

to require that all personnel assignments will comply with "Title VII of the Civil Rights Act of 1964 (PL 88-352)." This change complies with 30 CFR 884.13(d)(2), which requires a description of the personnel staffing policies which will govern the assignment of personnel to the State reclamation program. It also assures that the Kentucky program is in compliance with applicable Federal law governing personnel assignments. We are approving this change.

Purchasing and Procurement Systems
(pp. 12-1, 12-4, and 12-6)

Kentucky has proposed a revision to its program on page 12-1, paragraph 6, that would delete the reference to Public Law 95-87 (SMCRA) and add references to Chapter 3 of the AML Plan, pertaining to Small Operator Goals, and to 30 CFR 884.13(c)(1). These changes were contained in the 1981 Errata Sheet for the original Plan, both of which we approved in 1982, and are now incorporated into the text of the Plan in identical form. Therefore, the changes are approved.

The subsection pertaining to purchase requisitions is being revised to reflect the current procedure for reviewing and approving requisitions. Specifically, three new paragraphs are added to the beginning of the Purchase Requisition section on page 12-4. These new paragraphs state that project plans are selectively reviewed and revised, if necessary, by the staff of the Commissioner of the Department for Surface Mining Reclamation and Enforcement (DSMRE) and, if approved are then returned to the DAML, where a purchase requisition is prepared for the Director to review and sign. After they are signed, the plans are sent to the Division of Administrative Services, which reviews the purchase requisition for accuracy and form, and to insure that sufficient funds are available.

This section, in effect, re-delegates the function and responsibility of purchase requisition review, approval, and processing. The changes comply with the Federal regulations at 30 CFR 884.13(d)(3), which require a description of the purchasing and procurement systems to be used by the agency that administers the AML Plan. Therefore, the additional paragraphs are approved.

Kentucky has proposed a revision to the first paragraph on page 12-6 to read: "When an apparent low bidder is identified for any AML reclamation contract, the Division of Abandoned Lands forwards the low bidder's name, Federal tax number, social security numbers and other information as

required to the Ownership and Control Review section of the Division of Permits of the Kentucky Department of Surface Mining for an Applicant Violator System (AVS) check for permit eligibility, in accordance with 30 CFR 874.16. Before the contract is awarded to the apparent low bidder an AVS confirmation of permit eligibility will be received from the AVS check."

This revision effectively updates the Kentucky program to be in compliance with the Federal regulations at 30 CFR 874.16, pertaining to AML contractor eligibility, and with the standard for AVS reviews. This proposed change is approved.

Also on page 12-6, the fourth sentence of the first paragraph is revised by deleting the statement that the Commonwealth has the right to "waive all informalities and technicalities of a bid when, in their judgment, the best interest of the Commonwealth of Kentucky may be served." A sentence is then added immediately after the revised fourth sentence. The new sentence states that "[a]ll rejections of bids or waivers will be in accordance with requirements of Office of Management and Budget (OMB) Circular A-102, and applicable State or local law." We previously approved these revisions in the Errata Sheet for the original 1981 Plan. This proposal merely transfers the revisions to the text of the Plan, and is therefore approved without further discussion.

Construction (pp. 12-7 and 12-8)

Kentucky has deleted the subsections, "Monthly Reports for Office of Surface Mining", "Final Report for the Office of Surface Mining" and "Change Orders," in their entirety. In addition, the phrase, "and change orders," at the end of the first paragraph on page 12-7 has been deleted.

Kentucky has also inserted the sentence "guidelines pertaining to change orders will be developed by the Division Director as needed" as the last sentence of the "Project Inspection" subsection.

OSM currently analyzes reports under oversight. The monthly reports to OSM noted in the previously-approved Plan were designed to keep OSM informed of Kentucky's progress during the startup of the Kentucky program in the early 1980's and were sent to the Knoxville Regional Office, which no longer exists. All monitoring and oversight of the Kentucky AML program has been moved to the Lexington Field Office, thereby rendering the reporting required by the deleted subsections unnecessary. In addition, the State has produced and follows internal standard operating

procedures for change orders, which we review under normal oversight, and notifies us of significant change orders under a provision of our Directive AML-22 Performance Agreement for oversight purposes of their construction management process. Because there is no Federal requirement that States file monthly reports, final reports, with OSM, or that change orders or major revisions be approved by OSM, we are approving these changes.

AML Enhancement Rule (p. 12-9)

Kentucky has added the subsection "AML Enhancement Rule." This additional section incorporates OSM's AML Enhancement Rule at 30 CFR 874.17 by reference. The rule provides guidance and procedures for AML programs when considering an AML project as government-financed construction under 30 CFR Part 707 where the level of funding will be less than 50 percent of the total cost of planned coal extraction. Because this change will add to the universe of projects that are eligible for AML funding (*i.e.*, projects that involve the incidental removal of coal and that are less than 50% government financed), it changes the scope of Kentucky's AML program. Therefore, the change can only be approved in accordance with 30 CFR 884.14. *See* 30 CFR 884.15(a) (pertaining to State reclamation plan amendments). In reviewing this portion of the amendment, we have: provided adequate notice and opportunity for comment on the amendment; solicited and considered the views of other Federal agencies having an interest in the amendment; found that the State continues to have the legal authority, policies and administrative structure necessary to carry out the proposed plan, as amended; found that the State continues to have an approved State regulatory program; and, determined that the amendment is in accordance with all applicable State and Federal laws and regulations. The incorporation, by reference, of OSM's AML Enhancement Rule is therefore approved. However, we note that the United States Court of Appeals for the District of Columbia Circuit has, in part, remanded the Federal AML Enhancement Rule for further consideration. Specifically, the court ordered OSM to explain how it can reasonably construe the term "government-financed" to include "expenses incurred directly or indirectly by [an] AML agency," even where the "AML contractor receives no funds at all from the government." *Kentucky Resources Council v. Norton*, 2002 U.S. App. Lexis 11365, Slip. Op.