2000, is adopted as a final rule without change.

Dated: May 4, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–11642 Filed 5–9–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV00–993–2 FR]

Dried Prunes Produced in California; Undersized Regulation for the 2000–2001 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the undersized prune regulation for dried prunes received by handlers from producers and dehydrators under Marketing Order No. 993 for the 2000–2001 crop year. The marketing order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets, and allows handlers to dispose of undersized prunes in such outlets as livestock feed. The Committee estimated that this rule will reduce the excess of dried prunes expected at the end of the 1999–2000 crop year by approximately 5,100 tons, leaving sufficient prunes to fulfill foreign and domestic trade demand.

EFFECTIVE DATE: August 1, 2000.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720-2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule changes the undersized regulation in § 993.49(c) of the prune marketing order for the 2000–2001 crop year for inventory management purposes. The regulation removes prunes passing through specified screen openings. For French prunes, the screen opening will be increased from 23/32 to 24/32 of an inch in diameter; and for non-French prunes, the opening will be increased from 28/32 to 30/32 of an inch in diameter. This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets. The rule will be in effect from August 1, 2000, through July 31, 2001, and was unanimously recommended by the Committee at a November 30, 1999, meeting.

Section 993.19b of the prune marketing order defines undersized prunes as prunes which pass freely through a round opening of a specified diameter. Section 993.49(c) of the prune marketing order establishes an undersized regulation of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes. These diameter openings have been in effect for quality control purposes. Section 993.49(c) also provides that the Secretary, upon a recommendation of the Committee, may establish larger openings for undersized dried prunes whenever it is determined that supply conditions for a crop year warrant such regulation. Section 993.50(g) states in part: ''No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized prunes* * *'' Pursuant to § 993.52, minimum standards, pack specifications, including the openings prescribed in § 993.49(c), may be modified by the Secretary, on the basis of a recommendation of the Committee or other information.

Pursuant to the authority in § 993.52 of the order, § 993.400 modifies the undersized openings prescribed in § 993.49(c) to permit undersized regulations using openings of 23/32 or 24/32 of an inch for French prunes, and 28/32 or 30/32 of an inch for non-French prunes.

During the 1974–75 and 1977–78 crop years, the undersized prune regulation was established by the Department at 23/32 of an inch in diameter for French prunes and 28/32 of an inch in diameter for non-French prunes. These diameter openings were established in §§ 993.401 and 993.404, respectively (39 FR 32733, September 11, 1974; and 42 FR 49802, September 28, 1977). In addition, the Committee recommended and the Department established volume regulation percentages during the 1974–75 crop year with an undersized regulation at the aforementioned 23/32 and 28/32 inch diameter screen sizes. During the 1975–76 and 1976–77 crop years, the undersized prune regulation was established at 24/32 of an inch for French prunes, and 30/32 of an inch for non-French prunes. These diameter openings were established in §§ 993.402 and 993.403 respectively (40 FR 42530, September 15, 1975; and 41 FR 37306, September 3, 1976). The prune industry had an excess supply of prunes, particularly small-sized prunes. Rather than recommending volume regulation percentages for the 1975–76, 1976–77 and 1977–78 crop years, the Committee

recommended the establishment of an undersized prune regulation applicable to all prunes received by handlers from producers and dehydrators during each of those crop years.

The objective of the undersized regulations during each of those crop years was to preclude the use of small prunes in manufactured prune products, such as juice and concentrate. Handlers could not market undersized prunes for human consumption, but could dispose of them in nonhuman outlets such as livestock feed.

With these experiences as a basis, the marketing order was amended on August 1, 1982, establishing the continuing quality-related regulation for undersized French and non-French prunes under § 993.49(c). That regulation has removed from the marketable supply those prunes which are not desirable for use in prune products.

As in the 1970's, the prune industry is currently experiencing an excess supply of prunes, particularly in the smaller sizes. During the 1998–99 crop year, an undersized prune regulation was established at 24/32 of an inch for French prunes, and 30/32 of an inch for non-French prunes. These diameter openings were established in § 993.405 (63 FR 20058, April 23, 1998). At its meeting on December 1, 1998, the Committee recognized that the 1998–99 prune crop was about 50 percent of the normal size; however, with the large carryin inventories and anticipated large 1999–2000 prune crop, the Committee unanimously recommended continuing an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. These diameter openings were established in § 993.406 (63 FR 23759, May 4, 1999) and made effective from August 1, 1999, through July 31, 2000.

For the 1998–99 crop year, the carryin inventory level reached a record high of 126,485 natural condition tons. Excessive inventories tend to dampen producer returns, and cause weak marketing conditions. The carryin for the 1999–2000 crop year was reduced to 59,944 natural condition tons. This reduction was due to the low level of salable production in 1998–99 (about 102,521 natural condition tons and 50 percent of a normal size crop) and the undersized prune regulation. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the new crop has ranged between 35,353 and 42,071 natural condition tons since the 1996–97 crop year, while the actual inventory has ranged between 59,944 and 126,485 natural condition tons since that year. The desired inventory level for early season shipments fluctuates from year-to-year depending on market conditions.

At its meeting on November 30, 1999, the Committee unanimously recommended continuing an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes during the 2000–2001 crop year to help manage large prune supplies. This regulation will be in effect from August 1, 2000, through July 31, 2001.

The Committee estimated that there will be an excess of about 8,200 natural condition tons of dried prunes as of July 31, 2000. This rule will continue to remove primarily small-sized prunes from human consumption channels, consistent with the undersized prune regulation that was implemented for the 1998–99 and 1999–2000 crop years. It is estimated that approximately 5,100 natural condition tons of small prunes will be removed from human consumption channels during the 2000–2001 crop year. This will leave sufficient prunes to fill domestic and foreign trade demand during the 2000–2001 crop year, and provide an adequate carryout on July 31, 2001, for early season shipments until the new crop is available for shipment. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the new crop is about 42,000 natural condition tons.

In its deliberations, the Committee reviewed statistics reflecting: (1) A worldwide prune demand which has been relatively stable at about 260,000 tons; (2) a worldwide oversupply that is expected to continue growing for several more years (estimated at 350,845 natural condition tons by the year 2003); (3) a continuing oversupply situation in California caused by increased production from increased plantings and higher yields per acre (between the 1990–91 and 1999–2000 crop years, the yield ranged from 1.2 to 2.6 versus a 10 year average of 2.2 tons per acre); and (4) California's continued excess supply situation. The production of these small sizes ranged from 1,332 to 8,778 natural condition tons during the 1990–91 through the 1998-99 crop years. The Committee concluded that it had to continue utilizing supply management techniques to accelerate the return to a balanced supply/demand situation in the interest of the California dried prune industry. The changes to the undersized regulation for the 2000–2001 crop year are the result of these deliberations, and the Committee's desire to bring supplies more in line with market needs.

The current oversupply situation facing the California prune industry has been caused by four consecutive large crops (1994–95 through 1997–98) of over 180,000 natural condition tons. This oversupply situation is expected to continue over the next few years due to new prune plantings in recent years with higher yields per acre. The recent prune plantings have a higher tree density per acre than the older prune plantings. During the 1990–91 crop year, the non-bearing acreage totaled 5,900 acres; but by 1998–99, the non-bearing acreage had quadrupled to more than 26,000 acres. The 1996–97 through 1998–99 yields have ranged from 1.2 to 2.6 tons per acre. Over the last 10 years, the average was 2.2 tons per acre. The 1998–99 prune crop was exceptionally light, (about 50 percent of normal size or 103,000 tons), due to the unusually cool and wet weather conditions caused by the weather phenomenon known as El Nino. Although the small 1998–99 crop helped reduce the existing oversupply of small dried prunes, supplies of small dried prunes remain larger than needed to meet demand.

The 1999–2000 dried prune crop is expected to be 172,000 natural condition tons. Another large crop of about 200,000 natural condition tons is expected for the 2000–2001 crop year, partly because of an anticipated increase in bearing acreage.

Since the 1997–98 crop year, producer prices for the 24/32 of an inch in diameter French prunes have been about $40–50 per ton, about $260–270 per ton below the cost of production. The lower pricing of the smaller prunes continued in 1998–99 and 1999–2000. It is expected to continue as an incentive for production of larger size prunes. These larger sizes will help the industry better meet the increasing market demand for larger size pitted prunes.

The 1998–99 and 1999–2000 undersized prune rules of 24/32 of an inch for French prunes and 30/32 of an inch for non-French prunes have expedited the reduction of small prune inventories, but more needs to be done to bring supplies into balance with market demand. The excess inventory on July 31, 1999, was 17,873 natural condition tons, and only about 5,130 natural condition tons of dried prunes are expected to be removed from the 1999–2000 marketable supply by the current undersized regulation. The Committee believes that the same undersized regulation also should be implemented during the 2000–2001 crop year to continue reducing the inventories of small prunes, to help reduce the expected large 2000–2001 prune crop supplies, and more quickly

bring supplies in line with demand. Attainment of this goal will benefit all of the producers and handlers of California prunes.

The recommended decision of June 1, 1981 (46 FR 29271) regarding undersized prunes states that the undersized prune regulation at the 23/32 and 28/32 inch diameter size openings will be continuous for the purposes of quality control even in above parity situations. It further states that any change (*i.e.,* increase) in the size of those openings will not be for the purpose of establishing a new quality-related minimum. Larger openings would only be applicable when supply conditions warrant the regulation of a larger quantity of prunes as undersized prunes. Thus, any regulation prescribing openings larger than those in § 993.49(c) should not be implemented when the grower average price is expected to be above parity. The season average price received by prune growers averaged about 49 percent of parity during the 1994 through 1998 seasons and is in a downward trend. As discussed later, the average grower price for prunes during the 2000–2001 crop year is not expected to be above parity, and implementation of this more restrictive undersized regulation will be appropriate in reference to parity.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for volume control, not quality control. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented to improve product quality. The recommended increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of volume control. Therefore, the increased diameters will not be applied to imported prunes.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,250 producers of dried prunes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated industry profile shows that 7 out of 20 handlers (35 percent) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Thirteen of the 20 handlers (65 percent) shipped under $5,000,000 worth of prunes and could be considered small handlers. An estimated 109 producers, or less than 9 percent of the 1,250 total producers, could be considered large growers with annual income over $500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This final rule will establish an undersized prune regulation of 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes for the 2000–2001 crop year for inventory management purposes. This change in regulation will result in more of the smaller sized prunes being classified as undersized prunes, and is expected to benefit producers, handlers, and consumers. Since prune handlers already use 24/32 and 30/32 grader screens, small and large producers and handlers will not incur extra costs to purchase new screen sizes. Moreover, because the quality related undersized regulation has been in place continuously since the early 1980's, the only additional cost resulting from the change in regulations to the larger screen openings will be the disposal of additional undersized prune tonnage (about 5,100 natural condition tons) to nonhuman consumption outlets. The larger screen openings currently in place for 1999–2000 are expected to remove 5,130 tons of dried prunes from the excess marketable supply. The Committee estimated that there will be an excess of about 8,200 natural condition tons of dried prunes on July 31, 2000. Implementation of the larger openings in 2000–2001 is expected to reduce the surplus by about 5,100 tons.

Because the benefits and costs of the action will be directly proportional to the quantity of 24/32 screen French prunes and 30/32 screen non-French prunes produced or handled, small businesses should not be disproportionately affected by the action. While variation in sugar content, prune density, and dry-away ratio vary from county to county, they also vary from orchard to orchard and season to season. In the major producing areas of the Sacramento and San Joaquin Valleys (which account for over 99 percent of the State's production), the prunes produced are homogeneous enough that this action will not be viewed as inequitable by large and small producers in any area of the State.

The quantity of small prunes in a lot is not dependent on whether a producer or handler is small or large, but is primarily dependent on cultural practices, soil composition, and water costs. The cost to minimize the quantity of small prunes is similar for small and large entities. The anticipated benefits of this rule are not expected to be disproportionately greater or lesser for small handlers or producers than for larger entities. The only additional costs on producers and handlers expected from the increased openings will be the disposal of additional tonnage (now estimated to be about 5,100 tons) to nonhuman consumption outlets. These costs are expected to be minimal and will be offset by the benefits derived by the elimination of some of the excess supply of small-sized prunes.

At the November 30, 1999, meeting, the Committee discussed the financial impact of this change on handlers and producers. Handlers and producers receive higher returns for the larger size prunes. Prunes eliminated through the implementation of this rule have very little value. As mentioned earlier, the current situation for these small sizes is quite bleak, with producers losing about $260–270 on every ton they deliver to handlers. The 1999–2000 grower field price for 24/32 screen French prunes ranges between $40 and $50 per ton, the same as the 1998–99 year. The cost of drying a ton of such prunes is $260 per ton at a 4 to 1 dry-away ratio, transportation is at least $20 per ton, and the producer assessment paid to the California Prune Board (a body which administers the State marketing order for promotion and research) is $50 per ton. The total cost is about $330 per ton which equates to a loss of about $280–290 per ton for every ton of 24/32 screen French prunes produced and delivered to handlers.

Utilizing data provided by the Committee, the Department has

evaluated the impact of the undersized regulation change upon producers and handlers in the industry. The analysis shows that a reduction in the marketable production and handler inventories should probably result in higher season-average prices which will benefit all producers. The removal of the smallest, least desirable of the marketable dried prunes produced in California from human consumption outlets will eliminate an estimated 5,100 tons of small-sized dried prunes during the 2000–2001 crop year from the marketplace. This will help lessen the negative marketing and pricing effects resulting from the excess supply situation facing the industry. California prune handlers reported that they held 59,944 tons of natural condition prunes on July 31, 1999, the end of the 1998–99 crop year. The 59,944 ton year-end inventory is larger than what is desired for the prune industry. The desired industry inventory level is based on an average 12-week supply to keep trade distribution channels full while awaiting new crop. Currently, it is about 39,000 natural condition tons. This leaves an inventory surplus of about 18,000 tons. The near normal size 1999–2000 prune crop (172,000 tons) and undersized regulation will help reduce the surplus, but the anticipated large 2000–2001 prune crop is expected to further worsen the supply imbalance.

As the marketable dried prune inventories are reduced through this action, and producers continue to implement improved cultural and thinning practices to produce larger prunes, continued improvement in producer returns is expected.

For the 1994–95 through the 1998–99 crop years, the season average price received by the producers ranged from a high of $1,120 per ton to a low of $784 per ton during the 1998–99 crop year. The season average price received by producers during that 5-year period averaged about 49 percent of parity. Based on available data and estimates of prices, production, and other economic factors, the season average producer price for the 1999–2000 season is expected to be about $905 per ton, or about 43 percent of parity.

The Committee discussed alternatives to this change, including making no changes to the undersized prune regulation and allowing market dynamics to foster prune inventory adjustments through lower prices on the smaller prunes. While reduced grower prices for small prunes are expected to contribute toward a slow reduction in dried prune inventories, the Committee believed that the undersized rule change is needed to expedite that reduction. With the excess tonnage of dried prunes, the Committee also considered establishing a reserve pool and diversion program to reduce the oversupply situation. These initiatives were not supported because they would not specifically eliminate the smallest, least valuable prunes which are in oversupply. Instead, the reserve pool and diversion program would eliminate larger size prunes from human consumption outlets. Reserve pools for prunes have historically been implemented on dried prunes regardless of the size of the prunes. While the marketing order also allows handlers to remove the larger prunes from the pool by replacing them with small prunes and the value difference in cash, this exchange would be cumbersome and expensive to administer compared to this rule.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for inventory management, not quality control purposes. The smaller diameter openings of $^{23}/_{32}$ of an inch for French prunes and $^{28}/_{32}$ of an inch for non-French prunes were implemented for the purpose of improving product quality. The increases to $^{24}/_{32}$ of an inch in diameter for French prunes and $^{30}/_{32}$ of an inch in diameter for non-French prunes are for purposes of inventory management. Therefore, the increased diameters will not be applied to imported prunes.

This action will not impose any additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the Committee's meeting was widely publicized throughout the prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 30, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of twenty-two members. Seven are handlers, fourteen are producers, and one is a public member. Moreover, the Committee and its Supply Management Subcommittee have been reviewing this supply management problem for the second year, and this rule reflects their deliberations completely.

A proposed rule concerning this action was published in the **Federal Register** on Wednesday, January 19, 2000 (65 FR 2908). Copies of this rule were mailed or sent via facsimile to all Committee members, alternates and dried prune handlers. Finally, the rule was made available through the Internet by the U.S. Government Printing Office. The rule provided a comment period which ended April 17, 2000. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 993.407 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 993.407 Undersized prune regulation for the 2000–2001 crop year.

Pursuant to §§ 993.49 paragraph (c) and 993.52, an undersized prune regulation for the 2000–2001 crop year is hereby established. Undersized

prunes are prunes which pass through openings as follows: for French prunes, 24/32 of an inch in diameter; for non-French prunes, 30/32 of an inch in diameter.

Dated: May 4, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–11640 Filed 5–9–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–218–FOR]

Kentucky Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with one exception, a proposed amendment to the Kentucky regulatory program (Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kentucky is proposing revisions to the Kentucky Revised Statutes (KRS) pertaining to bonding and permits. The amendment is intended to revise the Kentucky program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: May 10, 2000.

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

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the May 18, 1982 **Federal Register** (47 FR 21404). You can find subsequent actions concerning conditions of approval and program amendments at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Submission of the Proposed Amendment

By letter dated April 23, 1998 (Administrative Record No. KY–1425), Kentucky submitted a proposed amendment to its program. House Bills (HB) 354, 498, and 593 (effective July 15, 1998) revise KRS sections 350.990(11), 350.131(2), 350.139(1), 350.990(1), and 350.060(16).

We announced receipt of the proposed amendment in the May 20, 1998, **Federal Register** (63 FR 27698), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on June 19, 1998.

III. Director's Findings

Following, according to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the proposed amendment.

Any revisions that we do not specifically discuss below concern nonsubstantive wording changes or revised cross-references and paragraph notations to reflect organizational changes that result from this amendment.

Reorganization—HB 354 confirms Executive Order 97–714 (June 11, 1997) which changed the name of the Division of Abandoned Lands to the Division of Abandoned Mine Lands. At KRS 350.990(11), Kentucky proposes to correct the name in this section. While there are no corresponding Federal provisions, we are approving the revision because it does not alter the authority or responsibility of the Division of Abandoned Mine Lands, and is not, therefore, inconsistent with the requirements of SMCRA and the Federal regulations.

Forfeited Bonds—HB 498 completes the bonding reforms recommended in the 1993 joint study of the adequacy of reclamation bonds in Kentucky. At KRS 350.131(2), Kentucky proposes to return any unused bond funds, less any accrued interest, to the party from whom they were collected when the forfeited amount is more than the amount needed for reclamation.

The Federal regulations at 30 CFR 800.50(d)(2) provide that, where the amount of the performance bond forfeited exceeds the cost of reclamation, ''the unused funds shall be returned * * * to the party from whom they were collected.'' However, both SMCRA and the Federal regulations are silent as to the disposition of any interest proceeds generated by the bond while it is in the possession of the regulatory authority. Therefore, while Kentucky's proposed requirement is not specifically authorized by SMCRA, it is nonetheless well within the discretion provided to the states by section 505 of SMCRA to propose more stringent regulation of surface coal mining and reclamation operations than do the provisions of SMCRA and its implementing regulations. Therefore, the Director finds the Kentucky proposal to be not inconsistent with the requirements of SMCRA or the Federal rules at 30 CFR part 800.

At KRS 350.139(1), Kentucky proposes to establish a bond forfeiture supplemental fund. All funds from the forfeiture of bonds will be placed in an interest-bearing account. The interest will become a supplemental fund and may be used to supplement forfeited bonds that are inadequate to complete the reclamation plan. The interest may be expended on lands other than those for which the bond was given. No more than 25 percent of the supplemental fund may be expended on any single site, unless a larger expenditure is necessary to abate an imminent danger to public health or safety.

At KRS 350.990(1), Kentucky proposes to establish a potential second source of money for the supplemental fund. The first $800,000 of the civil penalties Kentucky collects each year for coal mining violations goes to the State Treasury's General Fund. Any proceeds in excess of the first $800,000, collected in any fiscal year, go to the Kentucky Bond Pool Fund. Kentucky proposes to direct one-half of the excess that currently goes to the Bond Pool Fund to the new bond forfeiture supplemental fund, but only when the balance in the Bond Pool Fund is above the maximum of the operating range necessary to ensure its solvency. Currently, the maximum amount of money necessary to ensure the solvency of the Bond Pool Fund is $16 million. Accordingly, the amendment proposes no diversion of excess penalty income from the Bond Pool Fund to the bond forfeiture supplemental fund until the Bond Pool Fund reaches $16 million, or a larger amount established by the most recent actuarial study. The excess money collected will be deposited 50 percent to the Bond Pool Fund and 50 percent to the supplemental fund. If the Bond Pool Fund falls below $16 million (or a higher amount established by the actuarial study), all excess moneys will be deposited in the Bond Pool Fund until it reaches $16 million (or a higher amount).