

concerning emergency powers, the addition of and revisions to the following plan provisions and statutes, as submitted to OSM on July 24, 1995, are approved effective July 24, 1996:

Plan sections 874.16 and 875.20, contractor responsibility.

Plan section 875.16, exclusion of certain noncoal reclamation sites.

Plan section 886.23(c), reports.

NMSA 69-25B-3.A, C, and D, definitions of "director," "emergency," and "fund."

NMSA 69-25B-4, creation of abandoned mine reclamation fund.

NMSA 69-25B-6.B, filling voids and sealing tunnels.

NMSA 69-25B-7, acquisition and reclamation of land adversely affected by past mining practices.

NMSA 69-25B-8, liens.

(b) [Reserved]

3. Section 931.26 is added to read as follows:

**§ 931.26 Required plan amendments.**

Pursuant to 30 CFR 884.15, New Mexico is required to submit for OSM's approval the following proposed plan amendments by the date specified.

(a) By January 21, 1997, New Mexico shall revise NMSA 69-25B-2 and 3.B to provide references to August 3, 1977, the effective date of SMCRA, or otherwise modify its plan, to ensure that the reclamation of post-August 3, 1977, sites is specifically provided for with counterpart provisions to sections 402(g)(4) and 403(b)(2).

(b) By January 21, 1997, New Mexico shall further revise NMSA 69-25B-3.B to provide a definition for "eligible lands and water" that is consistent with the term as defined at section 404 of SMCRA.

(c) By January 21, 1997, New Mexico shall revise NMSA 69-25B-6.A, or otherwise modify its plan, to reflect the same expenditure priorities as counterpart section 403(a) of SMCRA.

(d) By January 21, 1997, New Mexico shall revise NMSA 69-25B-6.A by deleting NMSA 69-25B-6.A(4) and item No. I (d) of the "Ranking and Selection" section of its plan.

(e) By January 21, 1997, New Mexico shall revise NMSA 69-25B-6.C by reinserting the word "coal."

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BILLING CODE 4310-05-M

**30 CFR Part 936**

[SPATS No. OK-018-FOR]

**Oklahoma Regulatory Program**

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving a proposed amendment to the Oklahoma regulatory program (hereinafter referred to as the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Oklahoma proposed to recodify and reinstate regulations pertaining to an exemption for coal extraction incidental to government-financed or other construction. The amendment is intended to revise the Oklahoma program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** July 24, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6548, Telephone: (918) 581-6430.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Oklahoma 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 Oklahoma Program**

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. Background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 19, 1981, Federal Register (46 FR 4902). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 936.15 and 936.16.

**II. Submission of the Proposed Amendment**

By letter dated April 26, 1996 (Administrative Record No. OK-974), Oklahoma submitted a proposed amendment to its program pursuant to SMCRA. Oklahoma submitted the proposed amendment at its own initiative. Oklahoma, in accordance with the standards set forth by the Oklahoma State Legislature and the Oklahoma Office of Administrative Code, proposed to recodify and reinstate regulations pertaining to an exemption for coal extraction incidental to government-financed or other construction at Oklahoma Administrative Code (OAC) 460, Chapter 20, Subchapter 6 as follows: OAC 460:20-6-1, Purpose; 460:20-6-2,

Responsibility; 460:20-6-3, Definitions; 460:20-6-4, Applicability; and 460:20-6-5, Information to be maintained on site. These regulations were previously codified as Part 707, and they were inadvertently omitted from the Oklahoma program during Oklahoma's promulgation of its regulations after a previous rulemaking.

OSM announced receipt of the proposed amendment in the May 21, 1996, Federal Register (61 FR 25426), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on June 20, 1996.

**III. Director's Findings**

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

*OAC 460:20-6-1 through 460:20-6-5 Exemption for Coal Extraction Incidental to Government-Financed or Other Construction*

The proposed regulations contain language that is substantively identical to the provisions of the corresponding Federal regulations shown in brackets. OAC 460:20-6-1 [30 CFR 707.1] specifies the purpose of the regulations as establishing procedures for determining those surface coal mining and reclamation operations that meet the exemption criteria for coal extraction as an incidental part of government-financed construction. OAC 460:20-6-2 [30 CFR 707.4] sets out the State's responsibility for enforcing the requirements of the regulations. It also provides that persons conducting coal extraction as an incidental part of government-financed construction are responsible for keeping specified documentation on the site of the extraction operation. OAC 460:20-6-3 [30 CFR 707.5] contains definitions for the terms "Extraction of coal as an incidental part"; "Government financing agency"; and "Government-financed construction." OAC 460:20-6-4 [30 CFR 707.11] specifies that a permit must be obtained unless the coal extraction is an incidental part of government-financed construction. OAC 460:20-6-5 [30 CFR 707.12] specifies the information that must be maintained on the site of the extraction operation.

Because the proposed regulations are identical in meaning to the corresponding Federal regulations, the Director finds that they are no less effective than the Federal regulations. Therefore, the Director is approving the

proposed recodification and reinstatement of Oklahoma's regulations at OAC 460:20-6-1 through 460:20-6-5.

#### IV. Summary and Disposition of Comments

##### *Public Comments*

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

##### *Federal Agency Comments*

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Oklahoma program. No comments were received.

##### *Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Oklahoma proposed to make in this 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 No. OK-974.02). EPA did not respond to OSM's request.

##### *State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. OK-974.02). Neither SHPO nor ACHP responded to OSM's request.

#### V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Oklahoma on April 26, 1996.

The Federal regulations at 30 CFR Part 936, codifying decisions concerning the Oklahoma 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.

#### VI. Procedural Determinations

##### *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).

##### *Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, 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 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments 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.

##### *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)).

##### *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.*).

##### *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 which is the subject of this rule is based upon corresponding 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 corresponding Federal regulations.

##### *Unfunded Mandates*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

##### List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 3, 1996.

Brent Wahlquist,

*Regional Director, Mid-Continent Regional Coordinating Center.*

For the reasons set out in the preamble, 30 CFR Part 936 is amended as set forth below:

#### **PART 936—OKLAHOMA**

1. The authority citation for Part 936 continues to read as follows:

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

2. Section 936.15 is amended by adding paragraph (r) to read as follows:

##### **§ 936.15 Approval of regulatory program amendments.**

\* \* \* \* \*

(r) The additions of OAC 460:20-6-1 through 460:20-6-5 to the Oklahoma Coal Rules and Regulations, concerning an exemption for coal extraction incidental to government-financed or other construction as submitted to OSM on April 26, 1996, are approved effective July 24, 1996.

[FR Doc. 96-18611 Filed 7-23-96; 8:45 am]

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#### **30 CFR Part 948**

**[WV-075-FOR]**

#### **West Virginia Permanent Regulatory Program**

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is announcing the approval, with certain exceptions, of