

SUMMARY: This document removes the temporary regulations pertaining to the credit for employer FICA taxes paid with respect to certain tips received by employees of food or beverage establishments. The temporary regulations were published in the Federal Register on December 23, 1993. Statutory changes made by the Small Business Job Protection Act of 1996 have made these temporary regulations obsolete.

EFFECTIVE DATE: The removal of the temporary regulations is effective January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jean M. Casey at (202) 622-6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 23, 1993, the IRS published temporary regulations (TD 8503)(58 FR 68033) under section 45B of the Internal Revenue Code of 1986 (Code). Amendments made by sec. 1112(a) of the Small Business Job Protection Act of 1996 (Pub. L. 104-188) render the temporary regulations obsolete. Therefore, temporary regulation § 1.45B-1T is being removed.

On December 23, 1993, the IRS also issued a notice of proposed rulemaking (EE-71-93)(58 FR 68091) under section 45B of the Code. This notice of proposed rulemaking is being withdrawn in a separate document.

Explanation of provisions

Section 45B of the Code describes a business tax credit allowable under section 38 for food and beverage establishments. The credit is equal to the employer's Federal Insurance Contributions Act (FICA) obligation attributable to certain employee tips. The credit is reduced, however, if the nontip wages paid to an employee during a month are less than the amount that would have been payable to the employee at the federal minimum wage rate. The temporary regulations provide that this credit is available only for employer FICA taxes paid after December 31, 1993, with respect to tips received for services performed after December 31, 1993. The temporary regulations also provide that the credit applies only to taxes paid on tips that are reported to the employer by its employees.

Section 1112(a) of the Small Business Job Protection Act of 1996 amended Code section 45B to provide that the credit is available for employer FICA taxes paid after December 31, 1993, regardless of when the services with respect to which the tips are received

were performed. Section 1112(a) also provides that the credit is available whether or not the tips on which the employer FICA taxes were paid were reported to the employer by the employee. These provisions are effective as if included in the legislation under which section 45B was originally enacted, and thus render the temporary regulations obsolete.

Drafting Information

The principal author of these regulations is Jean M. Casey of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Penalties, Reporting and recordkeeping requirements.

Removal of Temporary Regulations

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

§ 1.45B-1T [Removed]

Par. 2. Section 1.45B-1T is removed. Margaret Milner Richardson, *Commissioner of Internal Revenue.*

Approved: December 11, 1996.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK-019-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 revisions to and additions of regulations pertaining to

repair or compensation for material damage resulting from subsidence caused by underground coal mining operations and to replacement of water supplies adversely impacted by underground coal mining operations. The amendment is intended to revise the Oklahoma program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: December 20, 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

On March 31, 1995, OSM promulgated rules to implement new section 720 of SMCRA, 30 U.S.C. 1201 *et seq.* Section 720, which took effect on October 24, 1992, as part of the Energy Policy Act of 1992, Public Law 102-486, 206 Stat. 2776, requires all underground coal mining operations conducted after October 24, 1992, to promptly repair or compensate for material damage caused by subsidence to noncommercial buildings and occupied residential dwellings and related structures. It also requires the replacement of drinking, domestic, and residential water supplies that have been adversely impacted by underground coal mining operations conducted after that date.

By letter dated July 17, 1996 (Administrative Record No. OK-975), Oklahoma submitted a proposed amendment to its program pursuant to SMCRA. Oklahoma submitted the proposed amendment in response to a May 20, 1996, letter (Administrative

Record No. OK-976) that OSM sent to Oklahoma in accordance with 30 CFR 732.17(c) concerning the changes which resulted from the enactment of section 720 of SMCRA and the promulgation of implementing Federal regulations.

Specifically, Oklahoma proposed to revise the Oklahoma Coal Rules and Regulations at Oklahoma Administrative Code (OAC) 460:20-3-5, Definitions; OAC 460:20-31-7, Hydrologic information; OAC 460:20-31-13, Subsidence control plan; OAC 460:20-45-8, Hydrologic-balance protection; and OAC 460:20-45-47, Subsidence control.

OSM announced receipt of the proposed amendment in the August 2, 1996, Federal Register (61 FR 40369), 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 September 3, 1996.

During its review of the amendment, OSM identified a concern relating to OAC 460:20-3-5, Definitions. Oklahoma had not proposed a definition for "occupied residential dwelling and structures related thereto." This definition was required in OSM's May 20, 1996, letter to Oklahoma. OSM notified Oklahoma of this concern by letter dated August 20, 1996 (Administrative Record No. 975.12). Oklahoma responded in a letter dated August 28, 1996 (Administrative Record No. 975.06), by submitting a revised amendment.

Based upon the additional revision to the proposed program amendment submitted by Oklahoma, OSM reopened the public comment period in the September 19, 1996, Federal Register (61 FR 49284). The public comment period closed on October 4, 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.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. Revisions to Oklahoma's Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

The proposed State regulations listed in the table contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the proposed State regulations and Federal regulations are nonsubstantive.

| State regulation OAC | Subject | Federal regulation 30 CFR |
|----------------------|---|---------------------------|
| 460:20-3-5 | Definition of "Drinking, domestic or residential water supply" | 701.5. |
| 460:20-3-5 | Definition of "Non-commercial building" | 701.5 |
| 460:20-3-5 | Definition of "Occupied residential dwelling and structures" | 701.5. |
| 460:20-3-5 | Definition of "Replacement of water supply" | 701.5. |
| 460:20-31-7(e)(3)(D) | Hydrologic information; Probable hydrologic consequences determination | 784.14(e)(3)(iv). |
| 460:20-31-13(a) | Presubsidence survey | 784.20(a). |
| 460:20-31-13(b) | Subsidence control plan | 784.20(b). |
| 460:20-45-8(j) | Hydrologic-balance protection; Drinking, domestic or residential water supply | CFR 817.41(j). |
| 460:20-45-47(a) | Subsidence control; Operator measures to prevent or minimize damage | 817.121(a). |
| 460:20-45-47(c) | Subsidence control; Repair of damage to surface lands | 817.121(c). |

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Oklahoma's proposed regulations are no less effective than the Federal regulations.

2. Revisions to Oklahoma's Regulations That Are Not Substantively Identical to the Corresponding Provisions of the Federal Regulations

OAC 460:20-3-5, Definition of "Material Damage" Oklahoma proposed the following definition for the term "material damage."

"Material damage" means any functional impairment of surface lands, features, structures or facilities. The material damage threshold includes: (A) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or (B) Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition. (C) Any situation in which an imminent danger to a person would be created.

The proposed definition contains provisions in the introductory sentence, (A), and (B) that are the same as the three substantive provisions in the Federal definition for "material damage" at 30 CFR 701.5. It, also, contains one additional provision at (C) pertaining to imminent danger that is consistent with the March 31, 1995, preamble discussion of the Federal definition (62 FR 16722). In the preamble discussion of the Federal definition, OSM stated that the material damage threshold "* * *" would also include any situation in which an imminent danger to a person would be created."

Based on the above discussion, the Director finds that Oklahoma's definition of "material damage" at OAC 460:20-3-5 is not inconsistent with the Federal definition at 30 CFR 701.5. Therefore, it is no less effective than the Federal definition, and it is approved.

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. By letters dated August 9, 1996, and October 1, 1996 (Administrative Record Nos. OK-975.05 and OK-975.11), the U.S. Army Corps of Engineers responded that its review found the changes to be satisfactory.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(i), 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-975.03 and OK-975.08). EPA did not respond to OSM's requests.

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-975.02 and OK-975.09). Neither SHPO nor ACHP responded to OSM's requests.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Oklahoma on July 17, 1996, and as revised on August 28, 1996.

The Director approves, as discussed in: Finding No. 1, OAC 460:20-3-5, concerning definitions for "drinking, domestic or residential water supply"; "non-commercial building"; "occupied residential dwelling and structures"; and "replacement of water supply"; OAC 460:20-31-7(e)(3)(D), concerning the probable hydrologic consequences determination; OAC 460:20-31-13(a), concerning a presubsidence survey; OAC 460:20-31(b), concerning the subsidence control plan; OAC 460:20-45-8(j), concerning replacement of drinking, domestic or residential water supply; OAC 460:20-45-47(a), concerning subsidence control measures to prevent or minimize damage; and OAC 460:20-45-47(c), concerning repair of damage to surface lands; finding No. 2, OAC 460:20-3-5, concerning a definition for "material damage."

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

The Federal regulations at 39 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: November 27, 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 937 continues to read as follows:

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

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

§ 936.15 Approval of regulatory program amendments.

* * * * *

(s) Revisions to the following provisions of the Oklahoma Coal Rules and Regulations, as submitted to OSM on July 17, 1996, and as revised on August 28, 1996, are approved effective December 20, 1996.

OAC 460:20-3-5—Definitions

OAC 460:20-31-7(e)(3)(D)—Hydrologic information

OAC 460:20-31-13 (a) & (b)—Subsidence control plan

OAC 460:20-45-8(j)—Hydrologic-balance protection

OAC 460:20-45-47 (a) & (c)—Subsidence control.

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