Dated: July 3, 1996.

Brent Wahlquist, Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 925 is amended as set forth below:

PART 925—MISSOURI

1. The authority citation for Part 925 continues to read as follows:

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

2. Section 925.15 is amended by adding paragraph (v) to read as follows:

§ 925.15 Approval of regulatory program amendments.

(v) Revisions to the Revised Statutes of Missouri (RSMo) at sections 444.800, 444.810, and 444.950 as submitted to OSM on March 20, 1996, are approved effective July 24, 1996.

[FR Doc. 96–18613 Filed 7–23–96; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 931

[NM–035–FOR]

New Mexico Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is approving, with certain exceptions and additional requirements, a proposed amendment to the New Mexico abandoned mine land reclamation (AMLR) plan (hereinafter, the “New Mexico plan”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). New Mexico proposed to amend its plan by adding plan provisions pertaining to contractor responsibilities, exclusion of certain sites from eligibility for reclamation, and reports. In addition, New Mexico proposed revising the State AMLR statute pertaining to its purpose, definition, creation of the abandoned mine reclamation fund, objectives of the fund, acquisition and reclamation of land adversely affected by past mining practices, liens, and emergency powers. The amendment was intended to revise the New Mexico plan to be consistent with SMCRA and meet the requirements of the corresponding Federal regulations, and to improve operational efficiency.

EFFECTIVE DATE: July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Guy Padgett. Telephone: (505) 248–5070. Internet address: GPADGETT@CWY GW. OSM. RE. GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Plan

On June 17, 1981, the Secretary of the Interior approved the New Mexico General background information on the New Mexico plan, including the Secretary’s findings and the disposition of comments, can be found in the June 17, 1981, Federal Register (46 FR 31641). Subsequent actions concerning New Mexico’s plan and plan amendments can be found at 30 CFR 931.25 and 931.26.

II. Proposed Amendment

By letter dated July 24, 1995, New Mexico submitted a proposed amendment to its plan (administrative record No. NM–758) pursuant to SMCRA (30 U.S.C. 1201 et seq.). New Mexico submitted the proposed amendment in response to a September 26, 1994, letter (administrative record No. NM–732) that OSM sent it in accordance with 30 CFR 884.15(d), and at its own initiative. The provisions of the New Mexico plan that New Mexico proposed to add were: section 874.16, contractor responsibility; 875.16, exclusion of certain sites from eligibility for reclamation; 875.20, contractor responsibility; and 886.23(c), reports. The provisions of the New Mexico Abandoned Mine Reclamation Act that New Mexico proposed to revise were: New Mexico Statute Annotated (NMSA) 69–258–2, purpose of the act; NMSA 69–258–3, definitions; NMSA 69–258–4, creation of the abandoned mine reclamation fund; NMSA 69–258–6, objective of the fund; NMSA 69–258–7, acquisition and reclamation of land adversely affected by past mining practices; NMSA 69–258–8, liens; and NMSA 69–258–12, emergency powers.

OSM announced receipt of the proposed amendment in the August 22, 1995, Federal Register (60 FR 43576), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NM–764). Because no one requested a public hearing or meeting, none was held. The public comment period ended on September 21, 1995.

During its review of the amendment, OSM identified concerns relating to the provisions of the New Mexico Abandoned Mine Reclamation Act at NMSA 69–258–2 and 69–258–3B, lands and water eligible for reclamation; NMSA 69–258–6.C, construction of public facilities; and NMSA 69–258–12, emergency powers. OSM notified New Mexico of these concerns by letter dated September 27, 1995 (administrative record No. NM–764).

New Mexico responded by telephone on April 10, 1995 (administrative record No. NM–778), that it would not submit revisions to the amendment and that OSM should proceed with the publication of this final rule Federal Register document.

III. Director’s Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 884.14 and 884.15, finds, with certain exceptions and additional requirements, that the proposed plan amendment submitted by New Mexico on July 24, 1995, meets the requirements of the corresponding Federal regulations and is consistent with SMCRA. Thus, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to New Mexico’s Statutes

New Mexico proposed revisions to the following previously approved statutes that are nonsubstantive in nature and consist of minor editorial, recodification, and State agency name changes (corresponding SMCRA provisions are listed in parentheses):

NMSA 69–258–3.A and D (section 401(a) of SMCRA), definitions for the terms “director” and “fund,”

NMSA 69–258–4 (section 401(a) of SMCRA), creation of abandoned mine reclamation fund, and

NMSA 69–258–6.B (section 409(a) and (d) of SMCRA), filling voids and sealing tunnels.

Because the proposed revisions to these previously-approved statutes are nonsubstantive in nature, the Director finds that they are consistent with the corresponding provisions of SMCRA. The Director approved the proposed revisions to these statutes.

2. Substantive Revisions to New Mexico’s Plan Provisions and Statutes That Are Substantively Identical to the Corresponding Provisions of SMCRA and the Federal Regulations

New Mexico proposed revisions to the following plan provisions and statutes that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulations and SMCRA provisions (listed in parentheses):

Plan section 875.16 (30 CFR 875.16), exclusion of certain noncoal reclamation sites,
Plan section 886.23(c) (30 CFR 886.23(b)), reports.
NMSA 69–25B–3.C (30 CFR 870.5),
definition of the term “emergency.”
NMSA 69–25B–7 (sections 407 and 411 (g)
of SMCRFA, acquisition and reclamation of
land adversely affected by past mining
practices, and
NMSA 69–25B–8, (section 408 and 411(g)
of SMCRFA), liens.

Because these proposed New Mexico plan provisions and statutes are
substantively identical to the corresponding provisions of the Federal
regulations and SMCRFA, the Director finds that they meet the requirements of
the Federal regulations and are
consistent with SMCRFA. The Director
approves the proposed revisions to
these plan provisions and statutes.

3. Plan Sections 874.16 and 875.20,
Contractor Responsibility

New Mexico proposed plan sections
874.16 and 875.20 to provide
procedures that require the low bidders
for abandoned mine land (AML) coal
and noncoal project contracts to clear
OSM’s Applicant/Violator System
(AVS) prior to the New Mexico AML
office awarding project contracts to any
such bidder. AVS is a computer system
used to track the ownership and control
relationships of parties involved in
surface coal mining and reclamation
operations.

The counterpart Federal regulations at
30 CFR 874.16 for coal and 875.20 for
noncoal, require that in order to receive
AML funds, every successful bidder for
an AML contract must be eligible under
30 CFR 773.15(b)(1) at the time of
contract award to receive a permit or
conditional permit to conduct surface
coal mining operations, and that bidder
eligibility must be confirmed by OSM’s
automated AVS for each contract to be
awarded.

As proposed in sections 874.16 and
875.20 of the New Mexico plan,
successful bidders for AML contracts
would have to clear AVS before
receiving a contract. A bidder could not
clear AVS if, at the time of contract
award, the bidder could not qualify to
receive a surface coal mining and
reclamation permit because the surface
coal mining and reclamation operation
owned or controlled by either the
bidder, or by any person who owns or
controls the bidder, was in violation of
SMCRFA, any Federal rule or regulation
promulgated pursuant thereto, a State
program, or any Federal or State law,
rule, or regulation pertaining to air or
water environmental protection.

Unlike the Federal regulations at 30
CFR 874.16 and 875.20, New Mexico’s
proposed plan provisions concerning
contractor responsibility contain details
on how the AVS checks will be carried out.
These details include procedures that require New Mexico to provide
OSM with the information submitted by the apparent low bidder in order for
OSM to conduct the AVS check. This
procedure is consistent with the
preamble for OSM’s May 31, 1994,
regulations, which states that “[i]n order to
provide information that will allow
the States to meet this requirement,
potential contractors may submit to
OSM or the State regulatory authority
that ownership and control information
enumerated at 30 CFR 778.13 (c) and
(d)” (59 FR 28136, 28158). By the State
passing the bidder information to OSM
for processing, the bidder is in effect
submitting the information to OSM for
the AVS check. These proposed
procedural requirements meet the
requirements of the Federal regulations
at 30 CFR 874.16 and 875.20.

In addition, New Mexico proposed at
plan sections 874.16 and 875.20 that
any subcontractor receiving 10 percent
or more of the total contract funding,
and any contract inspector, would have
to receive AVS clearance before being
allowed to work on an AML contract.
No counterpart requirements to these
proposed provisions exist in the Federal
regulations, and the preamble for the
Federal regulations at 30 CFR 874.16
and 875.20 does not address whether
subcontractors and contract inspectors
must also clear AVS (May 31, 1994; 59
FR 28136, 28158 and 28164). Absent
any specific requirements for
subcontractors and contract inspectors
in the Federal regulations or the
preamble language for these regulations,
New Mexico’s proposed provisions
concerning subcontractors and contract
inspectors are not inconsistent with the
Federal regulations at 30 CFR 874.16
and 875.20.

If, at any time in the future, OSM
decides to promulgate regulations or an
interpretive rule to address
subcontractors or contract inspectors, it
would notify New Mexico in accordance
with 30 CFR Part 884.15(b) of any
needed revisions to these plan sections.

For the above reasons, the Director
finds that New Mexico’s plan provisions
at sections 874.16 and 875.20 are
consistent with the Federal regulations
at 30 CFR 874.16 and 875.20. The
Director approves these New Mexico
plan provisions.

3.B, Purpose of the New Mexico
Abandoned Mine Reclamation Act and
Definition of “Eligible Lands and
Water”.

New Mexico proposed at NMSA 69–
25B–2 to delete the legal citation for
SMCRFA and refer to it as “SMCRFA,
as amended.” This is a stylistic revision
that has no substantive effect on the
New Mexico plan. Therefore, the
Director approves this proposed
revision to the statute.

OSM addresses below substantive
revisions to NMSA 69–25B–2 and
NMSA 69–25B–3.B.

a. Deletion of “prior to the enactment
of that act and which” and deletion of
“prior to August 3, 1977.”—New
Mexico also proposed at NMSA 69–
25B–2 to delete the phrase “prior to the
enactment of that act and which” from
the provision which indicates that the
purpose of New Mexico’s Abandoned
Mine Reclamation Act (Act) is “to
promote the reclamation of mined areas
left without adequate reclamation prior
to the enactment of that act [SMCRFA]”
and which continue, in their
unreclaimed condition, to substantially
degrade the quality of the
environment.” In addition, New Mexico
proposed in its definition for “eligible
lands and water” at NMSA 69–25B–3.B
to delete the phrase “prior to August 3,
1977.” The effect of the proposed
deletions from NMSA 69–25B–2 and
NMSA 69–25B–3.B makes coal lands and
water affected after August 3, 1977,
eligible for reclamation under New
Mexico’s statute.

Counterpart section 404 of SMCRFA
indicates that sites eligible for
reclamation are those left in an
inadequate state “prior to the date
(August 3, 1977) of enactment of this
Act” ([SMCRFA]). It provides, as well,
through its reference to section 402(g)(4)
of SMCRFA, for the reclamation of
certain sites affected by surface coal
mining operations between August 4,
1977, and December 31, 1980, and
certain other sites affected by surface
coal mining operations between August
Through its reference to section
403(b)(1), it also provides in a State that
has not certified to the completion of all
known coal-related projects for the
reclamation of the adverse effects on
water supplies that occurred both prior
to and after August 3, 1977, when such
effects occurred predominantly prior to
August 3, 1977, or the dates and under
the criteria set forth at section
402(g)(4)(B). Therefore, under section
404 of SMCRFA, only those post-August
3, 1977, sites addressed by selections
Noncoal sites before coal sites, except in those limited circumstances allowed by section 404 of SMCRA.

5. NMSA 69–25B–6, Objectives of the Fund

At NMSA 69–25B–6, New Mexico proposed to make stylistic changes (use of “the” and “those,” instead of “such”) and delete the legal citation for the New Mexico Abandoned Mine Reclamation Act. None of these revisions are substantive in nature. Therefore, the Director approves these changes to this statute.

OSM addresses below substantive revisions to NMSA 69–25B–6.

a. NMSA 69–25B–6.A, Expenditure Priorities.—New Mexico proposed at NMSA 69–25B–6.A (1) through (3), (5) and (6) to delete the word “coal” in several instances so that the objectives of the State abandoned mine reclamation fund are to protect the public against adverse effects of “mining practices” and “mining development” respectively rather than “coal mining practices” and “coal development.” Except for the proposed deletion of the word “coal,” these provisions are substantively identical to the provisions at section Counterpart section 403(a) of SMCRA. Therefore, the Director does not approve the deletion of the word “coal” at NMSA 69–25B–6.A. Instead, New Mexico’s proposed deletion of the word “coal” at NMSA 69–25B–6.A causes this provision to be not in compliance with section 403(a) of SMCRA. (See finding No. 46.) Therefore, the Director does not approve the deletion of the word “coal” at NMSA 69–25B–6.A, and requires New Mexico to revise its provisions to reflect the priorities for expenditures at counterpart 403(a) of the SMCRA.

In addition, New Mexico still retains, at NMSA 69–25B–6.A(4) and in item No. (d) of the “Ranking and Selection” section of its plan, as its fourth priority, the expenditure of funds for “research and demonstration projects related to the development of surface mining reclamation and water quality control programs and techniques.” The counterpart provision at section 403(a)(4) of SMCRA was elected by the Energy Policy Act of 1992, Pub. L. 102–486 (October 24, 1992), and the subsequent paragraphs (5) and (6) were renumbered accordingly. To be in compliance with section 403(a)(4) of SMCRA, the Director requires New Mexico to delete NMSA 69–25B–6.A(4) and item No. (d) of the “Ranking and Selection” section of its plan. In the intervening period until New Mexico revises its statute and plan to be consistent with section 403(a) of SMCRA, OSM cannot approve any New Mexico grant applications for research and demonstration projects related to the development of surface mining reclamation and water control programs and techniques.

The Director notes that New Mexico has not inserted into its statute a counterpart to section 403(b) of SMCRA, which provides for mitigation of adverse effects to water supplies caused by coal mining practices. Lack of a counterpart provision in the New Mexico plan does not make the plan inconsistent with SMCRA or the Federal regulations, but if New Mexico wished to expend funds for a water project as defined at 403(b)(1) of SMCRA, it would be prevented from utilizing up to 30 percent of the AML funds allocated to the State under 402(g)(1) and (5) for this purpose, because it appears that the plan lacks the statutory authority. If such projects have been identified in the State’s ranking and selection process, New Mexico may wish to amend its plan so that it has the proper authority to proceed with such projects.

b. NMSA 69–25B–6.C, Public Facilities.—New Mexico proposed at NMSA 69–25B–6.C to delete the word “coal” as used in “communities impacted by coal mining development,” where money in the fund may be expended for the purpose of constructing specific public facilities if certain criteria are met. Prior to the Abandoned Mine Reclamation Act (AMRA) of 1990, Pub. L. 101–350 (November 5, 1990), a counterpart provision in SMCRA existed at section 402(g)(2). However, AMRA deleted the provision there and created a new provision at section 411(e). This newly-created section addresses the priority of reclamation projects after the State has certified completion of coal projects and provides that “[r]eclamation projects involving* * * the construction of public facilities in communities impacted by coal or other mineral mining and processing practices, shall be deemed part of the objects set forth, and undertaken as the objectives stated to the priorities stated in subsection (c).”

Proposed NMSA 69–25B–6.C is deficient by allowing, through the deletion of the word “coal,” for the undertaking of noncoal projects prior to New Mexico’s certification of completion of coal projects and, through its reference to NMSA 69–25B–6.A, which includes NMSA 69–25B–6.A(4), and as discussed above, no longer has a counterpart at section 403(a) of SMCRA. Therefore, the Director requires New Mexico to provide a definition of the word “coal” at NMSA 69–25B–6.C. The Director also reiterates that to the extent that the
provisions of NMSA 69-25B-6.A(4) apply by reference, New Mexico would not receive OSM's approval to expend funds for research and demonstration projects relating to the development of surface mining reclamation and water control program methods and techniques. (See finding No. 5.a.)

2. Federal Agency Comments

Pursuant to 30 CFR 884.15(a) and 884.14(a)(2), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the New Mexico plan (administrative record No. NM–759).

U.S. Bureau of Mines.—The U.S. Bureau of Mines, in a telephone conversation on September 7, 1995, responded that it had no comments on the proposed amendment (administrative record No. NM–761). U.S. Environmental Protection Agency (EPA).—EPA responded on September 7, 1995 (administrative record No. NM–762), with comments on the proposed amendments to the New Mexico plan and New Mexico Abandoned Mine Reclamation Act. EPA agreed with the deletion of specific references to "coal" mining throughout the amendments because the State's act should not be restricted to coal mining, as the references to "coal" would suggest. OSM agrees that in some instances deletion of the word "coal" is appropriate, but as discussed at finding Nos. 4.a and 5.a and b above, the proposed deletions cause certain statutes of New Mexico's act to be deficient.

EPA commented that NMSA 69-25B-6.C should specify the types of public facilities that may be built with money from the Abandoned Mine Reclamation Fund. The counterpart provisions at sections 411 (e) and (f) of SMCRA allow for the construction of public facilities in communities impacted by coal or mineral mining and processing practices and for activities or construction of specific public facilities related to the coal or minerals industry in States impacted by coal or mineral development when a need is established and the Secretary of the Interior concurs in the need. "Public facilities" are not specifically defined in SMCRA. The scope of public facilities funded under section 411 of SMCRA is very broad and covers facilities related in some way to the coal or minerals industry in a State. OSM is not requiring New Mexico to revise NMSA 69-25B-6.C to list types of public facilities addressed by the statute.

EPA commented that NMSA 69-25B-7.D, which provides in part that "the price paid for land acquired under this plan shall reflect the market value of the land as adversely affected by past mining practices," is inconsistent with the Federal land acquisition regulations. EPA commented further that the price to be paid for acquired lands reflect the market value of the lands as "adversely affected by past mining practices." Because the price to be paid for acquired lands at NMSA 69-25B-7.D is consistent with section 407(d) of SMCRA, OSM is not requiring New Mexico to make any additional changes to this statute.

Lastly, EPA commented that NMSA 69-25B-8 should provide for the disposition of monies collected through liens (i.e., deposit monies in the Abandoned Mine Reclamation Fund or use them to reimburse the Federal government). New Mexico, at unrevised plan section 884.13(c)(5), requires that "monies derived from the satisfaction of liens established under this part shall be deposited in the Abandoned Mine Reclamation Fund." This provision already satisfies EPA's concern.

Bureau of Land Management (BLM)—The BLM New Mexico State Office suggested on August 24, 1995, two changes to the proposed amendment (administrative record No. NM–765). BLM suggested that the ownership and control information proposed at plan sections 874.16 and 875.20 could be changed by adding "[i]f the Apparent Low Bidder is unqualifiable, the AML office may process a subsequent Low Bidder without reinitiating the bidding process." This suggestion was offered as an option to allow for a streamlined bidding process and cost savings in the event of an unqualifiable low bidder rejection.

OSM responds that the requirements proposed by New Mexico at plan sections 874.16 and 875.20 are consistent with the requirements of the Federal regulations concerning contractor responsibility at 30 CFR 874.16 and 875.20. (See finding No. 3.) OSM has passed BLM's comment on to the New Mexico Mining and Minerals Division. It is left to the State to determine whether it will adopt the suggestion.

BLM also suggested that the amendment does not assert that funds available for reclamation through the abandoned mine act should address coal reclamation before noncoal reclamation. BLM stated that including wording that requires AML funds to be used for coal reclamation before noncoal reclamation would assure that the amendment is
fully compatible with the Federal statute.

OSM agrees that New Mexico's statute does not require this (see finding No. 4.b). New Mexico's plan section 884.13(c)(2), which is not proposed for revisions in this amendment, does require that coal reclamation be completed before noncoal reclamation, except, upon the request of the Governor of New Mexico, reclamation can occur on noncoal sites to protect the public from extreme hazards endangering life and property resulting from the adverse effects of past noncoal mining practices. This plan provision is consistent with sections 403 and 409 of SMCRA and the implementing Federal regulations at 30 CFR 874.13 and 875.12. Therefore, OSM is not requiring New Mexico to provide a statement as suggested by BLM that requires AML funds to be used for coal reclamation before noncoal reclamation, but as discussed in finding No. 4.b, above, OSM is requiring New Mexico to reinsert the word "coal" at NMSA 69-25B-3.B or otherwise revise its statute to preclude reclamation of noncoal sites before coal sites, except in those limited circumstances allowed by section 404 of SMCRA.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and/or additional requirements, New Mexico's proposed plan amendment as submitted on July 24, 1995.

With the requirement that New Mexico further revise its statutes, the Director does not approve, as discussed in: finding Nos. 4.a and b, NMSA 69-25B-2 and 3.B, concerning the purpose of the New Mexico Abandoned Mine Land Reclamation Act and definition of the term "eligible lands and water;" finding No. 5.a, NMSA 69-25B-6.A, concerning objectives of the fund; finding No. 5.b, NMSA 69-25B-6.C, concerning public facilities; and finding No. 6, NMSA 69-25B-12, concerning emergency powers.

The Director approves, as discussed in: finding No. 1, NMSA 69-25B-3.A and D, concerning definitions of "director" and "fund," NMSA 69-25B-4, concerning creation of abandoned mine reclamation fund, and NMSA 69-25B-6.B, concerning filling voids and sealing tunnels; finding No. 2, plan section 875.16, concerning exclusion of certain noncoal reclamation sites, plan section 886.23(c), concerning reports, NMSA 69-25B-3.C, concerning definition of "emergency," NMSA 69-25B-7, concerning acquisition and reclamation of land adversely affected by past mining practices, and NMSA 69-25B-8, concerning liens; and finding No. 3, plan sections 874.16 and 875.20, concerning contractor responsibility.

The Director approves the plan provisions and statutes as proposed by New Mexico with the provision that they be fully promulgated in identical form to the plan provisions and statutes submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 931, codifying decisions concerning the New Mexico plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State plan amendment process and to encourage States to bring their plans into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. 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 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 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 Tribe or State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific Tribe or State, not by OSM. Decisions on proposed Tribe or State AMLR plans and revisions thereof submitted by a Tribe or State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed Tribe or State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.48(29)).

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 Tribe or State submittal which is the subject of this rule is based upon 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 established by SMCRA or previously promulgated by OSM will be implemented by the Tribe or State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

6. Unfunded Mandates Act

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

List of Subjects in 30 CFR Part 931

Abandoned mine reclamation programs, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 26, 1996.

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 931—NEW MEXICO

1. The authority citation for Part 931 continues to read as follows:

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

2. Section 931.25 is added to read as follows:

§ 931.25 Approval of abandoned mine land reclamation plan amendments.

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-4, creation of abandoned mine reclamation fund.


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 as reads 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 sections to provisions 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."

[FR Doc. 96-18612 Filed 7-23-96; 8:45 am]

BILLING CODE 4310-05-M

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 74135-6457, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

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 and 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