the Departmental Manual 516 DM 2, Appendix 1.10.

Author: The principal author of this rule withdrawal is Jim Krawczyk, Office of Surface Mining, U.S. Department of the Interior, 3 Parkway Center, Pittsburgh, PA 15220.

List of Subjects in 30 CFR Part 870

Reporting and recordkeeping requirements, Surface mining, Underground mining.


Sylvia V. Baca,
Deputy Assistant Secretary for Land and Minerals Management.

For the reasons set forth in the preamble, 30 CFR part 870 is being amended as set forth below.

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

1. The authority citation for part 870 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq., as amended; and Pub. L. 100-34.

§ 870.17 [Removed]

2. Section 870.17 is removed.

[FR Doc. 98-5391 Filed 3-2-98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

[SPATS No. KS-017-FOR]

Kansas Regulatory Program and Abandoned Mine Land Reclamation Plan

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 Kansas regulatory program and abandoned mine land reclamation plan (hereinafter referred to as the “Kansas program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kansas proposed revisions to and additions of regulations pertaining to communications, petitions to initiate rulemaking, notice of citizen suits, preparation and submission of reports by the permittee, definitions, permit applications, administrative hearing procedures, civil penalties, permit review, permit revision, permit renewals, permit transfers, assignments, and sales, permit conditions, permit suspension or revocation, termination of jurisdiction, exemption for coal extraction incident to government-financed highway or other construction, exemption for coal extraction incidental to the extraction of other minerals, coal exploration, bonding procedures, performance standards, reclamation, interim performance standards, underground mining, small operator assistance program, lands unsuitable for surface mining, training, certification, and responsibilities of blasters and operators, employee financial interests, inspection and enforcement, eligible lands and water, reclamation project evaluation, consent to entry, liens, appraisals, contractor responsibility, exclusion of certain noncoal reclamation sites, and abandoned mine land reclamation plan reports. The amendment is intended to revise the Kansas program to be consistent with the corresponding Federal regulations.


FOR FURTHER INFORMATION CONTACT: Russell W. Frum, Mid-Continent Regional Coordinating Center, Office of Surface Mining, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463-6460.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

The Secretary of the Interior conditionally approved the Kansas regulatory program on January 21, 1981, and the Kansas abandoned mine land reclamation plan on February 1, 1982. General background information on the Kansas regulatory program and the Kansas abandoned mine land reclamation plan, including the Secretary’s findings, the disposition of comments, and the conditions of approval can be found in the January 21, 1981, Federal Register (46 FR 5892) and the February 1, 1982, Federal Register (47 FR 4513), respectively. Subsequent actions concerning Kansas’ program and program amendments can be found at 30 CFR 916.10, 916.12, 916.15, 916.16, 916.20, and 916.25.

II. Submission of the Proposed Amendment

By letter dated May 7, 1997 (Administrative Record No. KS-615), Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment at its own initiative.

OSM announced receipt of the proposed amendment in the June 4, 1997, Federal Register (62 FR 30535) and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on July 7, 1997. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified concerns relating to K.A.R. 47-2-53, definition for regulatory authority; K.A.R. 47-2-75(a)(6)(A), definition for director; K.A.R. 47-3-42(a)(49)(B) and (a)(49)(E), procedures for challenging ownership or control links shown in AVS; K.A.R. 47-3-42(a)(50)(E), standards for challenging ownership or control links and the status of violations; K.A.R. 47-5-5a(c)(4)(D), review of waiver determination; K.A.R. 47-5-5a(c)(6)(C)(i) and (c)(6)(E), summary disposition; K.A.R. 47-6-4(c), permit transfers, assignments, and sales; K.A.R. 47-6-8(b), termination of jurisdiction; K.A.R. 47-6-9(b)(3), exemption for coal extraction incident to government-financed highway or other construction; K.A.R. 47-6-10(b)(4), exemption for coal extraction incidental to the extraction of other minerals; K.A.R. 47-7-2(b)(6) and (b)(8), coal exploration; K.A.R. 47-8-9(a)(1) and (b)(8), bonding procedures; K.A.R. 47-9-1(c), performance standards—surface mining activates; K.A.R. 47-9-1(c)(17) and (e)(17), use of explosives: general requirements; K.A.R. 47-9-1(c)(35), backfilling and grading: time and distance requirements; K.A.R. 47-9-1(j)(9), substitution of Kansas terms for Federal terms in 30 CFR Parts 816 and 817; K.A.R. 47-16-1, eligible lands and water; K.A.R. 47-16-6(d), liens; K.A.R. 47-16-9(a), contractor responsibility; K.A.R. 47-16-10(b)(1), exclusion of certain noncoal reclamation sites; and K.A.R. 47-16-11 (a)(2)(A) and (b)(2)(A), responsibilities. OSM notified Kansas of the concerns by letter dated October 8, 1997 (Administrative Record No. KS-615.5).

By letter dated November 14, 1997 (Administrative Record No. KS-615.6), Kansas responded to OSM’s concerns by submitting explanatory information and revisions to its proposed program amendment. Kansas proposed additional revisions and additions to K.A.R. 47-2-53, definition for regulatory authority; K.A.R. 47-2-75a(6)(A), definition for director; K.A.R. 47-3-42(a)(49)(A), (a)(49)(D) and (a)(49)(G), procedures for challenging ownership or control links shown in


Based upon the additional explanatory information and revisions to the proposed program amendment submitted by Kansas, OSM reopened the public comment period in the January 20, 1998, Federal Register (63 FR 2916). The public comment period closed on February 4, 1998.

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.

Kansas Regulatory Program

A. Regulations Proposed for Deletion or Revocation

1. K.A.R. 47–1–1, Title. Kansas proposed to revoke this section that states these rules shall be known as rules of practice and procedures of the surface mining section of the Kansas department of health and environment. The Director is approving the revocation of this section because it will not render the Kansas regulations less effective than the Federal regulations.

2. K.A.R.: 47–1–4, Sessions. Kansas proposed to revoke this section regarding special meetings scheduled by the surface mining section chief with the approval of the Secretary of the Kansas department of health and environment. The Director is approving the revocation of this section because there is no counterpart Federal regulation and the revocation will not render the Kansas regulations less effective than the Federal regulations.

3. K.R. 47–1–10, General Notice Requirement. Kansas proposed to revoke this section regarding notice of scheduled surface mining section meetings. The Director is approving the revocation of this section because there is no counterpart Federal regulation and the revocation will not render the Kansas regulations less effective than the Federal regulations.

4. K.A.R. 47–2–14, Definition of Complete and Accurate Application. Kansas proposed to delete its definition of “complete and accurate application.” The Director previously approved this deletion (See 58 FR 32847, June 14, 1993).

5. K.A.R. 47–3–42(a)(15), Land Use Information. Kansas proposed to delete its adoption by reference of 30 CFR 779.22, land use information. The Director is approving this deletion because OSM deleted 30 CFR 779.22 from the Federal regulations in its entirety (See 59 FR 27932, May 27, 1994).

6. K.A.R. 47–4–14a(b)(2), Definition of Person. Kansas proposed to delete its definition of “person.” The Director is approving the deletion of this definition because Kansas proposed to adopt by reference the Federal definition of “person” at 30 CFR 700.5. This proposed adoption by reference can be found at K.A.R. 47–2–75(a).

7. K.A.R. 47–4–14a(d)(4)(G) and (d)(5)(B)(i), Formal Hearings—Prehearing Conference. Kansas proposed to delete the above paragraphs regarding prehearing conferences. These regulations would allow a prehearing conference to be converted, without further notice, into a conference hearing or a summary proceeding for disposition of the matter or conversion of the proceeding to another type. The Director previously approved the deletion of these provisions (See 58 FR 32847, June 14, 1993).

8. K.A.R. 47–4–14a(d)(17)(C), Formal Hearings—Orders. Kansas proposed to delete the above paragraph regarding formal hearings. This regulation would allow Kansas to take immediate action to protect the public interest in accordance with K.A.R. 47–4–14a(f), Emergency Proceedings. The Director previously approved the deletion of this provision (See 58 FR 32847, June 14, 1993).

9. K.A.R. 47–4–14a(e), Conference Hearings. Kansas proposed to delete the above paragraph regarding conference hearings. This regulation would allow Kansas to hold these hearings if their use does not violate any provision of law and where there is a matter in which there is no disputed issue of material fact or there is a disputed issue of material fact and the parties agree to a hearing. The Director previously approved the deletion of this provision (See 58 FR 32847, June 14, 1993).

10. K.A.R. 47–4–14a(f), Emergency Proceedings. Kansas proposed to delete the above paragraph regarding emergency proceedings. This regulation would allow Kansas to have these proceedings in a situation involving an immediate danger to the public health, safety or welfare requiring immediate state agency action or as otherwise provided by law. The Director previously approved the deletion of this provision (See 58 FR 32847, June 14, 1993).

11. K.A.R. 47–4–14a(g), Summary Proceedings. Kansas proposed to delete the above paragraph regarding summary proceedings. This regulation would allow Kansas to have these proceedings if their use does not violate any provision of law and the protection of the public interest does not require the state agency to give notice and an opportunity to participate to persons other than the parties. The Director previously approved the deletion of this provision (See 58 FR 32847, June 14, 1993).

12. K.A.R. 47–13–4, Training and Certification of Blasters. Kansas proposed to delete paragraphs (b)(2) and (b)(3) of this section. The Director previously approved these deletions (See 59 FR 28769, June 3, 1994).

B. Regulations With Editorial Changes

Kansas proposed nonsubstantive wording changes, paragraph notation changes, citation corrections, and other editorial changes in the following sections of the K.A.R.: 47–1–3, communication; 47–1–8, petitions to initiate rulemaking; 47–1–9, notice of citizen suits, 47–1–11, permittee preparation and submission of reports; 47–2–21, definition of material fact; 47–2–53, definition of regulatory authority or state regulatory authority; 47–2–53a,

Because Kansas’ proposed revisions to these previously approved regulations are nonsubstantive in nature, the Director finds that the proposed revisions do not render Kansas’ regulations less effective than the Federal regulations. Any substantive revisions included in the above regulations are summarized below.

C. State Adoption of Federal Regulations by Reference

1. K.A.R. 47–2–75, Definitions. a. Kansas proposed to revise its adoption by reference of applicable Federal definitions in 30 CFR 700.5, 701.5, 705.5, 773.5, and 846.5 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this adoption by reference.

b. In its adoption by reference of the Federal definitions at 30 CFR 700.5, Kansas proposed at K.A.R. 47–2–75(a)(6) to apply its own definition of “director” to additional sections of the Federal regulations that it adopted by reference. At these sections, the term “director” means the Director, Office of Surface Mining Reclamation and Enforcement. The additional sections of the Federal regulations for which this term is applicable are 30 CFR 705.4(a), 705.11(c) and (d), 705.13, 705.15, 705.19(a), 705.21, and 785.13. The Director is approving this amendment because the term “director” as used in these sections does indeed refer to the Director, Office of Surface Mining Reclamation and Enforcement and will not render the State regulations less effective than the Federal regulations.

c. At K.A.R. 47–2–75(e) in its adoption by reference of definitions at 30 CFR 846.5, Kansas proposed that the reference to “703 of the act” at paragraph (e)(6) be replaced by “K.S.A. 1995 Supp. 75–2973.” The Director is approving this revision because the State statute reference is the counterpart to the Federal statute at section 703 of SMCR.

d. K.A.R. 47–3–2, Application for Mining Permit. At paragraph (b), Kansas proposed to revise its adoption by reference of applicable Federal regulations concerning permit applications at 30 CFR 771.11, 777.13, 777.14, and 777.15 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this adoption by reference.


f. In its adoption by reference of 30 CFR 780.4 at K.A.R. 47–3–42(a)(17), Kansas proposed to replace the phrase “this part” with the Kansas regulations “K.A.R. 47–3–42(a)(17) to (35), inclusive.” The Director is approving the replacement language because it is the State counterpart to the Federal regulations at 30 CFR Part 780 and will not render the State regulations less effective than the Federal regulations.

c. At K.A.R. 47–3–42(a)(43), Kansas proposed to add a clarifying statement to its adoption by reference of 30 CFR 773.15. The statement reads as follows:

Only in paragraph 30 CFR 773.15(b) shall the term “act” mean “surface mining control and reclamation act of 1977 (Pub. L. 95–87)” and amendments thereto. All other references to the term “act” in 30 CFR 773.15 shall be replaced with “State act.”

The Director is approving the above added statement because it will not render the State regulations less effective than the Federal regulations.

d. At K.A.R. 47–3–42(a)(45), Kansas proposed to add a clarifying statement to its adoption by reference of 30 CFR 773.20. The statement reads as follows: except in subsection (c)(2) “43 CFR 4.1370 through 4.1377, where OSM is the regulatory authority, or under the State program equivalent, where a state is the regulatory authority” shall be replaced by “K.A.R. 47–4–14a”;

The Director is approving this added statement because K.A.R. 47–4–14a contains the State counterpart regulations to 43 CFR 4.1370 through 4.1377 and will not render the State regulations less effective than the Federal regulations.

e. In its adoption by reference of 30 CFR 773.24 at K.A.R. 47–3–42(a)(49), Kansas proposed to delete 30 CFR 773.24(a)(2) from its adoption by reference, replace “paragraphs (a)(1) or (a)(2)” in 30 CFR 773.24(b) with “paragraphs (a)(1) or (a)(3)” and replace Federal terms, references, and citations in 30 CFR 773.24 with the appropriate State terms and citations. Kansas also proposed to provide the State address where an individual may submit information on a challenge of the status of a State violation. The Director is approving these amendments.

f. At K.A.R. 47–3–42(a)(50), Kansas proposed to adopt by reference 30 CFR 773.25 as it existed on July 1, 1995, with exceptions that replace Federal terms and citations with the appropriate State terms and citations. In addition, Kansas proposed to replace 30 CFR 773.25(b) with K.A.R. 47–3–42(a)(50)(8) which authorizes the secretary of the Kansas
Department of Health and Environment
or his designee to make decisions
concerning ownership and control
relationships with regard to Kansas
civil penalties concerning permit transfers,
civil mining applications, issued
permits, and coal mining violations. The
Director is approving these
amendments.
At K.A.R. 47–5–5a(a), Kansas proposed
to revise its adoption by reference of applicable Federal regulations
concerning civil penalties at 30 CFR
845.11, 845.12, 845.13, 845.14, 845.15,
845.16, 845.17, 845.18, 845.19, and Part
846 from as they existed on July 1, 1990,
to as they existed on July 1, 1995.
Kansas also proposed in its adoption by
reference to replace certain Federal
terms and citations with the appropriate
State terms and citations at paragraph
(b). The Director is approving this adoption by reference.
b. At K.A.R. 47–5–5a(a)(10) that
adopts by reference 30 CFR part 846,
Kansas proposed to delete the phrase, “a
Federal lands program,” and to change
the phrase, “Federal enforcement of a
state program pursuant to section 521 of the
act” to “enforcement of a state
program pursuant to K.S.A. 49–405 of the
state act.” Kansas also proposed to adopt by reference 30 CFR 870.15(e)(1)
through (e)(5), (f), and (g) as they relate to 30 CFR 845.18(d) with the exception of
the sentence in paragraph (f) that
specifies that “this penalty is in addition to the interest described in
paragraph (c) of this section.” The
Director previously approved this amendment (See 59 FR 28769, June 3, 1994).
c. At K.A.R. 47–5–5a(b)(13) through
(20), Kansas proposed to add more State
terms and citations that will replace
specified Federal terms and citations wherever they appear in the text of the
Federal regulations concerning civil
penalties that were adopted by reference under K.A.R. 47–5–5a. The Director
previously approved this amendment
(See 59 FR 28769, June 3, 1994).
d. At K.A.R. 47–5–5a(c)(5), Kansas proposed to revise this paragraph to read as follows:
In civil penalty proceedings, the
department shall have the burden of going
forward to establish a prima facie case as to
the fact of the violation, the amount of the
civil penalty, and the ultimate burden of
persuasion as to the amount of the civil
penalty. The person who petitioned for
review shall have the ultimate burden of
persuasion as to the fact of the violation.
The Director previously approved this
amendment (See 58 FR 32847, June 14,
1993).
e. Kansas proposed to revise K.A.R.
47–5–5a(c)(7)(C), concerning the initial
order of the presiding officer. This
revision would require the presiding
officer to order the department to refund
the appropriate amount to the person
who made the payment. The department
must remit the amount within 30 days
of receipt of the order from the
presiding officer that finds no violation
or that reduces the penalty paid. The
Director previously approved this
amendment (See 59 FR 28769, June 3, 1994).
f. Kansas proposed to revise K.A.R.
47–5–5a(c)(7)(D) by requiring that if the
presiding officer increases the amount of
the civil penalty above that of the
proposed assessment, the presiding
officer is to order payment of the
appropriate amount within 15 days after
an order increasing the civil penalty is
mailed. The Director previously
approved this amendment (See 58 FR
32847, June 14, 1993).
5. K.A.R. 47–6–3, Permit Renewals. At
paragraph (a) Kansas proposed to revise
its adoption by reference of 30 CFR
774.15 concerning permit renewals from
as it existed on July 1, 1990, to as it
existed on July 1, 1995. The Director is
approving this amendment.
6. K.A.R. 47–6–4, Permit Transfers,
Assignments, and Sales. At paragraph
(b), Kansas proposed to revise its
adoption by reference of 30 CFR 774.17
concerning permit transfers, assignments,
or sales from as it existed on July 1, 1990,
to as it existed on July 1, 1995. The Director is
approving this amendment.
7. K.A.R. 47–6–6, Permit Conditions. At
paragraph (a), Kansas proposed to revise
its adoption by reference of 30 CFR
773.17 concerning permit conditions from
as it existed on July 1, 1990, to as it
existed on July 1, 1995. The Director is
approving this amendment.
8. K.A.R. 47–6–8, Termination of
Jurisdiction. At paragraph (a), Kansas
proposed to revise its adoption by
reference of 30 CFR 700.11, deleting
subsections (a)(1) and (b), from as it
existed on July 1, 1990, to as it existed
on July 1, 1995. The deletion of
subsections (a)(1) and (b) in Kansas’
adoption by reference of 30 CFR 700.11
is previously approved language. The
Director is approving this amendment.
9. K.A.R. 47–6–9, Exemption for Coal
Extraction Incident to Government-
Financed Highway or Other
Construction. At paragraph (a), Kansas
proposed to revise its adoption by
reference of 30 CFR 707.4, 707.5,
707.11, and 707.12 from as they existed on
July 1, 1990, to as they existed on
July 1, 1995. The Director is approving this
amendment.
10. K.A.R. 47–6–10, Exemption for
Coal Extraction Incidental to the
Extraction of Other Minerals. At
paragraph (a), Kansas proposed to revise
its adoption by reference of 30 CFR
702.1, 702.5, 702.10, 702.11, 702.12,
702.13, 702.14, 702.15, 702.16, 702.17,
and 702.18 from as they existed on July
1, 1990, to as they existed on July 1,
1995. The Director is approving this
amendment.
At paragraph (a), Kansas proposed to
revise its adoption by reference of 30 CFR
772.11, 772.12, 772.13, 772.14, and
772.15 from as they existed on July 1,
1990, to as they existed on July 1, 1995.
The Director is approving this
amendment.
12. K.A.R. 47–8–9, Bonding
Procedures. At paragraph (a), Kansas
proposed to revise its adoption by
reference of 30 CFR 810.4 [deleting
subsection (d)], 810.5 [deleting
subsection (c)], 810.11 [deleting
subsection (e)], 810.12 [deleting
subsection (c)], 810.13, 810.14, 810.15,
810.16, 810.17, 810.20, 810.21, 810.30,
810.40, 810.50, and 810.60 [deleting
subsection (d)] from as they existed on
July 1, 1990, to as they existed on July 1,
1995. The Director is approving this
amendment.
13. K.A.R. 47–9–1, Performance
Standards. a. At K.A.R. 47–9–1(a), Kansas
proposed to revise its adoption by
reference of 30 CFR 810.2, 810.4
[deleting subsection (a)], and 810.11
from as they existed on July 1, 1990, to
as they existed on July 1, 1995. The
Director is approving this adoption by
reference. At paragraph (a)(3), Kansas
proposed to add an exception to the adoption of 30 CFR 810.11 which would replace “parts 815 through 828” with
the State counterpart in K.A.R. 47–9–1.
The Director previously approved this
amendment (See 59 FR 28769, June 3,
1994). Kansas also proposed to add
paragraph (a)(5) which would replace the phrases “every state program” and
“the applicable regulatory program” with “the regulatory program.” The
Director previously approved this
amendment (See 58 FR 32847, June 14,
1993).
b. At K.A.R. 47–9–1(b), Kansas
proposed to revise its adoption by
reference at 30 CFR 815.13 and 815.15
from as they existed on July 1, 1990, to
as they existed on July 1, 1995. The
Director is approving this adoption by
reference.
c. At K.A.R. 47–9–1(c), Kansas
proposed to revise its adoption by
reference of 30 CFR Part 816 (excluding 30
CFR 816.10, 816.72, 816.73, and
816.107) from as it existed on July 1,
1990, to as it existed on July 1, 1995.
The Director is approving this adoption by reference.

i. At K.A.R. 47–9–1(c)(35), Kansas proposed to replace 30 CFR 816.101, backfilling and grading: time and distance requirements, in its adoption by reference of portions of 30 CFR part 816, with the following language:

(a) Except as provided in paragraph (b) of this section, rough backfilling and grading for surface mining activities shall be completed according to one of the following schedules:

(1) Contour mining. Within 60 days or 1,500 linear feet following coal removal;

(2) Area mining. Within 180 days following coal removal, and not more than four spoil ridges behind the active pit being worked, the spoil from the active pit constituting the first ridge; or

(3) Other surfacing mining methods. In accordance with the schedule established by the department.

(b) The department may extend the time allowed for rough backfilling and grading for the entire permit area or for a specific portion of the permit area if the permittee demonstrates in accordance with K.A.R. 47–3–42(a)(24), adopting by reference 30 CFR 780.18(b)(3) that additional time is necessary;

ii. Kansas proposed to add paragraph (i) concerning normal husbandry practices used to repair gullies. The Director previously approved this amendment (See 59 FR 28769, June 3, 1994).

iii. At K.A.R. 47–9–1(c)(43) in its adoption by reference of 30 CFR 816.116(a) and (c)(4). At 30 CFR 816.116(a), Kansas proposed to add paragraph (a)(3) regarding the submission of data being used for bond release. At 30 CFR 816.116(c)(4), Kansas proposed to add paragraph (i) concerning normal husbandry practices used to repair gullies. The Director previously approved this amendment (See 59 FR 28769, June 3, 1994). However, in the previous approval, paragraph (a)(3) was formally paragraph (a)(2)(i).

v. At K.A.R. 47–9–1(c)(46) in its adoption by reference of 30 CFR 816.133, postmining land use, Kansas proposed to add paragraph (i) concerning normal husbandry practices used to repair gullies. The Director previously approved this amendment (See 59 FR 28769, June 3, 1994).

vi. At K.A.R. 47–9–1(d)(3), Kansas proposed to add a paragraph that 30 CFR 816.107, backfilling and grading: steep slopes, was deleted from its adoption by reference of 30 CFR Part 816. The Director is approving this added language because Kansas does not have steep slope mining.

f. At K.A.R. 47–9–1(f), Kansas proposed to revise its adoption by reference of 30 CFR Part 819, excluding 30 CFR 819.1, from as it existed on July 1, 1990, to as it existed on July 1, 1995. The Director is approving this adoption by reference.

g. At K.A.R. 47–9–1(g), Kansas proposed to revise its adoption by reference of 30 CFR 823.11, 823.12, 823.14, and 823.15 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this adoption by reference with the deletion of 30 CFR 823.11(a). The deleted Federal regulation excludes coal preparation plants, support facilities, and roads of underground mines that are actively used over extended periods of time and where such uses affect a minimal amount of land from being subject to prime farmland performance standards. Because Kansas did not incorporate the adoption by reference of 30 CFR 823.11(a) into its regulation, the above underground facilities are now subject to Kansas' prime farmland performance standards.

h. At K.A.R. 47–9–1(h), Kansas proposed to revise its adoption by reference of 30 CFR Part 819, excluding 30 CFR 819.1, from as it existed on July 1, 1990, to as it existed on July 1, 1995. The Director is approving this adoption by reference.
adopted by reference under K.A.R. 47-9-1. At paragraph (j)(8), any reference to “Part 816” is replaced by “K.A.R. 47-9-1(c).” At paragraph (j)(9), any reference to “Part 817” is replaced by “K.A.R. 47-9-1(e).” The Director is approving this revision because the replacement terms are the State counterpart regulations to the replaced Federal regulations.

14. K.A.R. 47-9-4, Interim Performance Standards. At paragraph (a), Kansas proposed to revise its adoption by reference of applicable Federal regulations at 30 CFR Parts 710, 715, and 716 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this amendment.

15. K.A.R. 47-10-1, Underground Mining. At paragraph (a), Kansas proposed to revise its adoption by reference of applicable Federal regulations at 30 CFR parts 783 and 784 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this amendment. Kansas further proposed to list the actual Federal regulation sections adopted rather than listing the sections that it chose not to include in its adoption by reference of 30 CFR parts 783 and 784. The Director previously approved this amendment (See 59 FR 28769, June 3, 1994).

16. K.A.R. 47-11-8, Small Operator Assistance Program. At paragraph (a), Kansas proposed to revise its adoption by reference of applicable Federal regulations at 30 CFR Part 795 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this amendment.

17. K.A.R. 47-12-4, Lands Unsuitable for Surface Mining. a. At paragraph (a), Kansas proposed to revise its adoption by reference of applicable Federal regulations at 30 CFR parts 761, 762, and 764 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this amendment.

b. Kansas proposed to remove existing paragraphs (b)(2) and (b)(3) and to redesignate existing paragraphs (b)(4) and (b)(5) as paragraphs (b)(2) and (b)(3), respectively. The Director previously approved this amendment (See 59 FR 28769, June 3, 1994). Kansas also proposed to redesignate paragraph (b)(6) as paragraph (c). The Director is approving this amendment.

c. Kansas proposed to revise paragraph (c)(8) to read as follows:

Voluntary dismissal. Any party who initiated a proceeding may withdraw it by moving to dismiss. The presiding officer shall grant such motion.

The Director previously approved this amendment (See 58 FR 32847, June 14, 1993).

d. At paragraph (c)(11), Kansas proposed to provide that any person that fails to file a responsive pleading by the required time “may” be deemed to have waived his right to a hearing. Kansas also proposed to add that unless all parties who are entitled to a hearing waive such rights or are deemed to have waived such rights, a hearing shall be held. The Director previously approved these amendments (See 59 FR 28769, June 3, 1994).

E. Revisions to Kansas’ Regulations That Are Not Substantively Identical to the Corresponding Provisions of the Federal Regulations

1. K.A.R. 47-4-14a, Administrative Hearing Procedures. a. At K.A.R. 47-4-14a(c)(2), Kansas proposed to change the information regarding where to file administrative hearing documents. All documents are to be filed with the administrative appeals section of the Kansas Department of Health and Environment, Suite 400D, 109 SW 9th, Topeka, Kansas 66612-1215. The Director is approving this change because it only updates the information as to where to file administrative hearing documents and will not render the Kansas program less effective than the Federal regulations.

b. At K.A.R. 47-4-14a(c)(4), Kansas proposed to change the notice of appeals or petitions for reviews from the “office of legal services” to the “administrative appeals section.” The Director is approving this change because it only updates the information concerning who the recipient of these documents is and will not render the Kansas program less effective than the Federal regulations.

c. At K.A.R. 47-4-14a(d)(2)(C), Kansas proposed to change the word “shall” to the word “may,” regarding the right of any party to petition for the disqualification of a presiding officer. The Director previously approved this wording change (See 58 FR 32847, June 14, 1993).

d. At K.A.R. 47-4-14a(d)(2)(D), Kansas proposed to add a new provision concerning disqualification of a presiding officer that reads as follows:
In the event that the presiding officer fails to grant a petition for disqualification, the petitioning party may file an affidavit of personal bias or disqualification with substantiating facts, and the matter of disqualification shall be determined by the secretary.

The Director previously approved this amendment (See 59 FR 28769, June 3, 1994).

6. K.A.R. 47–4–14(d)(3), Kansas proposed to revise this paragraph to state that the presiding officer designated to conduct the hearing "may" conduct a prehearing conference. The Director previously approved this wording change (See 58 FR 32847, June 14, 1993).

7. K.A.R. 47–4–14a(d)(2), Kansas proposed to revise this paragraph to state that notice of a hearing shall be sent to the party at the last known address of the party. The Director previously approved this amendment (See 58 FR 32847, June 14, 1993).

b. Kansas proposed to revise paragraph (d)(2), Kansas proposed that the procedure set forth in K.A.R. 47–4–14a(d)(2) shall be followed regarding a proceeding to suspend or revoke a permit “except as provided for in this regulation.” At paragraph (h)(2), Kansas proposed that the procedure set forth in K.A.R. 47–4–14a(d)(14) is to be followed regarding appeals pertaining to suspended or revoked permits “except as provided for in this regulation.” The Director is approving these amendments because they will not render the State regulations less effective than the Federal regulations.

c. Kansas proposed to add an introductory statement regarding discovery in administrative hearings: “Discovery shall be permitted to the extent allowed by the presiding officer or as agreed to by the parties.” The Director previously approved this amendment (See 58 FR 32847, June 14, 1993).

F. Revisions to Kansas’ Regulations With No Corresponding Federal Regulations

1. K.A.R. 47–4–14a, Administrative Hearing Procedure. a. At paragraph (d) regarding formal hearings, Kansas proposed to remove the phrase “except as otherwise provided by subsection (e), (f), and (g).” The Director previously approved this amendment (See 58 FR 32847, June 14, 1993).

b. Kansas proposed to revise paragraph (d)(6)(E)(iii) and to add paragraph (d)(6)(E)(iv). At paragraph (d)(6)(E)(iii), Kansas proposed that notice of administrative hearings under this subsection may include all types of information provided in subsections (d)(6)(A) through (D) or may consist of a brief statement indicating the subject matter, parties, time, place where the hearing will be held, locations where the general public may meet for hearings which are conducted electronically, nature of the hearing, manner in which copies of the notice to the parties may be inspected and copied, and the name and telephone number of the presiding officer. At paragraph (d)(6)(E)(iv), Kansas proposed a provision that requires notice of a formal hearing to be posted at the surface mining section office and, where practicable, be published in a newspaper of general circulation in the area of the mine at least seven days prior to the hearing. The Director previously approved these amendments (See 59 FR 28769, June 3, 1994).

c. At K.A.R. 47–4–14a(d)(15), Kansas proposed to allow the presiding officer or secretary or secretary’s designee to take action on a petition for stay either before or after the effective date of an initial or final order. The Director previously approved this amendment (See 58 FR 32847, June 14, 1993).


Kansas proposed to add an introductory statement regarding discovery in administrative hearings: “Discovery shall be permitted to the extent allowed by the presiding officer or as agreed to by the parties.” The Director previously approved this amendment (See 58 FR 32847, June 14, 1993).

Kansas Abandoned Mine Land Reclamation Plan

A. Regulations With Editorial Changes

Kansas proposed minor wording changes, paragraph notation changes, citation corrections and other editorial changes in the following sections of the K.A.R.: 47–16–1, eligible lands and water; 47–16–2, reclamation project evaluation; 47–16–3, consent to entry; 47–16–4, entry for study or exploration; 47–16–5, entry for consent to reclaim; 47–16–6, liens; 47–16–7, appraisals; and 47–16–8, satisfaction of liens.

Because Kansas’ proposed revisions to these previously approved regulations are nonsubstantive in nature, the Director finds that the proposed revisions do not render Kansas’ regulations less effective than the Federal regulations. Substantive revisions included in these regulations are summarized below.

B. Revisions to Kansas’ 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 the Federal regulations are nonsubstantive.

<table>
<thead>
<tr>
<th>Topic</th>
<th>State regulation</th>
<th>Federal counterpart regulation</th>
</tr>
</thead>
</table>
Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Kansas' proposed regulations are no less effective than the Federal regulations and is approving them.

C. Revisions to Kansas' Regulations That Are Not Substantively Identical to the Corresponding Federal Regulations

1. K.A.R. 47–16–5, Entry and Consent to Reclalm. Kansas proposed to revise paragraph (b)(1) to read as follows:

(1) Before entry a written finding shall be made by the Secretary with reasons supporting the following conclusions: (A) An emergency exists constituting a danger to the public health, safety, or general welfare; and (B) no other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices.

The Director is approving this amendment because Kansas proposed to replace K.A.R. 47–16–5(b)(1) the reference to section 410 of SMCRA that defines when an emergency exists with the actual language of section 410 of SMCRA that defines when an emergency exists.

2. K.A.R. 47–16–11, Reports. Kansas proposed a new section which specifies that for each grant, cooperative agreement or both, Kansas shall semiannually or annually (whichever the case may be) submit to OSM any reporting as required by OSM. The Director is approving this amendment because it is no less effective than the Federal regulations at 30 CFR 886.23 and the requirements of the Federal Assistance Manual.

IV. Summary and Disposition of Comments

Public Comments

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

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 Kansas program (Administrative Record No. KS–615.1). OSM received one comment from the U.S. Fish and Wildlife Service stating that it had no comments to offer on the proposed state regulations (Administrative Record No. KS–615.2).

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 Kansas proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request the EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from the EPA (Administrative Record No. KS–615.1). The EPA did not respond to OSM's request.

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

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. KS–615.1). Neither the SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Kansas on May 7, 1997, and as revised on November 14 and December 31, 1997. The Director approves the regulations as proposed by Kansas 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 30 CFR part 916, codifying decisions concerning the Kansas 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 12998

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12998 (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 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

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 et seq.) that this rule will not impose a cost of $100 million or more in any given year on
Local, state, or tribal governments or private entities.

**List of Subjects in 30 CFR Part 916**
- Intergovernmental relations, Surface mining, Underground mining.


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

For the reasons set out in the preamble, 30 CFR Part 916 is amended as set forth below:

**PART 916—KANSAS**

1. The authority citation for part 916 continues to read as follows:

<table>
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<tr>
<th>Original amendment submission date</th>
<th>Date of final publication</th>
<th>Citation/description</th>
</tr>
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<tr>
<td>May 7, 1997</td>
<td>March 3, 1998</td>
<td>K.A.R. 47–1–1, 3, 4, 8, 9, 10, 11; 47–2–14, 21, 53, 53a, 58, 64, 67, 74, 75; 47–3–1, 2, 3a, 42; 47–4–14a, 47–4–15; 47–4–16; 47–4–17; 47–5–5a; 47–5–16; 47–6–1, 2, 3, 4, 6, 7, 8, 9, 10; 47–7–2; 47–8–9, 11; 47–9–1, 2, 4; 47–10–1; 47–11–8; 47–12–4; 47–13–4, 5, 6; 47–14–7; 47–15–1a; 47–15–3, 4, 7, 8, 15, 17.</td>
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</table>

3. Section 916.25 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

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<thead>
<tr>
<th>Original amendment submission date</th>
<th>Date of final publication</th>
<th>Citation/description</th>
</tr>
</thead>
</table>

30 U.S.C. 1201 et seq.

2. Section 916.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

§ 916.15 Approval of Kansas regulatory program amendments.

Supplementary Information:

I. Background on the Texas Program

II. Submission of the Proposed Amendment

By letter dated December 1, 1997 (Administrative Record No. TX–643), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. Texas proposed to amend the Texas Surface Coal Mining and Reclamation Act (TSCMRA) to reflect changes resulting from the passage of Senate Bills (SB) 636 and 986 by the 75th Texas Legislature.

OSM announced receipt of the proposed amendment in the December 29, 1997, *Federal Register* (62 FR 67596), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on January 28, 1998. Because no one requested a public hearing or meeting, none was held.