

significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as item number 1415 in HUD's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23370) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, 24 CFR part 203 is amended as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b and 1715u; 42 U.S.C. 3535(d).

2. Section 203.259a is amended by adding a new sentence to the end of paragraph (b), to read as follows:

§ 203.259a Scope.
* * * *

(b) * * * In the cases that the Commissioner deems appropriate, the Commissioner may require, by means of instructions communicated to all affected mortgages, that up-front MIP be remitted electronically.

* * * *

3. A new § 203.269 is added to the end of the undesignated center heading "Mortgage Insurance Premiums—Periodic Payment", to read as follows:

§ 203.269 Method of payment of periodic MIP.

In cases that the Commissioner deems appropriate, the Commissioner may require, by means of instructions communicated to all affected mortgagees, that periodic MIP be remitted electronically.

4. Section 203.284 is amended by revising paragraph (f) to read as follows:

§ 203.284 Calculation of up-front and annual MIP on or after July 1, 1991.
* * * *

(f) *Applicability of other sections.* The provisions of §§ 203.261, 203.264, 203.266, 203.267, 203.268(a)(1), 203.269, 203.280, and 203.282 are applicable to mortgages subject to premiums under this section.

* * * *

5. Section 203.285 is amended by revising paragraph (c) to read as follows:

§ 203.285 Fifteen-year mortgages: Calculation of up-front and annual MIP on or after December 26, 1992.
* * * *

(c) *Applicability of certain provisions.* The provisions of §§ 203.261, 203.266, 203.267, 203.268, 203.269, 203.280, and 203.282 are applicable to mortgages subject to premiums under this section. The provisions of paragraphs (d), (e), and (g) of § 203.284 also shall be applicable to mortgages subject to premiums under this section.

* * * *

Dated: June 20, 1995.
Nicolas P. Retsinas,
Assistant Secretary for Housing-Federal Housing Commissioner.
[FR Doc. 95-16128 Filed 6-29-95; 8:45 am]
BILLING CODE 4210-27-P

**DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 904
Arkansas Regulatory Program**

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with additional requirements, a proposed amendment to the Arkansas regulatory program (hereinafter referred to as the "Arkansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Arkansas proposed changes to its statute by adding definitions of the terms "unanticipated event or condition" and "lands eligible for re-mining," deleting the authority to either regulate or not regulate surface coal mining operations affecting 2 acres or less, and revising provisions pertaining to violations and revegetation performance standards for re-mining permits. The amendment was intended to revise the Arkansas program to be consistent with SMCRA.

EFFECTIVE DATE: June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Timothy Dieringer, Acting Director, Tulsa Field Office, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. General background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program can be found in the November 21, 1980, **Federal Register** (45 FR 77003). Subsequent actions concerning Arkansas's program and program amendments can be found at 30 CFR 904.12 and 904.15.

II. Proposed Amendment

By letter dated August 26, 1994, Arkansas submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. AR-522). Arkansas submitted the proposed amendment at its own initiative with the intent of making its coal mining statutes consistent with SMCRA. Arkansas proposed to revise the Arkansas Surface Coal Mining and Reclamation Act of 1979 (ASCMRA) at (1) section 5, jurisdiction and powers; rules and regulations, (2) section 13, surface coal mining permits, and (3) section 15, environmental protection performance standards.

OSM published a notice in the September 29, 1994, **Federal Register** (59 FR 49616) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (administrative record No. AR-526). The public comment period ended October 31, 1994.

During its review of the amendment, OSM identified concerns with section 13(k) of ASCMRA, regarding re-mining permit violations, and section 15(d)(1) of ASCMRA, regarding revegetation performance standards on lands eligible for re-mining. OSM notified Arkansas of the concerns by letter dated November 22, 1994 (administrative record No. AR-539). Arkansas responded in a letter dated March 1, 1995, by submitting a revised amendment (administrative record No. AR-540).

In the revised amendment, Arkansas proposed to add definitions of the terms "unanticipated event or condition" and "lands eligible for re-mining" at sections 4(18) and 4(19) of ASCMRA.

Based upon the revisions to the proposed program amendment submitted by Arkansas, OSM reopened the public comment period in the March 17, 1995, **Federal Register** (60 FR 14399, administrative record No. AR-544). The

public comment period ended on April 3, 1995.

By letter dated April 4, 1995, Arkansas withdrew from this amendment section 15(d)(1) of ASCMRA, which was a counterpart to section 515(b)(20)(B) of SMCRA, and which set forth a variance from the liability period performance standard for revegetation on lands eligible for remining. In doing so, Arkansas indicated that it intends to insert a counterpart provision to section 515(b)(20)(B) of SMCRA in its regulations rather than in its statute at section 15(d)(1) of ASCMRA as originally proposed (administrative record No. AR-548).

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with additional requirements, that the proposed program amendment submitted by Arkansas on August 26, 1994, and as revised by it on March 1 and April 4, 1995, is no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

1. Substantive Arkansas Statute Provision That Is Substantively Identical to the Corresponding SMCRA Provision

Arkansas proposed a definition of the term "unanticipated event or condition" at section 4(18) of ASCMRA (to be codified at Arkansas Code Annotated (ACA) 15-58-104(17)) that is substantively identical to the definition of the same term at section 701(33) of SMCRA.

Because this proposed statutory provision is substantively identical to the corresponding SMCRA provision, the Director finds that it is no less stringent than SMCRA. The Director approves the proposed definition of the term "unanticipated event or condition."

2. ASCMRA 4(19), Definition of the Term "Lands Eligible for Remining"

Arkansas proposed at section 4(19) of ASCMRA (ACA 15-58-104(18)) to define the term "lands eligible for remining" to mean those lands that would otherwise be eligible for expenditures under section 6 of ASCMRA (ACA 15-58-401).

Section 701(34) of SMCRA defines the term "lands eligible for remining" to mean those lands that would otherwise be eligible for expenditures under section 404 or 402(g)(4) of SMCRA.

Referenced section 6 of ASCMRA (ACA 15-58-401) in Arkansas' proposed definition of the term "lands eligible for remining" is the State

counterpart provision to referenced sections 404 and 402(g)(4)(B) of SMCRA in the Federal definition. However, unlike section 404 of SMCRA, section 60 of ASCMRA (ACA 15-58-401) does not provide for an exclusion of expenditures for those lands addressed by section 411 of SMCRA. Accordingly, Arkansas' proposed definition of the term "lands eligible for remining" at section 4(19) of ASCMRA (ACA 15-58-104(18)) is less stringent than section 404 of SMCRA.

Therefore, the Director approves but requires Arkansas to revise its definition, or otherwise modify its program, to exclude those lands addressed by section 411 of SMCRA.

3. ASCMRA 5(b)(1), Applicability of the 2-Acre Exemption

Arkansas proposed to delete the language of section 5(b)(1) of ASCMRA, which provided, in part, that "the Commission may, by regulation, include, modify or omit permit application requirements, permit approval or denial procedures, bond requirements and environmental performance standards as it deems appropriate for surface mining operations affecting two acres or less." Under this authority, Arkansas previously promulgated rules at Part 772 of the Arkansas Surface Coal Mining and Reclamation Code (ASCRC) that exempted from regulation surface mining operations affecting 2 acres or less.

As originally enacted, section 528(2) of SMCRA exempted from the requirements of SMCRA coal operations affecting 2 acres or less. However, on May 7, 1987, the President signed Pub. L. 100-34, which repealed this exemption and preempted any corresponding acreage-based exemptions included in State laws or regulations.

In accordance with the repeal of section 528(2) of SMCRA, Arkansas proposed and the Director approved the deletion of the 2-acre exemption allowance at ASCRC Part 772 and the references to that exemption at ASCRC 707.12, 770.6(b), 770.6(i) (a) and (c), 810.11, 815, 815.2 (b) and (c), 815.11(c), 815.15 (a) through (d), and (f) through (k), and 1000(d)(7) (August 19, 1992; 57 FR 37423, 37426-37427). Arkansas' proposed deletion of its statutory language at section 5(b)(1) of ASCMRA is consistent with its previous OSM-approved rule revisions deleting the 2-acre exemption allowance and is no less stringent than SMCRA, as amended by Pub. L. 100-34. Accordingly, the Director approves Arkansas' proposed deletion.

4. ASCMRA 13(k), Remining Permit Violations

Arkansas proposed to create new section 13(k) of ASCMRA (ACA 15-58-503(a)(3)(G)) to provide that certain violations incurred under a remining permit shall not disqualify the holder of that permit from obtaining subsequent surface coal mining permits. Specifically, proposed section 13(k) of ASCMRA requires that

After the date of enactment of this subsection, the prohibition of subsection (c)(3)(E) shall not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining under a permit held by the person making such application. As used in this subsection, the term "violation" has the same meaning as such term has under subsection (c)(3)(E). The authority of this subsection and Section 15(d)(1) shall terminate on September 30, 2004.

The only difference in wording between this proposed statutory provision and the counterpart provision at section 510(e) of SMCRA is that it references section 13(c)(3)(E) of ASCMRA instead of section 510(c) of SMCRA and references section 15(d)(1) of ASCMRA instead of section 515(b)(20)(B) of SMCRA.

Referenced section 13(c)(3)(E) of ASCMRA is a counterpart to section 510(c) of SMCRA that Arkansas previously proposed and OSM approved. Arkansas withdrew from this amendment referenced section 15(d)(1) of ASCMRA, which was a counterpart to section 515(b)(20)(B) of SMCRA.

With the exception of the reference to section 15(d)(1) of ASCMRA, which does not exist, proposed section 13(k) of ASCMRA is substantively identical to and no less stringent than section 510(e) of SMCRA. Accordingly, the Director approves proposed section 13(k) of ASCMRA but requires Arkansas to delete the phrase "and section 15(d)(1)."

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal

agencies with an actual or potential interest in the Arkansas program.

Soil Conservation Service (SCS). SCS responded on October 24, 1994, that it had no comments to make concerning the proposed amendment. SCS further stated that since the proposal deals with remining it expects no impact on Rural Abandoned Mine Program projects in Arkansas, which are administered by SCS under the abandoned mine reclamation provisions of title IV of SMCRA (administrative record No. AR-532).

The Bureau of Land Management (BLM). BLM responded on October 19, 1994 (administrative record No. AR-533). It commented that Arkansas' amendment to section 13(k) of ASCMRA tends to follow the intent of SMCRA. As discussed in finding No. 4, the Director finds, with an additional requirement, that proposed section 13(k) of ASCMRA is no less stringent than section 510(e) of SMCRA.

BLM further commented that while the exception concerning rainfall was left out of section 15(d) of ASCMRA, which serves as the statutory authority for Arkansas' environmental protection performance standards and regulations, a review of the SCS Handbook for Logan County, Arkansas indicates an annual precipitation of 46 inches and, as such, the probability of 26 inches or less of annual precipitation in the State is probably remote. In its November 22, 1994, issue letter, OSM notified Arkansas that it did not include in its proposed revision at section 15(d)(1) of ASCMRA a counterpart to the last part of section 515(b)(20)(b), which states that "in those areas or regions of the country where the annual average precipitation is twenty-six inches or less, then the operator's assumption of responsibility and liability will be extended for a period of five full years after the last year of augmented seeded, fertilizing, irrigation, or other work in order to assure compliance with the applicable standards." OSM further notified Arkansas that it requires in section 816.116(c)(3) of its rules a 10-year liability period for areas receiving 26 inches or less of precipitation. As a result, OSM requested that Arkansas clarify whether or not the provision at section 816.116(c)(3), regarding the liability period for areas receiving 26 inches or less of annual average precipitation, is applicable to Arkansas on the basis of Arkansas' climate. In its March 1, 1995, revised amendment, Arkansas responded that because Arkansas' climate incurs 50 or more inches of annual precipitation, section 816.116(c)(3) of its regulations is

inapplicable and, as such, shall be deleted in a subsequent amendment.

BLM also commented that the amendment to section 5(b)(1) of ASCMRA striking the 2-acre or less exemption appears to follow the intent of SMCRA. As discussed in finding No. 3, Arkansas' proposed deletion of the statutory exemption for operations affecting 2 acres or less is (1) consistent with Arkansas' deletion of the counterpart regulation exemption that OSM previously approved and (2) is no less stringent than SMCRA.

Lastly, BLM commented that the portion of the State law referring to the extraction of coal as an incidental part of the Federal, State, or local government-financed highway or other construction under regulations and the extraction of coal by a landowner for noncommercial use should be in the regulation elsewhere. In response to BLM's last comment, the Arkansas provisions concerning the exemption for coal incident to government-financed highways or other construction can be found at ACA 15-58-106(3) and at Part 707 of Arkansas' rules.

U.S. Forest Service. The U.S. Forest Service responded on October 20, 1994, that it had no additions or corrections to offer on the proposed amendment (administrative record No. AR-534).

U.S. Bureau of Mines. The U.S. Bureau of Mines responded on October 31, 1994, and March 30, 1995, that its Division of Environmental Technology reviewed Arkansas' proposed amendment and had no comment (administrative record Nos. AR-535 and AR-546).

U.S. Fish and Wildlife Service (USFWS). USFWS responded on November 14, 1994, that it had no objections to Arkansas' proposed amendments to sections 5 and 15 of ASCMRA. However, it did express a concern that the amendment to section 13 of ASCMRA, which would provide that certain violations incurred under a remining permit shall not disqualify the holder from obtaining subsequent coal mining permits, should not be adopted (administrative record No. AR-537). USFWS further stated that outstanding violations on existing permits should be corrected or resolved prior to the permit holder being issued additional permits.

In response to USFWS's concern, section 510(e) of SMCRA, as discussed in finding No. 4, provides, as does proposed section 13(k) of ASCMRA, that violations resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining under a permit held by the person making such application shall not disqualify the

holder from obtaining subsequent coal mining permits.

Therefore, this provision of proposed section 13(k) of ASCMRA is in accordance with and no less stringent than section 510(e) of SMCRA. Because the Federal regulations at 30 CFR 730.5(b) only require that a State's laws and regulations be "consistent with" and "in accordance with" SMCRA and the Federal regulations, the Director does not have the authority to require standards in excess of SMCRA or the Federal regulations. On this basis, the Director does not require Arkansas to revise its program in response to USFWS's comment.

U.S. Army Corps of Engineers. The U.S. Army Corps of Engineers responded on March 28, 1995, that it found the changes submitted by Arkansas to be satisfactory (administrative record No. AR-545).

The National Park Service. The National Park Service responded by telephone conversation on April 10, 1995, that it had no comments on the proposed amendment (administrative record No. AR-547).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of 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 Arkansas proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record Nos. AR-524 and AR-541). By letter dated April 11, 1995, EPA responded that it had no comments on the proposed amendment (administrative record No. AR-549).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record Nos. AR-524 and AR-541). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with additional requirements, Arkansas' proposed

amendment as submitted on August 26, 1994, and as revised on March 1 and April 4, 1995.

The Director approves, as discussed in: finding No. 1, section 4(18) of ASCMRA, concerning the definition of the term "unanticipated event or condition;" and finding No. 3, section 5(b)(1) of ASCMRA, concerning the applicability of the 2-acre exemption.

With the requirement that Arkansas further revise its statutes, the Director approves, as discussed in: finding No. 2, section 4(19) of ASCMRA, concerning the definition of the term "lands eligible for remining;" and finding No. 4, section 13(k) of ASCMRA, concerning remining permit violations.

The Director approves the statute revisions as proposed by Arkansas with the provision that they be fully promulgated in identical form to the statute revisions submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 904, codifying decisions concerning the Arkansas 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.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendment submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of

30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 22, 1995.

Peter A. Rutledge,

Acting Regional Director, Western Regional Coordinating 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 904—ARKANSAS

1. The authority citation for Part 904 continues to read as follows:

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

2. Section 904.15 is amended by adding paragraph (m) to read as follows:

§ 904.15 Approval of amendments to State regulatory program.

* * * * *

(m) The following sections of the Arkansas Surface Coal Mining and Reclamation Act of 1979 (ASCMRA), as submitted to OSM on August 26, 1994, and as revised on March 1 and April 4, 1995, are approved effective on June 30, 1995:

section 4(18), definition of the term "unanticipated event or condition;" 4(19), definition of the term "lands eligible for remining;" 5(b)(1), applicability of the 2-acre exemption; and 13(k), remining permit violations.

3. Section 904.16 is added to read as follows:

§ 904.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), Arkansas is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA or 30 CFR Chapter VII and a timetable for enactment that is consistent with Arkansas' established administrative or legislative procedures.

(a) By August 29, 1995, Arkansas shall revise section 4(19) of the Arkansas Surface Coal Mining and Reclamation Act of 1979 (ASCMRA), concerning the definition of the term "lands eligible for remining," or otherwise modify its program, to exclude those lands addressed by section 411 of SMCRA.

(b) By August 29, 1995, Arkansas shall revise section 13(k) of ASCMRA, concerning remining permit violations, by deleting the phrase "and section 15(d)(1)."

[FR Doc. 95-15967 Filed 6-29-95; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 904

Arkansas Regulatory Program

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

ACTION: Final rule; correction.

SUMMARY: This document explains and corrects OSM's codified approval of an amendment to Arkansas' permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment revised Arkansas' small operators assistance program (SOAP). OSM published its approval of the Arkansas proposed amendment in a November 17, 1994, final rule **Federal Register** document.