

State regulations (405 KAR 7:080)	Subject	Federal regula- tions (30 CFR part 795)
Section 5(2)	Annual Coal Production	795.6(a)(2).
Section 5(2)(a)	Ownership of the Applicant	795.6(a)(2)(i).
Section 5(2)(b)	Ownership of the Applicant	795.6(a)(2)(ii).
Section 11(1)	Services Performed	795.12(a).
Section 11(1)(e)	Transfer of Permit	795.12(a)(3).

Because the above, proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that these proposed rules are no less effective than the Federal rules.

B. Revisions to Kentucky's Regulations That Are Not Substantively Identical to the Corresponding Provisions of the Federal Regulations

1. 405 KAR 7:080 Section 8. Information requirements

Kentucky proposes to revise 405 KAR 7:080 sections 8(2)(a)(11) and (b)(11) to authorize the use of SOAP assistance to collect and analyze information required by the Kentucky regulations at 405 KAR 8:030 and 040, Section 30; MRP. These regulations concern information necessary for the protection of historically or archaeologically significant sites of public parks and historic places.

The Federal regulations at 30 CFR part 795.9(b)(4) authorize use of SOAP funding to collect historic or archaeological information but do not mention the protection of public parks. The Director finds that 405 KAR 7:080 sections 8(2)(a)(11) and (b)(11), as revised, are no less effective than the corresponding Federal regulations at 30 CFR 795.9(b)(4) with the understanding that Kentucky may authorize the use of SOAP funds to collect and analyze historical or archaeological information required by Kentucky for historic sites but not to collect and analyze any additional information required by Kentucky for public parks.

2. 405 KAR 7:080 Section 11. Applicant liability

Kentucky proposes to revise 405 KAR 7:080 section 11(1)(e) to require that the SOAP applicant reimburse Kentucky for the costs of SOAP-funded services if the permit rights are sold, transferred, or assigned to another person and if that person's coal production exceeds the 300,000 ton annual limit during the twelve months immediately following the date the original permit is reissued in the name of the successor.

The revised Kentucky rules differ slightly from the corresponding Federal regulations at 30 CFR 795.12(a)(3)

which refer to the twelve-month period after the date the permit was originally issued. The Director finds that 405 KAR 7:080 section 11(1)(e), as revised, is no less effective than the corresponding Federal regulations at 30 CFR 795.12(a)(3) for two reasons:

(1) The Kentucky regulations require reimbursement in every instance in which the Federal regulations require reimbursement; and

(2) The additional reimbursement requirements imposed by Kentucky in the event of permit sale, transfer, or assignment would not adversely impact the availability of SOAP assistance to eligible small operators.

C. Revisions to Kentucky's Regulations With no Corresponding Federal Provisions

1. 405 KAR 7:080 Section 6. Filing for assistance

Kentucky proposes to revise 405 KAR 7:080 section 6 by changing the reference date of Kentucky's SOAP application form in the rule from October 1991 to September 1994, with the latter date reflecting Kentucky's most recent revision to that form. Kentucky's SOAP application form date has no equivalent in the corresponding Federal regulations at 30 CFR part 795.7.

The Director finds that the proposed revision is necessary for the accuracy of the Kentucky regulations and is not inconsistent with any requirement of SMCRA or the Federal regulations.

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. No one requested an opportunity to speak at a public hearing, so no hearing was held.

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 U.S. Environmental Protection Agency noted that the

reference in 405 KAR 7:080 section 10(2)(a)(6) to the document "Standard Methods for the Examination of Water and Wastewater," 14th edition, 1975, should be updated to refer to the 18th edition, 1992. The Director concurs with this comment even though the referenced Kentucky regulations was not affected by the program amendment which is the subject of this final rule. OSM has notified Kentucky of this U.S. EPA comment and has requested that the State make this correction in its next revision of 405 KAR 7:080. The U.S. Fish and Wildlife Service, the Mine Safety and Health Administration, the U.S. Forest Service, and the U.S. Bureau of Mines responded that they had no comment on the proposed amendment.

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.*). None of the revisions that Kentucky proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Kentucky on October 3, 1994.

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.

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,