For valuation dates occurring in the month—	The values for i_k are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_u
•			•			•		•			•			•		•
October 1991.....	.07	.06875	.0675	.06625	.065	.06375	.06375	.06375	.06375	.06375	.06125	.06125	.06125	.06125	.06125	.05875

Issued at Washington, DC, on this 6th day of September 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-22021 Filed 9-12-91; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010-AB17

Revision of Valuation Regulations Governing Gas Sales Under Percentage-of-Proceeds Contracts

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its gas product valuation regulations to change the method of determining the value of gas sold under arm's-length percentage-of-proceeds (POP) contracts. The final rule provides for valuation of gas sold under these contracts using the rules applicable to unprocessed rather than processed gas. For wet gas sold under arm's-length POP contracts, it accepts as value for royalty purposes the market-based value determined by the gross proceeds remitted to the lessee under that contract. However, the regulations being adopted also retain a minimum royalty value for the wet gas in certain limited circumstances.

This rulemaking amends MMS's Federal and Indian gas royalty valuation regulations at 30 CFR part 206 governing the valuation of gas sold under arm's-length POP contracts. The requirements on accounting for comparison and major portion analysis as contained in the terms of Indian leases are not affected by this rulemaking. As stated in its proposed rule amendment that was published in the **Federal Register** on December 15, 1988 (53 FR 50422), MMS believes that the explicit recognition and use of gross proceeds under arm's-length contracts as value will not result in a change in royalty collections, given current relative market prices of methane and other gas plant products. These changes will simplify royalty reporting requirements and will have a negligible affect on royalty revenues.

EFFECTIVE DATE: November 1, 1991.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, Mail Stop 3910, Minerals Management Service, Royalty Management Program, P.O. Box 25165, Denver, Colorado 80225-0165 (303) 231-3432 or (FTS) 326-3432.

SUPPLEMENTARY INFORMATION:

I. Background

The MMS has historically required lessees with processed gas sales (including gas sales subject to POP contracts) to base royalties on 100 percent of the value of the residue gas and a minimum of one-third of the natural gas liquids, or the gross proceeds received by the lessee, whichever was greater (30 CFR 206.105 and 206.106 (1987)). The MMS continued to require lessees to value gas sold under POP contracts as processed gas after publication of the new gas valuation regulations on January 15, 1988 (53 FR 1230), although lessees could obtain approval of a processing allowance in excess of the two-thirds limit upon application to MMS. One of the primary reasons MMS chose to value gas in this manner, both historically and under the new regulations, was to prevent lessees from exceeding the otherwise applicable processing allowance limit by the terms of their POP contracts. During the process of revising the final gas valuation regulations (which became effective March 1, 1988), industry commenters argued that POP contracts represented wellhead sales of unprocessed gas. These commenters said that the gross proceeds to the lessee should be accepted as value, and that lessees should not be required to calculate processing allowances for these types of gas sales. However, an opposing point of view was presented by the State and Indian commenters who argued that MMS should not accept gross proceeds without requiring proof that processing costs charged to the lessee were reasonable.

On December 15, 1988 (53 FR 50422), MMS issued a notice proposing to amend its gas product valuation regulations to require that the valuation of gas sold under arm's-length POP contracts be determined by the provisions of the unprocessed gas valuation regulations at 30 CFR 206.152 (1988) rather than the provisions of the processed gas valuation regulations at 30 CFR 206.153 (1988). This would result, in most circumstances, in the value for royalty purposes being based on gross proceeds. However, MMS also proposed adding a new provision to the unprocessed gas valuation regulations requiring that value, for royalty purposes, of gas sold under arm's-length POP contracts could never be less than 100 percent of the value of the residue gas attributable to processing the lessee's gas. Under the proposed rule, valuation of gas sold under non-arm's-length POP contracts would have remained under the processed gas valuation regulations.

The MMS's proposal was premised on the belief that the new regulations would generate a large number of requests to exceed the two-thirds processing allowance limit (see 30 CFR 206.158(c)(2) and (c)(3) (1988)) and that virtually all these requests would be granted. The MMS believed that, for arm's-length POP contracts, the new regulations imposed an unnecessary burden on industry and on MMS by requiring the submittal of allowance forms to claim an allowance up to the two-thirds limit, requests to exceed the limit, new allowance forms to claim an approved allowance in excess of the two-thirds limit, and the amendment of previously submitted Reports of Sales and Royalty Remittance (Form MMS-2014) to reflect the newly approved, higher allowance. Also, with the proposal that the value of such gas be a minimum of 100 percent of the value of the residue gas, MMS estimated that royalty would not be significantly affected by changing valuation of gas sold under arm's-length POP contracts

to the unprocessed gas valuation regulations. In addition to these proposals, MMS also requested specific comments on whether the proposed rule, if adopted, should be retroactive.

II. Comments Received on Proposed Rule

The proposed rulemaking provided for a 30-day public comment period which ended January 17, 1989, and was subsequently extended to February 3, 1989 (see 54 FR 1398, January 13, 1989). During the public comment period, MMS received 24 written comments: 16 responses from industry, 3 from industry trade groups or associations, 3 from State Agencies, and 2 from State/Indian associations.

The five State and Indian commenters were unanimously opposed to adopting both the proposed revision and the retroactive effective date. They stated that MMS has no adequate basis for the conclusions enumerated in the proposed rulemaking and that there is no known study that establishes the prevalence of POP contracts. They also argued that, if a large number of such contracts did exist, MMS has not demonstrated that processing allowances under these contracts would, in most instances, exceed the two-thirds limit.

These commenters claimed that, contrary to MMS's assertion that the proposed changes will reduce the administrative burden, the revision will merely shift this burden to a different division of MMS, the Royalty Compliance Division (RCD). Several of these commenters stressed that the burden would actually increase for the auditors who audit payors "after the fact," and suggested that the burden would increase, with the passage of time, for payors who might not learn of an increase in royalty liability until 6 years after production occurs. They contended that, until MMS is able to audit all payors, the proposed revision carries an increased risk that the public will suffer a loss of royalties and that the protection of the lessor will be weakened in the name of administrative convenience.

Finally, these commenters observed that no justification exists for abandoning the prudent policy of requiring payors to perform a processing costs analysis prior to payment of royalties and that if payors cannot overcome the burden of proving that their processing costs are reasonable, actual, and necessary, they should not be permitted an exception to the allowance limitation.

Industry and industry trade groups or associations supported adoption of the proposed revision and a retroactive effective date of March 1, 1988, consistent with the effective date of the new gas valuation regulations. Some industry commenters stated that the revenues received under arm's-length POP contracts represent the wellhead value of unprocessed gas and that valuing gas sold under POP contracts as unprocessed gas is consistent with basing royalty on the market value of gas at the wellhead. These commenters declared that it is illogical to treat arm's-length POP contracts differently from other arm's-length transactions. One industry commenter suggested that gas sold under non-arm's-length POP contracts should also be valued as unprocessed gas because, in sales of gas to affiliates under POP contracts, the seller retains no more interest in the gas after the sale than if the gas had been sold to a nonaffiliate.

Commenters also claimed that adopting the revision would alleviate the enormous administrative burden for both MMS and industry of filing updated Payor Information Forms, processing allowance forms (Form MMS-4109), and filing and processing requests to exceed the two-thirds processing allowance limitation.

The proposal to require a minimum value of 100 percent of the residue gas was opposed by all industry respondents. Industry claimed that its position would be consistent with MMS's general philosophy that revenue received under, or prices established in, arm's-length contracts represent reasonable value for royalty purposes.

Several industry commenters proclaimed that the minimum value provision adds a dual accounting requirement to POP contracts that is impossible to comply with. Many commenters also mentioned that not all purchasers provide sufficient information on the settlement statement to enable a payor to perform dual accounting and that the value of the gas at the wellhead is represented by the proceeds received under the contract.

Various commenters alleged that the minimum value provision may create an economic burden on payors because their royalty payments might exceed their revenue if the value, for royalty purposes, exceeds the gross proceeds received for sale of the gas at the wellhead. Some commenters discussed the imposition of transportation and/or gathering charges by processors in addition to the costs of processing and stated that the minimum value provision may limit the payor from properly recovering these costs. Multiple commenters stressed that the minimum value provision will result in an increased workload.

Few State or Indian respondents commented on the minimum value provision because they were opposed to adoption of the revision in its entirety. The few State commenters that did respond reasoned that the entire concept of valuing gas sold under POP contracts as unprocessed gas is faulty if a minimum value is based on the sale of residue gas. These commenters were very concerned that this provision would allow payors to deduct 100 percent of the value of gas plant products without approval or monitoring by MMS.

In the proposed rulemaking MMS did not specify an effective date for the proposed changes. Most industry commenters strongly recommended that MMS make the proposed revision effective retroactive to March 1, 1988, the effective date of the new regulations. Several commenters reasoned that this would be consistent with MMS's objective of eliminating unnecessary workload, would allow MMS to consistently apply the revision from inception of the new regulations, and would avoid audit confusion. Some industry commenters believed that MMS should postpone the due date for filing Forms MMS-4109 that contain actual 1988 data and estimated 1989 data for gas sold under POP contracts until the proposed rulemaking is final. State and Indian respondents presented no comments on this issue.

III. Results of Study

To respond to some of the concerns raised by commenters, MMS undertook a study to determine: (1) The number of leases subject to POP contracts; (2) how many processing allowances under these contracts would reasonably be expected to exceed the two-thirds limit; (3) how many requests for exceptions to the two-thirds processing allowances limit were actually submitted to MMS; and (4) the extent of the reporting burden caused by the existing regulations.

Leases with gas sales under POP contracts were identified by reviewing company-generated valuation requests, requests to exceed the two-thirds processing allowance limit applicable to gas plant products, and information assembled by RCD from audits involving POP contracts. Actual data reported to the Auditing and Financial System (AFS) on Form MMS-2014 were reviewed to determine lessee compliance with regulatory requirements. Reported processing allowances were reviewed to determine the percentage of the value of gas plant

products actually claimed as a deduction.

The MMS identified 326 leases subject to POP contracts. The MMS has no method of determining the total number of leases with gas sales subject to POP contracts, but suspects that the 326 identified leases do not include all leases subject to this type of contract.

The MMS review indicated that processing allowances for about 50 percent of the 326 leases studied would reasonably be expected to exceed the two-thirds processing allowance. Processing allowances for 6 leases (2 percent) exceeded 100 percent of the value of the gas plant products. Accordingly, the statistics suggest that the lessee's gross proceeds will exceed 100 percent of the value of the residue gas in almost all cases and will exceed 100 percent of the value of the residue gas plus one-third of the value of the liquid products in about half of the cases.

With implementation of the January 1988 gas valuation regulations, all lessees with POP sales were required to submit a Form MMS-4109 to MMS pursuant to 30 CFR 206.159(c) and report processing allowances as separate line items on the Form MMS-2014 pursuant to 30 CFR 206.159(c)(4). Industry reports a monthly average of 207,000 lines on the Form MMS-2014 and 32,400 lines on separate allowance reporting forms that were entered into the allowance tracking system. The 326 leases alone would account for approximately 7 percent of the total processing allowance lines reported on Form MMS-2014.

IV. Discussion

The MMS believes that gross proceeds under arm's-length contracts is the best indicator of value except under limited circumstances. In particular, gross proceeds may not be the measure of value for royalty purposes when the gas is not sold in marketable condition. See 30 CFR 206.152(i) and 206.153(i). This factor is similar to holdings in several oil and gas producing states, where the courts were concerned that the choice of a point of sale "rests entirely [with the lessee and its purchaser and could] lead to manipulation by lessees". *State* v. *Davis Oil Co.* 728 P.2d 1107, 1110 (Wyo. 1986) (dealing with POP contracts). See also *Piney Woods Country Life Sch.* v. *Shell Oil Co.* 726 F.2d 225 (5th Cir. 1984) (applying Mississippi law). Gross proceeds may also not be the best measure of value when the lessee is unable to market the gas at a competitively determined price. In particular, POP contracts often occur under conditions where the lessee is subject to monopsonistic market power by its purchaser or processor.

The principle adopted for the new gas valuation regulations on January 15, 1988 (53 FR 1230), is that the value of production for royalty purposes is the value at the lease. Except under the narrow circumstances described above, the gross proceeds accruing under an arm's-length contract will determine that value. This principle governs royalty valuation determinations made for other resources, as well as oil and gas.

Based on this general philosophy, the comments received on the proposed rule, and the facts ascertained from the study, MMS decided that valuation of gas sold under arm's-length POP contracts will be determined by the provisions of the unprocessed gas valuation regulations at 30 CFR 206.152.

As stated in its proposed rule amendment (53 FR 50423), MMS believes that the explicit recognition and use of gross proceeds under arm's-length contracts as value will not result in a change in royalty collections. There was significant controversy surrounding valuation under POP contracts in adopting the final product value regulations in 30 CFR part 206 (53 FR 1230, January 15, 1988). Because of these concerns, MMS proposed to take a conservative approach in changing the regulations, and has therefore retained the minimum value provision. The MMS continues to believe that such a minimum will not result in a change in royalty collections. There is no additional reporting burden associated with this minimum.

The MMS does not believe that adoption of the revision will create any additional burden for either RCD or lessees. Even under the current regulations, lessees have the obligation to base royalties on no less than their gross proceeds and payments made by lessees are subject to audit "after the fact." The revision does not change these requirements nor does it place any increased burden on RCD to assure that they are met. The revision also does not carry an increased risk of loss of royalties nor does it change the existing requirements for dual accounting (30 CFR 206.155(b)) and major portion analysis (30 CFR 206.152(a)(3)(i)) on Indian leases. Furthermore, MMS retains the ability to determine another value if the values received under arm's-length contracts do not reflect either the total consideration transferred between buyer and seller or a reasonable value because the lessee has breached its duty to market production for the mutual benefit of the lessee and the lessor or because of misconduct (see 30 CFR 206.152(b)(1)(ii) and (iii)).

The study conducted by MMS does not support industry's position that the minimum value provision imposes an economic burden on lessees. Of the 326 leases reviewed, only 6 leases (2 percent) had reported processing allowances in excess of 100 percent of the value of the gas plant products. The very small number of leases with allowances exceeding 100 percent of the value of the gas plant products indicates that industry's contention of economic burden is unfounded.

The concerns of the State and Indian commenters that the provision will always cause POP sales values to be based only on the value of the residue gas are not supported by the statistics. The commenters appear to be assuming that all gas will be valued according to the minimum value provision of the rule. This however is not the case. Gas under POP contracts still must be valued at least equal to the gross proceeds actually received by the lessee.

The MMS is also not convinced that requiring the value of the gas to be a minimum value equivalent to 100 percent of the value of the residue gas will increase the paperwork burden on the lessee. The contractually specified percentage of the residue gas value is known to the lessee; the lessee received that specified percentage of value as part of its gross proceeds. Therefore, determination of the 100 percent value of the residue gas is a simple mathematical calculation. Those lessees who contend that they do not receive sufficient information to determine the 100 percent value are assumed to be failing in their duty to determine if the purchaser is complying with their contract, a situation the lessor cannot endorse.

The final issue concerning the minimum value provision is the contention by lessees that they effectively will not be able to deduct transportation fees they incur under the POP contract if the value is established at no less than 100 percent of the value of the residue gas. The lessees are concerned because they are required under their arm's-length contracts to provide the purchaser/gas plant operator a volume of gas, in kind, that represents the fuel necessary to transport their gas to the plant. In addition, any liquids recovered in the transportation system between the lease and the plant are normally retained by the purchaser/gas plant operator, either in whole or in part. However, the rule gives the lessee the benefit of these deductions because the royalty is based

either on gross proceeds (which reflects reductions for the volumes returned by the purchaser) or 100 percent of the value of the residue gas at the tailgate of the plant (which reflects the deductions because the volumes at the tailgate already are reduced by volume returned by the purchaser). The study conducted by MMS and the comments received also pointed out that there may be costs of transporting the residue gas from the plant to a sales point prior to sale. These transportation costs are typically deducted from the plant owner's sales values prior to making payment to producers and therefore are reflected in the gross proceeds. The MMS will also allow these costs to reduce the value of the residue gas determined under 30 CFR 206.152 in arriving at the minimum value under the rules being adopted today.

The final issue raised by commenters was whether or not to make the proposed revision retroactive. The MMS has decided not to adopt the proposed revision retroactively. The effect of adopting this rule retroactively would be to provide unwarranted administrative relief to certain lessees for having failed to properly follow current reporting requirements.

V. Summary of Final Rule

The MMS is amending its gas product valuation regulations to change valuation of gas sold under arm's-length POP contracts from the processed gas valuation regulations at 30 CFR 206.153 to the unprocessed gas valuation regulations at 30 CFR 206.152. The MMS is also adopting a new provision in the unprocessed gas valuation regulations requiring that the value for royalty purposes for gas sold under arm's-length POP contracts be no less than a value equivalent to 100 percent of the value of the residue gas, less any applicable allowances for transporting the residue gas away from the plant prior to sale. The final rule is effective as of the date specified in the **EFFECTIVE DATE** section of this preamble.

Procedural Matters

Executive Order 12291

Because this rulemaking does not result in any additional burden for lessees, the Department has determined that this document is not a major rule and therefore does not require a regulatory analysis under Executive Order 12291.

Regulatory Flexibility Act

Because this rulemaking will remove requirements of existing regulations, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of the rule. Therefore, the Department has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Executive Order 12630

The Department certifies that this rulemaking does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Paperwork Reduction Act of 1980

Information collection requirements contained in this rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1010–0075.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal Action that significantly affects the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Minerals royalties, Natural gas, Petroleum, Public lands-minerals resources, Reporting and recordkeeping requirements.

Dated: July 31, 1991.

Richard Roldan,

Deputy Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 206 is amended as follows:

PART 206—PRODUCT VALUATION

1. The authority citation for part 206 continues to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Paragraphs (a)(1) and (b)(1)(i) of § 206.152 under subpart D (Federal and Indian Gas) are revised to read as follows:

§ 206.152 Valuation standards—unprocessed gas.

(a)(1) This section applies to the valuation of all gas that is not processed and all gas that is processed but is sold or otherwise disposed of by the lessee pursuant to an arm's-length contract prior to processing (including all gas where the lessee's arm's-length contract for the sale of that gas prior to processing provides for the value to be determined on the basis of a percentage of the purchaser's proceeds resulting from processing the gas). This section also applies to processed gas that must be valued prior to processing in accordance with § 206.155 of this part. Where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right, § 206.153 of this part shall apply instead of this section.

* * * * *

(b)(1)(i) The value of gas which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1) (ii) and (iii) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit. For purposes of this section, gas which is sold or otherwise transferred to the lessee's marketing affiliate and then sold by the marketing affiliate pursuant to an arm's-length contract shall be valued in accordance with this paragraph based upon the sale by the marketing affiliate. Also, where the lessee's arm's-length contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas, the value of production, for royalty purposes, shall never be less than a value equivalent to 100 percent of the value of the residue gas attributable to the processing of the lessee's gas.

* * * * *

3. Paragraph (a)(1) of § 206.153 under subpart D (Federal and Indian Gas) is revised to read as follows:

§ 206.153 Valuation standards—processed gas.

(a)(1) This section applies to the valuation of all gas that is processed by the lessee and any other gas production to which this subpart applies and that is not subject to the valuation provisions of § 206.152 of this part. This section applies where the lessee's contract

includes a reservation of the right to process the gas and the lessee exercises that right.

* * * * *

[FR Doc. 91-22092 Filed 9-12-91; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Kansas Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a program amendment submitted by Kansas as a modification to the State's permanent regulatory program (hereinafter referred to as the Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to general requirements, definitions, permit applications, public hearing, assessment conferences, individual civil penalties and civil penalties, permit review, bonding procedures, performance standards, underground mining, small operator assistance, lands unsuitable for surface coal mining, blaster certification, employee financial interests, inspection and enforcement, subsidence control, and incidental coal extraction.

The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, incorporate the additional flexibility afforded by the revised Federal regulations and improve operational efficiency.

EFFECTIVE DATE: September 13, 1991.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Telephone: (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

On January 21, 1981, the Secretary of Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas program can be found in the January 21, 1981, **Federal Register** (46 FR 5892). Subsequent actions concerning Kansas' program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

II. Submission of Amendment

By letter dated June 29, 1989 (Administrative Record No. KS-436), Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed revisions (1) in response to an October 21, 1988 (Administrative Record No. KS-432), letter that OSM sent in accordance with 30 CFR 732.17(d) requiring certain provisions of the State program to be updated for consistency with the Federal regulations through July 1, 1988, and to satisfy anticipated deficiencies in the State program through July 1, 1989; (2) in response in a May 11, 1989, letter (Administrative Record No. KS-434) that OSM sent in accordance with 30 CFR 732.17(d) concerning ownership and control; and (3) at the State's own initiative to improve its program.

The regulations that Kansas proposes to amend are. Kansas Administrative Regulations (K.A.R.) 47-1-1, Title; 47-1-3, Communication; 47-1-4, Sessions; 47-1-8, Petitions to Initiate Rulemaking; 47-1-9, Notice of Citizen Suits; 47-1-10, General Notice Requirement; 47-1-11, Permittee Preparation and Submission of Reports; 47-2-14, Complete and Accurate Application Defined; 47-2-21, Employee Defined; 47-2-53, Regulatory Authority or State Regulatory Authority Defined; 47-2-67, Surety Bond Defined; 47-2-75, Definitions-Adoption by Reference; 47-3-1, Application for Mining Permit; 47-3-2, Application for Mining Permit-Adoption by Reference; 47-3-3a, Application for Mining Permit-Maps; 47-3-42, Application for Mining Permit-Adoption by Reference; 47-4-14a, Administrative Hearing Procedure; 47-4-15, Administrative Hearings, Discovery; 47-4-16, Interim Orders for Temporary Relief; 47-4-17, Administrative Hearings, Award of Costs and Expenses; 47-5-5a, Civil Penalties-Adoption by Reference; 47-5-16, Civil Penalties-Final Assessment and Payment of Civil Penalties; 47-6-1, Permit Review; 47-6-2, Permit Revision; 47-6-3, Permit Renewals-Adoption by Reference; 47-6-4, Permit Transfers, Assignments, and Sales-Adoption by Reference; 47-6-6, Permit Conditions-Adoption by Reference; 47-6-7, Permit Suspension or Revocation; 47-6-8, Termination of Jurisdiction-Adoption by Reference; 47-6-9, Exemption for Coal Extraction Incident to Government Financed Highway or Other Construction-Adoption by Reference; 47-6-10, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals-Adoption by Reference; 47-7-2, Coal Exploration-Adoption by Reference; 47-8-9, Bonding Procedures-Adoption by Reference; 47-8-11, Use of Forfeited Bond Funds; 47-9-1, Performance Standards-Adoption by Reference; 47-9-2, Revegetation; 47-9-4, Interim Program Performance Standards-Adoption by Reference; 47-10-1, Underground Mining-Adoption by Reference; 47-11-8, Small Operator Assistance Program-Adoption by Reference; 47-12-4, Lands Unsuitable for Surface Mining-Adoption by Reference; 47-13-4, Training and Certification of Blasters-Adoption by Reference; 47-13-5, Responsibilities of Operators and Blasters-in-Charge; 47-13-6, Training Program; 47-14-7, Employee Financial Interest-Adoption by Reference; 47-15-1a, Inspection and Enforcement-Adoption by Reference; 47-15-3, Lack of Information; Inability to Comply; 47-15-4, Injunctive Relief; 47-15-7, State Inspections; 47-15-8, Citizen's Request for State Inspections; 47-15-15, Service of Notices of Violation and Cessation Orders; 47-15-17, Maintenance of Permit Areas.

OSM published a notice in the July 14, 1989, **Federal Register** (54 FR 29742) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. KS-441). The public comment period ended August 14, 1989.

During its review of the amendment, OSM identified concerns related to K.A.R. 47-1-9(e) and (f), Notice of Citizen Suits; 47-2-21, Employee Defined; 47-2-53, Regulatory Authority or State Regulatory Authority Defined; 47-2-53a, Regulatory Program Defined; 47-2-58, Significant, Imminent Environmental Harm to Land, Air, and Water Resources Defined; 47-2-64, State Act Defined; 47-2-74, Public Road Defined; 47-2-75(a)(6), (7), and (8), Definitions; 47-2-75(b)(6)(B) and (C), Alluvial Valley Floor and Arid and Semiarid Area Defined; 47-2-75, Ownership and Control Definitions; 47-3-1, Application for Mining Permit; 47-3-2(c)(3), Application for Mining Permit; 47-3-42, Application for Mining Permit; 47-3-42(b)(15), Special Category Permits; 47-3-42, Application for Mining Permit; 47-4-14, Incorporation by Reference of Kansas Statute Annotated (KSA) 77-501 *et seq.*; 47-5-5a(a)(10), Individual Civil Penalties; 47-6-2(d), Permit Revision; 47-6-6(b)(4), Permit Review; 47-7, Coal Exploration; 47-8-9(q)(2), Bonding Procedures; 47-9-1(c)(6), Topsoil and Subsoil; 47-9-1(c)(26), Coal Mine Waste: General Requirements; 47-9-1(c)(42) and (d)(39), Surface and Underground Revegetation: Standards for Success; 47-9-1(c)(45) and (d)(44), Surface and Underground Postmining Land Use; 47-9-1(d)(2),