously performed by the permittee. Such parties or forces not controlled by the permittee shall include, without limitation, acts of God, oil and gas operations, loggers, recreational vehicles and trespassers. The amendment also directs the NREPC to promulgate regulations which specifically set forth the procedure for transferring liability for reclamation of a surface mining permit to a party who will make a post mining use of the permit area. Since the amendment is only enabling legislation directing the NREPC to promulgate new regulations and does to change existing law, the Director finds the proposed amendment to be not inconsistent with SMCRA and can be approved. However, as required by 30 CFR 732.17(g), any regulations that are promulgated pursuant to SB–255 must be submitted and approved by the Director before Kentucky may implement such regulations.

2. KRS 350.010 Definitions

(a) Surface Coal Mining Operations

Kentucky has amended its Surface Mining Law (KRS Chapter 350) through the actions of the Kentucky General Assembly. The definitions of "surface coal mining operations" at SB–149 section 1(1) and "strip mining" at SB–149 section 1(2) that modify KRS 350.010 exclude from such definitions those activities which involve the extraction of coal by a landowner of 50 tons or less within 12 successive calendar months for his own noncommercial use. The current approved State definitions exempt the extraction of coal by a landowner with no time or weight limitations. The definitions are further modified to exclude the extraction of, or intent to extract, 25 tons or less of coal by any person by surface coal mining operations within 12 consecutive calendar months. The current State definitions provide for 250 tons or less exemption.

The Federal regulations at 30 CFR 700.11 provide that the regulations promulgated under SMCRA do not apply to coal extracted by a landowner for his own noncommercial use from land owned or leased by him or to the extraction of 250 tons of coal or less by a person conducting a surface coal mining and reclamation operation. Since only the amounts of extracted coal have been changed, the Director finds the definition of "surface coal mining operations" is no less stringent than the Federal definition of the term at SMCRA section 701(28) and the provision for approval of exploration at SMCRA section 512(d). It should be noted that the definition of "surface coal mining operations" found at 405 KAR 7:020 has not been changed to reflect the new tonnage limitation of 25 tons. This is inconsistent with the amended statutory language. Thus, the statutory definition of "surface coal mining operations" is controlling. Although there is no Federal definition of "strip mining," Kentucky's definition of the term conforms to the Federal definition of "surface coal mining operations." Therefore, the Director finds the proposed amendment at SB–149, section 1(2) that modifies KRS 350.010 to be in accordance with sections 701(28) and 512(d) of SMCRA.

3. KRS 350.053 Seizure of Equipment by Special Investigators and Peace Officers; Sale of Seized Property after Conviction of User; Rights of Owners or Lien Holders; Return of Property, Expense of Sale; Notification of Court

(a) Seizure of Equipment

Kentucky has amended its Surface Mining Law (KRS chapter 350) through the actions of the Kentucky General Assembly. The amendment contained in SB–149 section 2(1) that modifies KRS 350.053 provides that authorized representatives of the Office of Special Investigations of the cabinet and all peace officers shall seize and take possession of all instrumentalities willfully and knowingly used in the mining of coal without a permit in violation of KRS 350.060 or willingly and knowingly used for the removal of more than 25 tons of coal during coal exploration in violation of KRS 350.057. Prior language required a seizure of equipment if more than 250 tons of coal were removed without a coal exploration permit. Since there is no Federal counterpart to this statute and its adoption by Kentucky does not render other parts of the approved program less stringent than SMCRA, the Director finds the proposed amendment to be not inconsistent with SMCRA or with the Federal regulations.

(b) Seizure of Equipment

Kentucky has amended its Surface Mining Law (KRC chapter 350) through the actions of the Kentucky General Assembly. The amendment contained in SB–205 section 1(1) that modifies KRS 350.053 provides that authorized representatives of the Office of Special Investigations of the cabinet and all peace officers may seize and take possession of all instrumentalities willfully and knowingly used in the mining of coal without a permit in violation of subsection (1)(a) of section 4 of SB–205 or willingly and knowingly used for the removal of more than 25 tons of coal during coal exploration in violation of subsection (3) of section 3 of SB–205. The current State statute requires the mandatory seizure of instrumentalities used in the mining of coal without a permit or used for the removal of more than 250 tons of coal. Since there is no Federal counterpart to this statute and its adoption by Kentucky does not render other parts of the approved program less stringent than SMCRA, the Director finds the proposed amendment to be not inconsistent with SMCRA and the Federal regulations.

(c) Sale of Seized Equipment

Kentucky has amended its Surface Mining Law (KRS chapter 350) through the actions of the Kentucky General Assembly. The amendment contained in SB–205 section 1 adds a new subsection 3 to modify KRS 350.053 to provide that upon conviction of any person of a violation of subsection (3)(b) of section 3 of SB–205 or subsection (1)(b) of section 4 of SB–205, the court shall order the instrumentalities used in furtherance of the crime forfeited and sold at public auction. Proceeds from the sale shall be deposited in the illegal mining and conveyance reclamation fund established by subsection (1) of section 2 of SB–205. Since there is no Federal counterpart to this statute and its adoption by Kentucky does not render other parts of the approved program less stringent than SMCRA, the Director finds the proposed amendment to be not inconsistent with SMCRA and the Federal regulations.

(d) Return of Seized Property

Kentucky has amended its Surface Mining Law (KRS chapter 350) through the actions of the Kentucky General Assembly. The amendment contained in SB–205 section 1 that modifies former subsection (4), now subsection (5) to KRS 350.053 clarifies that if any person charged with a violation of subsection (3) of section (3) or subsection (1) of section 4 of SB–205 is acquitted, all property seized pursuant to subsection (1) of this section shall be ordered returned to its rightful owner unless previously returned under subsection (4) of this section. The current State statute provides that if the defendant is acquitted, all property seized in connection with the defendant's arrest shall be ordered returned to the rightful owner. The amendment contained in

SB–205 section 1 also modifies former subsection (5), now subsection (6), to KRS 350.053 clarifying that all expenses associated with the seizure, storing, and if applicable, sale of the property shall be the responsibility upon conviction of the person charged with the violation of subsection (3) of section 3 or subsection (1) of section 4 of SB–205. The current State statute provides that the defendant, if convicted, is responsible for all expenses associated with the seizure, storage and sale of the property. Since there is no Federal counterpart to these statutory subsections and their adoption by Kentucky does not render other parts of the approved program less stringent than SMCRA, the Director finds the proposed amendments to be not inconsistent with SMCRA and the Federal regulations.

4. KRS 350.054 Illegal Mining Reclamation Fund Established; Purpose; Control

Kentucky has amended its Surface Mining Law (KRS chapter 350) through the actions of the Kentucky General Assembly. The amendment contained in SB–205 section 2 that modifies KRS 350.054 provides that the name of the special fund established by SB–205 will be the "Illegal Mining and Conveyance Reclamation Fund" instead of the "Illegal Mining Reclamation Fund." The bill also adds references to statutory sections that this fund shall consist of all moneys from the sale or forfeiture of all instrumentalities used in violation of subsection (3) of section 3, or subsection (1) of section 4 of SB–205. Previous language of SB–205 section 2(2) that modifies KRS 350.054 did not cite to statutory sections but allowed such funding if instrumentalities were used in mining coal without an authorization. Since there is no Federal counterpart to this statute and its adoption by Kentucky does not render other parts of the approved program less stringent than SMCRA, the Director finds the proposed amendment to be not inconsistent with SMCRA and the Federal regulations.

5. KRS 350.057 Coal Exploration Operations

(a) 25 Ton Limit on Coal Removal

Kentucky has amended its Surface Mining Law (KRS chapter 350) through the actions of the Kentucky General Assembly. The amendment contained in SB–149 section 3(3) that modifies KRS 350.057 provides that no person shall remove more than 25 tons of coal pursuant to a coal exploration permit without the specific written approval of the cabinet. Prior language set a 250 ton coal limit. Section 512(d) of SMCRA prohibits the removal of more than 250 tons of coal pursuant to an exploration permit without written approval by the regulatory authority. It should be noted that coal exploration permitting requirements found at 405 KAR 8:020 have not been changed to reflect the new tonnage limitation of 25 tons. This is inconsistent with the amended statutory language. Thus, the statutory requirements are controlling. Since Kentucky is only modifying tonnage, the Director finds the proposed amendment no less stringent than SMCRA.

(b) No Unauthorized Conversion of Coal from Exploration Operations to Industrial Use

Kentucky has amended its Surface Mining Law (KRS chapter 350) through the actions of the Kentucky General Assembly. The amendment contained in SB–205 section 3(3) that modifies KRS 350.057 from its previous tonnage limit of 250 tons to provide that no person shall remove more than 25 tons of coal by coal exploration operations without first obtaining a coal exploration permit from the cabinet. Section 512(d) of SMCRA prohibits the removal of more than 250 tons of coal pursuant to an exploration permit without written approval by the regulatory authority. The coal exploration permitting requirements found at 405 KAR 8:020 have not been changed to reflect the new tonnage limitation of 25 tons. This is inconsistent with the amended statutory language. Thus, the statutory requirements are controlling. Since Kentucky is only modifying tonnage, the Director finds the proposed amendment no less stringent than SMCRA.

The amendment also adds at section 3 of SB–205 that modifies KRS 350.057 a provision that no person or operator conducting coal exploration operations in which more than 25 tons of coal are removed shall knowingly and willfully receive, transport, sell, convey, exchange, transfer, trade, donate, deliver, or otherwise convert to a commercial use any coal extracted during the course of the operations, except with the prior written approval of the cabinet for the purpose of testing or determining the properties of the coal. On May 22, 1990, Kentucky issued Reclamation Advisory Memorandum (RAM) #101 (Administrative Record No. KY–1003) which stated that SB–205 contained provisions that would greatly assist the State in combatting illegal mining. There is no direct Federal counterpart to this provision. Since the adoption of this amendment by Kentucky does not render other parts of the approved program less stringent than SMCRA, the Director finds the proposed amendment not inconsistent with the requirements of SMCRA and the Federal regulations.

6. KRS 350.060 Permit Required; Content of Application; Fee; Bond; Exemptions; Administrative Regulations; Successive Renewal; Auger Mining of Previously Mined Area; Exempt Operations

(a) No Benefit may be Derived from Coal Mined without a Permit

Kentucky has amended its Surface Mining Law (KRS chapter 350) through the actions of the Kentucky General Assembly. The amendment contained in SB–205 section 4(1) that modifies KRS 350.060 adds a new paragraph (b) to provide that subject to the provisions of KRS 350.010 (1) and (2), no person shall knowingly and willfully receive, transport, sell, convey, transfer, trade, exchange, donate, purchase, deliver or in any other way derive benefit from coal removed from any surface mining operation that does not have a permit as required under this section. There is no direct Federal counterpart to this provision. Since the adoption of this amendment by Kentucky does not render other parts of the approved program less stringent than SMCRA, the Director finds the proposed amendment no inconsistent with the requirements of SMCRA and the Federal regulations.

(b) Fee for Permit Renewal

Kentucky has amended its Surface Mining Law (KRS chapter 350) through the actions of the Kentucky General Assembly. The amendment contained in SB–202 section 1(14) that modifies KRS 350.060 provides that an applicant for renewal of a permit shall pay a basic fee set by regulation, not to exceed $375. The Federal regulations at 30 CFR 777.17 require that a fee in an amount to be determined by the regulatory authority accompany a permit application when it is filed with the regulatory authority. The amount of the fee may be less than, but not exceed the actual or anticipated cost of reviewing, administering, and enforcing the permit. According to Kentucky's May 8, 1990, submittal letter, the purpose of this amendment was to make permitting fees consistent. The initial approval of the $375 permit application fee was on January 4, 1983 (see 48 FR 245, 248). The Director finds the proposed fee to be reasonable and not exceeding the actual cost of processing the permit renewal. He therefore finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 777.17.

7. KRS 350.070 Permit Revisions

(a) Incidental Boundary Revisions (IBR)

Kentucky has amended its Surface Mining Law (KRS chapter 350) through the actions of the Kentucky General Assembly. The amendment contained in HB-519 and SB-256 (identical bills) provides that incidental boundary revisions be deemed to be minor revisions if they meet certain requirements. It also establishes the maximum size limitation for incidental boundary revisions (IBR's). The proposed statute allows up to 20 acres for surface operations (subsection 4(a)), 10 percent or 20 acres for underground operations and up to 20 acres for surface disturbances (subsection 4(b)). The cumulative acreage added by successive revisions shall not exceed the above limitations. Surface operations and underground operations are to be considered separately under the provisions of this amendment.

Section 511(a)(2) of SMCRA provides the regulatory authority discretion in determining the scale or extent of a permit revision request for which all permit application information requirements and procedures shall apply. 30 CFR 774.13 requires the regulatory authority to establish guidelines for which all permit application's notices, public participation and notice of decision shall apply.

Section 511(a)(3) of SMCRA and the Federal regulations at 30 CFR 774.13(d) require that any extension of area covered by a permit, except for incidental boundary revisions, be made by application for a new permit. Neither of these Federal documents provides guidance on what is an incidental boundary revision. Thus the scale and extent of incidental boundary revisions is left to the State regulatory authority to incorporate into the State program. Classification as an incidental boundary revision still requires review and evaluation by the State. Kentucky, in its approved program, defines incidental boundary revision at 405 (KAR 7:020(60). This definition indicates that such a revision is "small in relation to the permit" and "[w]here an extension includes new areas from which coal will be removed, it will be considered as incidental boundary revision only if the extension is no more than ten (10) permit of the permit area acreage or five (5) acres, whichever is less." The definition continues for "new areas not involving extraction of coal, it will be considered an incidental boundary revision only if the extension is no more than ten (10) percent of the permit area acreage (surface operations area acreage for underground mining activities) or two (2) acres, whichever is greater."

At first blush, it appears that the new statute is inconsistent with the approved regulation in that subsection 4(a) and 4(c) of the statute do not include the 10 percent limitation in the regulatory definition. However, upon closer examination and the application of the rules or statutory construction, the apparent conflict is resolved. Statutes are to be read in their entirety, and paragraph 4 does not *mandate* any acreage to be added: it *allows* certain acreages. It gives Kentucky discretion, up to specified amounts later listed; it does not create a right to 20 acres. The regulation and the statute can be read consistently with each other; and Kentucky has indicated that they will be, in its May 8, 1990, submission letter and in RAM #101. It is well settled that the interpretation of a law and its regulations given by the implementing agency, is generally given great deference. In these documents, Kentucky does not read KRS 350.070(4) (a) and (c) as automatic extensions of 20 acres. Under the State's interpretation, IBR's are limited to 10 percent or 20 acres, whichever is less. Therefore, the statute should be read consistently with the regulatory definition of IBR's, with the written policy interpretation of RAM #101, and with the May 8, 1990, submittal letter. The Director finds the amendment to be in accordance with section 511(a)(3) of SMCRA and consistent with 30 CFR 774.13(d).

In addition, this amendment provides criteria for IBR's deemed to be minor revisions. Under the approved Kentucky program, minor revisions are subject to many of the same public notice requirements of a major revision. The minor revision is still available for public inspection at the regional office in the area where the mining will occur. In order for an IBR to be a minor revision, the revision must meet all 10 requirements, which are listed below. If any requirement is not satisfied, then the IBR is a major revision and subject to the public notice requirements of 405 KAR 8:010 section 8. The criteria for minor revisions as established by the amendment are:

(a) Do not exceed 10 percent of the initial permit acreage;

(b) Are contiguous with the permit acreage;

(c) Are within the same watershed as the initial permit acreage;

(d) Are required for an orderly continuation of the mining operation;

(e) Cover the same coal seam or seams as in the permit;

(f) Would only involve lands for which the hydrologic and geologic data and the probable hydrologic consequences analysis contained in the permit are applicable to the proposed incidental boundary revision;

(g) Would not involve properties designated as unsuitable for mining, or any properties eligible for listing on the National Register of Historic Places;

(h) Would not involve any of the special categories of mining listed in 30 CFR part 785 including, but not limited to, prime farmland and coal preparation plants, unless the approved permit already includes the relevant category;

(i) Would not constitute a change in the method of mining; and

(j) Would be reclaimed in conformity with the initial reclamation plan.

Again, there is no guidance from either the Federal regulations or SMCRA on when an IBR is considered a significant revision and thus subject to all the public notice requirements. Pursuant to section 511(a)(2) of SMCRA, discretion is given to the regulatory authority for revisions. Since there is no Federal counterpart to this statute and its adoption by Kentucky does not render other parts of the approved program less stingent than section 511 of SMCRA, the Director finds that Kentucky has reasonably exercised its discretion and finds the proposed amendment to be not inconsistent with SMCRA or with the Federal regulations.

(b) *Extension of a Permit Area, Except IBRs*

Kentucky has amended its Surface Mining Law (KRS chapter 350) through the actions of the Kentucky General Assembly. The amendment contained in SB-202 section 2 that modifies KRS 350.070 provides that any extensions of the area covered by the permit except incidental boundary revisions be made by application for another permit or an amendment to the permit. The Federal regulations at 30 CFR 774.13 address how a permit may be modified. They contemplate permit revision, but do not contemplate amendment of a permit. However, in 1982, OSM approved program regulations at KAR 8:010(23) which allow amendment to permits as long as they are treated as applications for new permits (47 FR 21404). In so doing Kentucky restricted the process by providing that any application for adding new area to a permit shall be subject to all of the procedures and requirements applicable to applications for original permits under 405 KAR. Since the proposed amendment serves to make the Kentucky Surface Mining Law consistent with its previously approved program regulations, the Director finds the amendment no less effective than the Federal regulations at 30 CFR 774.13. The process also requires an applicant for an amendment to pay a basic fee, not to exceed $375 plus a fee not to exceed $75 per acre or fraction of an acre for the increase requested. According to Kentucky's May 8, 1990, submittal letter, the purpose of this amendment was to make permitting fees consistent. The initial approval of the $375 permit application fee was on January 4, 1983 (see 45 FR 245, 248). The Director finds this proposed fee to be reasonable an not exceed the act cost of processing the permit amendment. He therefore finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 777.17.

The amendment also requires that an application for a permit shall be subject to all of the same requirements as an original application, including, but not limited to, the same public notice, review and issuance or denial provisions. The effect of the amendment under consideration here is only to make the provisions of the Kentucky code at KRS 350.070 consistent with the Kentucky regulations at 405 KAR 8:010(23). The Director finds the proposed amendment to be not inconsistent with SMCRA and the Federal regulations at 30 CFR 774.13.

(c) Reduction of a Permit Area

Kentucky has amended its Surface Mining law (KRS chapter 350) through the actions of the Kentucky General Assembly. The amendment contained in SB–202 section 2(3) that modifies KRS 350.070 provides that if the cabinet approves a reduction in the acreage covered by the permit, it shall release the bond for each acre reduced but the bond shall not be reduced below $10,000. References to "original or supplemental" permits are deleted to conform more closely to the Federal language. Also deleted is the phrase, "except as provided in subsection (12) of KRS 350.060," which provides an exception to the $10,000 bond reduction limit. This language is no longer needed as the exception pertains to the Federal two-acre exemption which was found at section 201 of SMCRA and repealed on May 7, 1987. The Director finds the proposed amendment to be no less stringent than sections 509(a) and (e) of SMCRA.

(d) Permit Revision

Kentucky has amended its Surface Mining Law (KRS chapter 350) through the actions of the Kentucky General Assembly. The amendment contained in SB–202 section 2(4) that modifies KRS 350.070 adds a requirement that an applicant for a permit revision pay a basic fee, not to exceed $375, plus a fee not to exceed $75 per acre or fraction of an acre included in an incidental boundary revision. As discussed in Finding 7(b), the Director finds the proposed fee to be reasonable and not exceeding the actual cost of processing the permit revision. He therefore finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 777.17.

8. KRS 350.085 Denial of Permits and Operations; Deletion of Land Areas

Kentucky has amended its Surface Mining Law (KRS chapter 350) through the actions of the Kentucky General Assembly. The amendment contained in SB–202 section 3 that modifies KRS 350.085 clarifies the language and corrects references changed during the codification process. Since the amendment merely clarifies but does not alter the effectiveness of the existing approved rule, the Director finds the amendment to be not inconsistent with SMCRA and the Federal regulations.

9. KRS 350.090 Method of Operation, Grading, Backfilling, and Reclamation Plans; Funding from Reclamation Development Fund; Waste Materials in Permit Area Only

Kentucky has amended its Surface Mining Law (KRS chapter 350) through the actions of the Kentucky General Assembly. The amendment contained in SB–154 section 1(1) that modifies KRS 350.090 provides that if the permit application is not acceptable, the cabinet shall set forth the reasons for which the application or plans are not acceptable and it may propose modifications, delete areas, or reject the entire application. The amendment changes the term "plan" "permit application" to conform more closely to the Federal language. The Federal regulations at 30 CFR 773.19(a) require that if an application is disapproved, specific reasons for the disapproval be set forth in a notification of the decision. The Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 773.19.

10. KRS 350.093 thru KRS 350.990

Kentucky's proposed amendment contained in SB–202 amends portions of KRS 350.093 through KRS 350.990 to clarify minor, nonsubstantive changes in language, to update references, and to eliminate provisions no longer pertinent to these sections. KRS 350.110, "Partial Release of Bond When Planting is Deferred," is repealed. Neither SMCRA nor the Federal regulations contain counterpart provisions for bond release when planting is deferred. The deletion of KRS 350.110 does not render the State program less effective than the Federal regulations. SB–202 section 5(3) revises KRS 350.113 to delete the cabinet's authority to release the remaining portion of a bond held on reclaimed areas after a determination has been made that satisfactory vegetative cover has been established. Neither SMCRA nor the Federal regulations at 30 CFR 800.40 contain similar provisions. The Director finds that the deletion will not render the statute less effective than the Federal regulations.

11. KRS 350.710–750 Bond Pool

Kentucky has amended its Surface Mining Law (KRS chapter 350) through the actions of the Kentucky General Assembly. The amendments contained in SB–202 and HB–676 amend KRS 350.710 through KRS 350.750. The proposed amendment removes from KRS 350.720 section 1(5) language concerning the ineligibility of two-acre-or-less operations for coverage by the bond pool. SB–202 contains the same deletion. The proposed amendment also adds a provisions at HB–676 section 1(11) that modifies KRS 350.720 to disallow an applicant's or member's experience pursuant to a two-acre-or-less permit that was issued prior to June 6, 1987 to be considered in the rating assignments. The proposed amendment provides at HB–676 section 1(7) that modifies KRS 350.720 that bond pool members must continue to meet bond pool eligibility criteria to maintain their membership in the pool. The proposed amendment modifies HB–676 sections 2(1)(b) of KRS 350.725 to include cash, cashier's check, or money orders as acceptable media of payment for bond pool membership fees. The proposed amendment modifies HB–676 section 5(4) of KRS 350.750 to provide that if a member of the bond pool transfers more than 50 percent of any class of stock or other ownership interest, whether by sale, gift, or otherwise, the member and the person to whom more than 50 percent of the interest is transferred shall notify the bond pool administrator, in writing, of the transfer within 15 days. The bond pool administrator shall review the eligibility of all persons who own or control, are owned or controlled by, or are under common ownership or control with the member after the transfer using the criteria set forth in KRS 350.720, and shall report his findings to the commission. The commission shall revoke the membership if it determines that the member after the transfer does not meet the eligibility criteria. OSM is currently reviewing the Kentucky bond pool and is deferring all decisions on such, until the review is completed. Thus, the Director is not acting at this time on the amendments by SB–202 and HB–676 to KRS 350.710 through 350.750.

Pursuant to section 503 of SMCRA, 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.

12. KRS 350.990 Penalties

(a) Penalty Recovery Agency

Kentucky has amended its Surface Mining Law (KRS chapter 350) through the actions of the Kentucky General Assembly. The amendment contained in SB–141 section 1(1) that modifies KRS 350.990 to provide that penalties and equitable actions shall be recoverable in the name of the Commonwealth of Kentucky by the cabinet's Department of Law rather than by the Office of General Counsel, or upon the Secretary's request by the Attorney General. Since the amendment at SB–141 section 1(1) that modifies KRS 350.990 clarifies but does not alter the effectiveness of the existing approved Kentucky rule, the Director finds it to be in accordance with sections 518 and 521(c) of SMCRA.

(b) Civil Penalties

SB–141 section 1(2) that modifies KRS 350.990 clarifies that each day shall constitute a separate violation for civil penalty provisions. Also, in addition to the penalties provided in section 1, SB–141 adds a provision that any person or operator who fails to abate a violation of KRS 350.060 or KRS 350.029 or KRS 350.057 as noted in a notice of noncompliance or an order for immediate compliance and cessation within the time period prescribed for the abatement shall be assessed an additional civil penalty of not less than $750 for each day during which the violation continues. Kentucky stated in RAM #101 that the purpose of the amendment is to ensure that illegal operators will not be subject to less severe penalties than legal operators when they fail to correct environmental damage. There is no direct Federal counterpart to this provision. The Director finds that since the amendment at SB–141 section 1(2) that modifies KRS 350.990 does not alter the effectiveness of the existing approved Kentucky rules, it is not inconsistent with SMCRA and the Federal regulations.

(c) Recovery of Penalties by the Department of Law

SB–141 section 1(3) that modifies KRS 350.990 clarifies that it is the duty of the cabinet's Department of Law to bring action for recovery of penalties and equitable relief against any operator or other person violating or threatening to violate any of the provisions of this chapter or violating or threatening to violate any order of determination promulgated pursuant to the provisions of this chapter. Since the amendment only clarifies but does not alter the effectiveness of the existing approved Kentucky rule, the Director finds the amendment at SB–141 section 1(3) that modifies KRS 350.990 to be in accordance with sections 518 and 521(c) of SMCRA.

(d) The Legal Tests of Willfully and Knowingly

SB–141 section 1(8) that modifies KRS 350.990 is amended to provide that "except as permitted by law, any person who willfully and knowingly resists, prevents, impedes or interferes with the secretary or other personnel of the cabinet in the performance of duties pursuant to this chapter shall, upon conviction, be fined not more than $5000 or imprisoned for not more than 1 year, or both." In addressing the protection of government employees at section 704, SMCRA contains only the element of "willfully." The addition by Kentucky of a second element, "knowingly," requires an additional element of proof, rendering the statute more difficult to use successfully against persons so interfering. Therefore, as the Director finds the amendment to SB–141 section 1(8) that modifies KRS 350.990 to be less stringent than section 704 of SMCRA, he is not approving the amendment of the word "knowingly."

(e) Recovery of Penalties, No Benefit May be Derived From Coal Mined Without a Permit

Kentucky has amended its Surface Mining Law (KRS chapter 350) through the actions of the Kentucky General Assembly. The amendment contained in SB–205 section 5(1) that modifies KRS 350.990 provides that penalties shall be recoverable in actions brought in the name of the Commonwealth of Kentucky by the cabinet's Department of Law rather than by the Office of General Counsel, or the Attorney General. Section 5(3) of SB–105 assigns the responsibility for bringing actions to recover penalties to the cabinet's Department of Law rather than to the Office of General Counsel or the Attorney General. These issues, addressed earlier in this document at Findings 12(a) and 12(c), were found to be in accordance with SMCRA.

At section 5(5) of SB–205 the amendment adds a new subsection (b) to KRS 350.990 to provide that any person who, in violation of subsection (1)(b) of section 4 of this Bill, willfully and knowingly receives, transports, sells, conveys, transfers, trades, exchanges, donates, purchases, delivers or in any other way derives benefit from coal removed from any surface mining operations conducted in violation of subsection (1)(a) of section 4 or section 3 of this Bill shall be guilty of a Class D felony and upon conviction thereof shall be imprisoned for at least 1 but not more than 5 years and be fined an amount not to exceed $10,000. This issue is similar to one addressed earlier in this document at Finding 6(a). However, section 5 provides for criminal measures. It has no direct Federal counterpart. The Director finds the amendment to KRS 350.990 by SB–205 at sections 5 (1), (3), and (5) to be not inconsistent with SMCRA and the Federal regulations.

SB–205 also revises the language of section 5(8) of the Bill, by adding the word "knowingly" to the provision that, "except as permitted by law, any person who "willfully and knowingly resists, prevents, impedes or interferes with the secretary or other personnel of the cabinet in the performance of duties pursuant to this chapter shall, upon conviction, be fined not more than $5000 or imprisoned for not more than one (1) year, or both." As discussed in Director's Finding 12(d), the addition of the element of "knowingly" to the provisions of KRS 350.990 section 5(8) is not in accordance with section 704 of SMCRA and cannot be approved. Therefore, the Director finds the proposed amendment to be less stringent than SMCRA.

SB–205 also deletes old section 5(10) of the Bill modifying KRS 350.990 which stated that any person found in violation of KRS 350.060(11) shall be fined not more than $500 for each violation, nor less than $50. This provision was also deleted in SB–202 at section 13(10). The provision refers to a statute, repealed by Kentucky in 1988, that specified that the failure to cover a coal truck constituted a violation. Neither SMCRA nor the Federal regulations contain similar provisions. The Director finds that the deletion will not render the statute less effective than the Federal regulations.

13. KRS 224.083 Hearings

The amendment contained in SB–249 amends KRS 224.083 to extend from 7 to 14 days the time that parties to hearings held before NREPC may file exceptions. The amendment clarifies that the cabinet Secretary must consider exception that are filed before issuing a final order. Since there is no direct Federal counterpart to this regulation and its adoption by Kentucky does not render other parts of the approved program less effective than the Federal regulations, the Director finds the proposed amendment to be not inconsistent with SMCRA and the Federal regulations.

IV. Summary and Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested agencies. One agency, the Kentucky Heritage Council (KHC) responded with pertinent comments.

1. By letter dated July 12, 1990 (Administrative Record No. KY–999), the KHC commented that the language of the amendment proposed at KRS 350.070 by section 1(3)(g) of HB–591 and SB–256 should be altered to read, "Would not involve properties designated as unsuitable for mining, and a determination has been made by the State Historic Preservation Officer (SHPO) that an archaeological survey is unwarranted." The KHC contends that it would be almost impossible to determine if sites eligible for listing on the National Register of Historic Places (NRHP) would be impacted unless an archaeological or historical survey was conducted.

Under the terms of a Memorandum of Agreement between the NREPC and the KHC, signed May 1989, the Division of Permits will review all applications for new operations, revisions and amendments to identify those proposed operations that include previously undisturbed surface acreage. If previously undisturbed areas are proposed for disturbance and those acreages have not been investigated by a professional archaeologist, DSMRE will request comments from the SHPO concerning the need for an archaeological assessment. Further, Kentucky's regulations at 405 KAR 8:010 section 14(5) do not permit mining operations to adversely affect any publicly-owned parks or places included in the NRHP. 405 KAR 8:030 section 11(2) requires that the permit applicant describe and identify the nature of any cultural, historic and archaeological sites listed or eligible for listing in the NRHP based on available information from the State Historic Preservation Officer and other local agencies. The applicant may also be required to identify and evaluate important historic and cultural resources through the collection of additional information, by conducting field investigations, and other appropriate analyses.

The Director believes the coordination provided for by the interagency agreement and the provisions of the existing Kentucky regulations are an adequate response to the requirements of SMCRA related to cultural and historic sites, and that the language change proposed by the commenter would not further enhance the regulatory program or the opportunity for input by the SHPO.

Public Comments

The public comment period and opportunity to request a public hearing was announced in the June 14, 1990, **Federal Register** (55 FR 24113). The comment period closed on July 16, 1990. No one requested an opportunity to testify at the scheduled public hearing and no hearing was held.

Two individuals responded to the request for public comments with pertinent comments. One respondent represented the Kentucky Resources Council (KRC), and one represented his own interest.

1. The KRC commenter restated the Council's continuing concerns that bond pool coverage expressly excludes coverage for subsidence impacts, and for the artificial capping of the forfeiture expenditures from the pool at the cost of reclamation as set by the Division of Permits, rather than the real cost of completion of the reclamation plan. These comments were directed to the amendments of HB–676. As stated in Finding 11, the Director is deferring his decision on the amendments to the Kentucky bond pool. Thus, the comments will not be addressed until a decision is made by the Director.

2. The KRC commenter stated that to the extent that the statutory revisions contained in SB–141 allow for the issuance of a notice of noncompliance rather than an imminent harm cessation order where an entity is conducting coal mining or coal exploration without a valid permit, these provisions conflict with section 521 of SMCRA as implemented at 30 CFR 843.11(a)(2). The term, "notice of noncompliance" as used in SB–141 and a concern of the KRC's refers to Kentucky's unique enforcement system. Pursuant to 405 KAR 12:020 section 3(2)(b), the cabinet simultaneously issues an order for cessation and immediate compliance (Kentucky's equivalent to an imminent harm cessation order) *and* a notice of non-compliance and order for remedial measures (Kentucky's equivalent to a notice of violation). For further explanation of this system, the reader is referred to the May 18, 1982, **Federal Register** notice (47 FR 21404, 21407). Thus, the use of the "notice of noncompliance" does not mean that a notice of noncompliance will be issued instead of an imminent harm cessation order. It means that for any remedial action, i.e. violation, listed in the notice of noncompliance and the order for cessation and immediate compliance, a penalty will be issued. As described in Kentucky's submission letter of May 8, 1990, and in RAM #101, the intent was to ensure "that illegal operators will not be subject to less severe penalties than legal operators when they fail to correct environmental damage."

Kentucky's program at KRS 350.130(4) continues to provide that any condition or operation that creates or is expected to create an imminent danger to the environment or to the public shall immediately cease operations. The Kentucky regulations at 405 KAR 12:020 section 3(c) "flesh out" the statute by requiring the immediate issuance of an order for cessation and immediate compliance to a person conducting surface coal mining and reclamation operations without a valid license. Section 3(c) also requires the issuance of a cessation order when coal exploration operations are found that are being conducted without proper notice of intention to explore or approval for such operations.

3. The KRC commenter stated in regard to SB–255 that while the KRC has no objection to the passage of enabling legislation that sets no standards concerning third-party liability, it believes that any provisions which limit the operator's bond liability for vegetation based on action of third-parties is inconsistent with the Act (SMCRA). The Director agrees with the commenter and has reflected his view in Finding 1. In that Finding, the Director states that any regulations that are promulgated pursuant to SB–255 must be submitted and approved by the Director before Kentucky may implement such regulations.

4. The KRC commenter stated that the identical bills SB–256 and HB–519 expand the class of permit boundary changes that can be used to add new areas for coal removal beyond the permit boundaries without the requirements of a permit amendment. The commenter interpreted the new

statute as allowing "a flat 10 percent of the permit area up to 20 acres," which is consistent with the State's interpretation and with the State's approved definition of IBR's; but objected to that as beyond the narrow concept of IBR's intended by Congress. As the commenter acknowledges, legislative history on this subject is extremely sparse. There are 13 words illustrating one example of what an IBR might be: "such as additional footage to permit the better siting of an access road." (S. Rep. No. 402, 93rd Cong., 1st Sess. 57 (1973)). Those words do suggest that IBR's be limited to a matter to feet, but they do not indicate that the footage must be less than 10 percent of the total acreage. When Congressional intent is unclear or unknown, great deference is given to the agency interpretation of a statute. As long as an agency's interpretation is reasonable, that interpretation is upheld. In Indiana's regulatory program, the Director has approved IBR's that will either be 10 percent or 20 acres, whichever is less (see 51 FR 17478 (1986)). In Illinois' regulatory program, the Director has approved IBR's that allow 10 percent of the original acreage for areas of 100 acres or less, and for areas over 200 acres the IBR cannot exceed 20 acres (see 47 FR 23858 (1982)). In addition, the 10 percent limitation is already a part of the approved Kentucky regulatory program (see 48 FR 21574, 21577 (1983) and 48 FR 22711, 22714 (1983)).

The KRC stated that there is no criteria governing incidental boundary revisions which are major revisions. The KRC goes on to say that this could lead to substantial new acreage. The Director does not agree with the KRC. Any IBR must not exceed the 10 percent or 20 acre limitation. In addition, any IBR that does not satisfy the 10 requirements needed to be a minor revision is automatically a major revision. To list every situation that would classify an IBR as a major revision is an impossible task. Therefore, the Director finds Kentucky's approach to be reasonable and in accordance with SMCRA.

Finally, the KRC stated there would be little or no public involvement if the amendment was approved. Again, the Director disagrees with the commenter. If the IBR is a major revision, the revision must be advertised in the local newspaper pursuant to 405 KAR 8:010 section 8.

5. A private citizen expressed concern about the revision proposed in SB-202 that would delete the requirement that a civil penalty be assessed for failure to cover the bed of a coal truck. The Director notes that there is no comparable Federal regulation requiring that a civil penalty be assessed for failure to cover coal trucks and that the deletion of the provision does not render Kentucky's program inconsistent with SMCRA or the Federal regulations. The Director also notes that on August 10, 1990, OSM approved the deletion of Kentucky's transportation plan requirement which, in part, specified that the failure to cover a coal truck constituted a violation (55 FR 32618).

The citizen also expressed his concern for the provisions of the amendment contained in SB-255 that direct the NREPC to promulgate regulations to address the liability surface mining permittees have in reclaiming permit areas on which parties or forces not controlled by the permittee have disturbed the reclamation previously performed by the permittee. The provisions of SB-255 that direct the NREPC to promulgate regulations setting forth the procedures for transferring liability for reclamation of a surface mining permit to a party who will make a post mining use of the permit area are also of concern to this citizen. The Director agrees with the commenter that these issues are of general concern but he disagrees with the commenter that these issues are pertinent to the amendment contained in SB-255. SB-255 is only enabling legislation directing the NREPC to promulgate new regulations. Attention should be focused on the content of the regulations that are to be developed under this enabling legislation. The Director has addressed this issue Finding 1 and will require that Kentucky submit and obtain the Director's approval of implementing regulations developed in response to this amendment as set forth in SB-255.

V. Director's Decision

Based on the findings discussed above, the Director is approving the proposed amendment as submitted to OSM by Kentucky on May 8, 1990, with the exception of those issues discussed in Findings 11, 12(d), and 12(e).

This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform their program with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relates 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.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In the oversight of the Kentucky program, the Director will recognize only the approved program, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Kentucky of such provisions.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 29, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. 30 CFR 917.15, is amended by adding a new paragraph (gg) to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(gg) The following amendments to the Kentucky Revised Statutes (KRS) submitted to OSM on May 8, 1990, are approved effective February 6, 1991: Amendments to KRS chapter 350 as contained in Senate Bill 255; amendments to KRS chapter 350 sections 350.010, 350.053, 350.057 as contained in Senate Bill 149; amendments to KRS chapter 350 sections 350.053, 350.054, 350.057, 350.060 as contained in Senate Bill 205; amendments to KRS chapter 350 sections 350.060, 350.070, 350.085, 350.093, 350.113, 350.130, 350.139, 350.151, 350.990 as contained in Senate Bill 202; amendments to KRS chapter 350 section 350.070 as contained in Senate Bill 256; amendments to KRS chapter 350 section 350.090 as contained in House Bill 154; amendments to KRS chapter 350 section 350.990 as contained in House Bill 141 and Senate Bill 205 with the exception of the word "knowingly" found at 350.990 1(8) and 5(8); amendments to KRS chapter 350 section 224.083 as contained in House Bill 249; and amendments to KRS chapter 350 section 350.070 as contained in House Bill 519. The repeal of KRS 350.110, 350.113, and 350.990(10) by Senate Bill 202. Action is being deferred on the proposed provisions at KRS 350.710, 350.720, 350.725, 350.735, 350.740, and 350.750 pending the outcome of OSM's review of the Kentucky bond pool.

[FR Doc. 91-2811 Filed 2-5-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AE96

Inference of Marriage of a Veteran's Child

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations concerning the reduction or discontinuance of monetary benefits when there is an inference of marriage of a veteran's child. A recent VA General Counsel opinion held that an individual who is living with a person of the opposite sex and holding himself or herself out to the public to be the spouse of such person remains a "child" under the law governing payment of VA benefits, as long as the individual does not contract a valid marriage. The intended effect of this change is to bring the regulations into conformance with this interpretation.

EFFECTIVE DATE: September 10, 1990.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: In a precedent opinion dated September 10, 1990 (O.G.C. Prec. 90-90), VA's General Counsel held that an individual who is living with a person of the opposite sex and holding himself or herself out to the public to be the spouse of such person remains a "child" within the meaning of 38 U.S.C. 101(4), as long as the individual does not contract a valid marriage. 38 CFR 3.500(n)(3) currently establishes an effective date for reduction or discontinuance of an award of pension, compensation, or dependency and indemnity compensation based upon a finding of an inferred marriage of a child. Since there is no legal basis for such reduction or discontinuance, VA will remove subparagraph (3) of § 3.500(n).

VA is issuing a final rule to delete the provisions of 38 CFR 3.500(n)(3). This change is necessary to conform the regulatory provisions with the VA General Counsel precedent opinion referenced above. Because this amendment constitutes a liberalizing change relieving a restriction and an interpretive rule, publication as a proposal for public notice and comment is unnecessary. For the same reasons, this amendment is retroactively effective on September 10, 1990, the date of the precedent opinion upon which it is based.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). In any case, this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. sections 601-612. This amendment will not directly affect any small entity.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with Foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practices and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: January 16, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 3, Adjudication, is amended as follows:

PART 3—[AMENDED]

In § 3.500, paragraph (n)(3) is removed, existing paragraph (n)(4) is redesignated as paragraph (n)(3) and an authority citation is added after paragraph (n)(3) to read as follows:

§ 3.500 General

* * * * *

(n) *Marriage (or remarriage) (38 U.S.C. 101(3), 3012(b))* * * *

* * * * *

(3) * * *

(Authority: 38 U.S.C. 101(4); 210(c)(1))

* * * * *

[FR Doc. 91-2727 Filed 2-5-91; 8:45 am]

BILLING CODE 8320-01-M