

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.

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## 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@CWYGW.OSMRE.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)  
69-25B-2, purpose of the act; NMSA  
69-25B-3, definitions; NMSA 69-25B-  
4, creation of the abandoned mine  
reclamation fund; NMSA 69-25B-6,  
objective of the fund; NMSA 69-25B-7,  
acquisition and reclamation of land  
adversely affected by past mining  
practices; NMSA 69-25B-8, liens; and  
NMSA 69-25B-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-760). 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 69-25B-2 and 69-25B-3.B,  
lands and water eligible for reclamation;

NMSA 69-25B-6.C, construction of  
public facilities; and NMSA 69-25B-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 69-25B-3.A and D (section 401(a)  
of SMCRA), definitions for the terms  
"director" and "fund,"

NMSA 69-25B-4 (section 401(a) of  
SMCRA), creation of abandoned mine  
reclamation fund, and

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

NMSA 69-25B-8, (section 408 and 411(g) of SMCRA), liens.

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

### 4. NMSA 69-25B-2 and NMSA 69-25B-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 SMCRA and refer to it as "SMCRA, 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 [SMCRA] 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 SMCRA 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" [(SMCRA)]. It provides, as well, through its reference to section 402(g)(4) of SMCRA, 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 4, 1977, and November 5, 1990. 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 SMCRA, only those post-August 3, 1977, sites addressed by selections

402(g)(4) and 403(b) of SMCRA are allowed to be reclaimed under a State plan. New Mexico has not proposed to revise its statute to add counterparts to sections 402(g)(4) and 403(b) of SMCRA.

Because New Mexico at proposed NMSA 69-25B-2 and 69-25B-3.B has in effect, through its deletion of the two phrases, revised its statute to allow the reclamation of post-August 3, 1977, sites beyond those allowed by sections 402(g)(4) and 403(b)(2) of SMCRA, these proposed statutory provisions are not in compliance with section 404 of SMCRA. Therefore, the Director does not approve these revisions, and requires New Mexico to revise NMSA 69-25B-2 and NMSA 69-25B-3.B to preclude the reclamation of post-SMCRA sites, with the only two possible exceptions being that New Mexico may allow the reclamation of post-SMCRA sites if it adopts counterparts to sections 402(g)(4) and/or 403(b) of SMCRA.

b. *Deletion of the word "coal".*—At NMSA 69-25B-3.B, New Mexico proposed to delete the word "coal" from the phrases "mined for coal," "coal processing," and "other coal mining processes." The effect of the deletion of the word "coal" (1) makes lands affected by any type of mining operation, not just coal mining operations, eligible for reclamation under the New Mexico plan and (2) allows New Mexico to reclaim noncoal lands and water prior to reclaiming all coal lands and water. These revisions also make the statute inconsistent with the unrevised corresponding "Ranking and Selection" section of New Mexico's plan, which continues to rank coal projects ahead of noncoal projects.

Counterpart section 404 of SMCRA indicates that sites eligible for reclamation are those affected by coal mining. It also provides, through its reference to section 409 of SMCRA and the reference of section 403(a)(1) in section 409(c)(1), for the reclamation of sites affected by noncoal mining in States such as New Mexico that have not certified completion of coal projects if the Governor makes a request for reclamation of a noncoal site on the basis that the site poses an extreme danger to public health, safety, general welfare, or property.

New Mexico's proposed deletion of the word "coal" from its definition for "eligible lands and water" at NMSA 69-25B-3.B causes the State's AML program not to be in compliance with section 404 of SMCRA. The Director does not approve the deletion of the word "coal" at NMSA 69-25B-3.B and requires New Mexico to reinsert the word "coal" 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.

##### 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 the 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 indicates that sites eligible for reclamation are those affected by coal mining. 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. 4.6.) 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. I(d) of the "Ranking and Selection" section of its plan, as its fourth priority, the expenditure of funds for "research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods 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) of SMCRA, the Director requires New Mexico to delete NMSA 69-25B-6.A(4) and item No. I(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 relating to the development of surface mining reclamation and water control program methods 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 water 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. 101-508 (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 they relate 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 reinsert 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.)

#### 6. NMSA 69-25B-12, Emergency Powers

New Mexico proposed at NMSA 69-25B-12 to delete the word "coal" from its provisions setting forth emergency powers for the Director of the Mining and Minerals Division.

Counterpart section 410 of SMCRA provides for an emergency program to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices on eligible lands. This emergency program extends only to coal lands and water and is a Federal responsibility except in those cases where a State has sought and been given such authority.

In 1985, New Mexico enacted into law NMSA 69-25B-12, which is the State counterpart to section 410 of SMCRA for the assumption by New Mexico of an emergency program. On May 9, 1986, New Mexico of an emergency program. On May 9, 1986, New Mexico submitted a formal amendment in which it requested approval of a State emergency program (administrative record Nos. NM-AML-36 and 37). New Mexico subsequently withdrew its request on August 22, 1988 (administrative record NO. NM-AML-51).

The amendment currently under review by OSM still includes NMSA 69-25B-12, but OSM understands that New Mexico's intent at this time is not to assume an emergency program. Therefore, the Director reluctantly cannot approve NMSA 69-25B-12. Even though OSM strongly supports and encourages State assumption of emergency programs, NMSA 69-25B-12 will have no effect in New Mexico's AML program until such time as New Mexico requests, with supporting documentation, an emergency program limited to coal reclamation only, and OSM approves it.

#### 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 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, 1955, 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 other 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 minerals 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 section 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 land acquired pursuant to the New Mexico Abandoned Mine

Reclamation Act should reflect the fair market value of land as "unaffected by contamination." This change could cause New Mexico to pay a higher price for lands acquired under NMSA 69-25B-7, and would cause NMSA 69-25B-7.D to be inconsistent with SMCRA. Counterpart sections 407(d) and 411(g) of SMCRA require that the price 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 8.4B(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.

(a) With the exception of New Mexico Statute Annotated (NMSA) 69-25B-2, concerning the purpose of the New Mexico Abandoned Mine Land Reclamation Act, NMSA 69-25B-3.B, concerning the definition of "eligible lands and water," NMSA 69-25B-6.A, concerning objectives of the fund, NMSA 69-25B-6.C, concerning public facilities, and NMSA 69-25B-12,

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."

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

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