

the Departmental Manual 516 DM 2, Appendix 1.10.

Author: The principal author of this rule withdrawal is Jim Krawchyk, 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.

Dated: February 18, 1998.

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]

BILLING CODE 4310-05-M

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 incidental to government-financed highway or other construction, exemption for coal extraction incidental to the extraction of other minerals, coal exploration, bonding procedures, performance standards, revegetation, 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. **EFFECTIVE DATE:** March 3, 1998.

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
- 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 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(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 incidental 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 activities; 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), reports. 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

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 (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. 47-7-2(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 activities; 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, reports.

In addition, via the facsimile machine on December 31, 1997 (Administrative Record No. KS-615.7), OSM notified Kansas of additional concerns regarding its November 14, 1997, response. These concerns involved typographical errors at K.A.R. 47-3-41(a)(49)(G), procedures for challenging ownership or control links shown in AVS; K.A.R. 47-9-1(c)(35)(a), backfilling and grading: time and distance requirements, and K.A.R. 47-16-11(a), reports. Kansas responded to the concerns by correcting typographical errors in a letter dated December 31, 1997 (Administrative Records No. KS-615.8).

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 employee; 47-2-53, definition of regulatory authority or state regulatory authority; 47-2-53a,

definition of regulatory program; 47-2-58, definition of significant, imminent environmental harm to land, air or water resources; 47-2-64, definition of state act; 47-2-67, definition of surety bond; 47-2-74, definition of public road; 47-2-75, definitions; 47-3-1, application for mining permit; 47-3-2, application for mining permit; 47-3-3a, application for mining permit—maps; 47-3-42, application for mining permit; 47-4-14a, administrative hearing procedure; 47-4-15, administrative hearings—discovery; 47-4-16, interim orders for temporary relief; 47-4-17, administrative hearings—award of costs and expenses; 47-5-5a, civil penalties; 47-5-16, final assessment and payment of civil penalty; 47-6-1, permit review; 47-6-2, permit revision; 47-6-3, permit renewals; 47-6-4, permit transfers, assignments, and sales; 47-6-6, permit conditions; 47-6-7, permit suspension or revocation; 47-6-8, termination of jurisdiction; 47-6-9, exemption for coal extraction incident to government-financed highway or other construction; 47-6-10, exemption for coal extraction incidental to the extraction of other minerals; 47-7-2, coal exploration; 47-8-9, bonding procedures; 47-8-11, use of forfeited bond funds; 47-9-1, performance standards; 47-9-2, revegetation; 47-9-4, interim performance standards; 47-10-1, underground mining; 47-11-8, small operator assistance program; 47-12-4, lands unsuitable for surface mining; 47-13-4, training and certification of blasters; 47-13-5, responsibilities of operators and blasters-in-charge; 47-13-6, training; 47-14-7, employee financial interests; 47-15-1a, inspection and enforcement; 47-15-3, lack of information—inability to comply; 47-15-4, injunctive relief; 47-15-7, state inspections; 47-15-8, citizen's requests for state inspections; 47-15-15, service of notices of violations and cessation orders; and 47-15-17, maintenance of permit areas.

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 contained 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 "Section 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 SMCRA.

2. *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 777.11, 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.

3. *K.A.R. 47-3-42, Application for Mining Permit.* a. At K.A.R. 47-3-42(a), Kansas proposed to revise its adoption by reference of applicable Federal regulations at 30 CFR Parts 773, 778, 779, 780, and 785 concerning applications for mining permits from as they existed on July 1, 1990, to as they existed on July 1, 1995. In this adoption by reference, Kansas proposed to add new paragraphs K.A.R. 47-3-42(a)(47), verification of ownership or control application information; K.A.R. 47-3-42(a)(48), review of ownership or control violation information; K.A.R. 47-3-42(a)(49), procedures for challenging ownership or control links shown in AVS; and K.A.R. 47-3-42(a)(50), standards for challenging ownership or control links and the status of violations. Kansas also proposed to redesignate old paragraphs K.A.R. 47-3-42(a)(47) and (a)(48) as new paragraphs K.A.R. 47-3-42(a)(51) and (a)(52). The Director is approving this adoption by reference, the addition

of the new paragraphs, and the redesignation of the old paragraphs.

b. 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)(B) which authorizes the secretary of the Kansas

Department of Health and Environment or his designee to make decisions concerning ownership and control relationships with regards to Kansas coal mining applications, issued permits, and coal mining violations. The Director is approving these amendments.

4. *K.A.R. 47-5-5a, Civil Penalties.* a. 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 Incident 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.

11. *K.A.R. 47-7-2, Coal Exploration.* 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 800.4 [deleting subsection (d)], 800.5 [deleting subsection (c)], 800.11 [deleting subsection (e)], 800.12 [deleting subsection (c)], 800.13, 800.14, 800.15, 800.16, 800.17, 800.20, 800.21, 800.30, 800.40, 800.50, and 800.60 [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 amendment.

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;

OSM's time and distance requirements at 30 CFR 816.101 were suspended indefinitely effective on August 31, 1992 (See 57 FR 33874, July 31, 1992). Therefore, States may adopt backfilling and grading time and distance standards which result in contemporaneous mining and reclamation as required by 30 CFR 816.100. The Director finds that Kansas' proposed provisions at K.A.R. 47-9-1(c)(35) are no less effective than the Federal requirements for contemporaneous reclamation at 30 CFR 816.100 and is approving this amendment.

ii. Kansas proposed to revise K.A.R. 47-9-1(c)(36), backfilling and grading: general requirements, by deleting subsections (k)(3) (i) and (ii) in its adoption by reference of 30 CFR 816.102. Kansas also proposed to delete the following statement:

The first paragraph of subsection (a) of 30 CFR 816.102 shall be replaced by the following: Absent an approved schedule, backfilling and grading will be completed within 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. Disturbed areas shall be backfilled and graded to comply with the following:

In addition, Kansas proposed to renumber existing paragraphs (c)(36) through (c)(50) as paragraphs (c)(37) through (c)(51), respectively. The Director previously approved these amendments (See 59 FR 28769, June 3, 1994).

iii. At redesignated K.A.R. 47-9-1(c)(43), revegetation: standards for

success, Kansas proposed to delete previously approved language in paragraph (c)(2) that was added to its adoption by reference of 30 CFR 816.116 and editorial note "3." The Director previously approved this amendment (See 59 FR 28769, June 3, 1994).

iv. Kansas proposed to add requirements 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 these amendments (See 59 FR 28769, June 3, 1994). However, in the previous approval, paragraph (a)(3) was formerly 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 delete subsection (d). The Director previously approved this amendment (See 59 FR 28769, June 3, 1994).

d. 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.

e. At K.A.R. 47-9-1(e), Kansas proposed to revise its adoption by reference at 30 CFR Part 817 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. In its adoption by reference of 30 CFR 817.61 at K.A.R. 47-9-1(e)(17), Kansas proposed to delete everything from 30 CFR 817.61(c)(1) except the statement, "all blasting operations shall be conducted under the direction of a certified blaster." The Director previously approved this deletion (See 59 FR 28769, June 3, 1994).

ii. Kansas proposed to add an additional requirement at K.A.R. 47-9-1(e)(39) in its adoption by reference of 30 CFR 817.116(a). At K.A.R. 47-9-1(e)(39), Kansas proposed to add new subparagraph (a)(3), regarding the submission of data being used for bond release, at the end of the adopted Federal regulations at 30 CFR 817.116(a). While the Federal regulations do not provide similar detailed requirements regarding submission of data used for bond release, in accordance with section 505(b) of SMCRA and 30 CFR 730.11(b), the State regulatory authority has the

discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations that are no less stringent than those imposed under SMCRA and the Federal regulations. Moreover, the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining operations for which no Federal counterpart exists. Section 505(b) of SMCRA and 30 CFR 730.11 dictate that such State provisions shall not be construed to be inconsistent with the Federal program. Therefore, the Director is approving this proposed revision at K.A.R. 47-9-1(e)(39).

iii. In its adoption by reference of 30 CFR 817.133, postmining land use, at K.A.R. 49-9-1(e)(44), Kansas proposed to delete subsection (d). The Director previously approved this amendment (See 59 FR 28769, June 3, 1994).

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 823.4, 823.11 [deleting subsection (a)], 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 827.11, 827.12, and 827.13 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this adoption by reference.

i. At K.A.R. 47-9-1(i), Kansas proposed to revise its adoption by reference of 30 CFR 828.11 and 828.12 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this adoption by reference.

j. At K.A.R. 47-9-1(j), Kansas proposed to revise its list of terms that replace terms in the Federal regulations

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 revise paragraph (a)(6), which adopts 30 CFR 762.12 by reference, by specifying that the term "secretary" shall mean the "secretary of the United States Department of the Interior." The Director previously approved this amendment (See 59 FR 28769, June 3, 1994).

18. *K.A.R. 47-13-4, Training and Certification of Blasters.* a. At paragraph (a), Kansas proposed to revise its adoption by reference of applicable Federal regulations at 30 CFR part 850 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.

19. *K.A.R. 47-14-7, Employee Financial Interests.* At paragraph (a), Kansas proposed to revise its adoption by reference of applicable Federal regulations at 30 CFR Part 705 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this amendment.

20. *K.A.R. 47-15-1a, Inspection and Enforcement.* a. At paragraph (a), Kansas proposed to revise its adoption by reference of applicable Federal regulations at 30 CFR Parts 840, 842, and 843 from as they existed on July 1, 1990, to as they existed on July 1, 1995. The Director is approving this amendment.

b. At paragraph (b), Kansas proposed to revise its list of terms that replaces terms in the Federal regulations adopted by reference under K.A.R. 47-15-1a by adding paragraphs (b)(20) and (b)(21). Paragraph (b)(20) specifies that the term "Director" shall be replaced by "secretary." Paragraph (b)(21) specifies that the reference to "30 CFR 843.15(e)" shall be replaced by "An informal public hearing shall be conducted in accordance with K.A.R. 47-4-14a." The Director previously approved these amendments (See 59 FR 28769, June 3, 1994).

D. Revisions to Kansas' Regulations That Are Substantively the Same as the Corresponding Provisions of the Federal Regulations

1. *K.A.R. 47-4-14a(c), Administrative Hearing Procedures—Rules of Procedure.* a. At paragraph (c)(1), Kansas proposed to require that hearing locations be designated by the presiding officer, giving consideration to the convenience of the parties, their representatives and witnesses, except as otherwise provided by the state act. The Director previously approved this amendment (See 58 FR 32847, June 14, 1993).

b. At paragraphs (c)(7) and (c)(7)(B), Kansas proposed that persons "may" petition for leave to intervene in a proceeding as opposed to persons "shall" petition for leave to intervene in a proceeding. Kansas also proposed that the presiding officer make a decision to grant intervention based on factors listed at K.A.R. 47-4-14a(c)(7)(B)(i)-(iv) if subsections (7)(A)(i) or (7)(A)(ii) are

not applicable. The Director previously approved these amendments (See 59 FR 28769, June 3, 1994).

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 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 recipient of the notices 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).

e. At K.A.R. 47-4-14a(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).

f. At K.A.R. 47-4-14a(d)(3)(A), Kansas proposed to correct the incorrect reference citation. The Director previously approved this correction (See 58 FR 32847, June 14, 1993).

2. *K.A.R. 47-6-2, Permit Revision.* At paragraph (c), Kansas proposed to add a provision that applications for permit revisions only need to be accompanied by a map "when it is required." The Director is approving this provision because it is not inconsistent with the Federal regulations and will not render the Kansas regulations less effective than the Federal regulations.

3. *K.A.R. 47-6-7, Permit Suspension or Revocation.* a. At paragraph (e), Kansas proposed that the procedure set forth in K.A.R. 47-4-14a(d) 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.

b. Kansas proposed to revise paragraph (h)(1) by requiring a party to file a notice of appeal of an initial order in a suspension or revocation proceeding with the secretary within 15 days after receipt of the order. This revision is no less effective than the

Federal regulation at 43 CFR 4.1377 which allows a party to petition for discretionary review of initial decisions.

4. *K.A.R. 47-5-5a, Civil Penalties.* At paragraph (b)(17), Kansas proposed to update the address where individuals file a petition for review of a proposed individual civil penalty assessment. The new address is "Administrative Appeals Coordinator, Administrative Appeals Section, Office of the Secretary, Kansas Department of Health and Environment, Mills Building, Suite 400D, 109 SW 9th Street, Topeka, Kansas 66612-1215." The Director is approving this amendment.

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 subsections (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 sections (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).

2. *K.A.R. 47-4-15, Administrative Hearings; Discovery.*

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.

Topic	State regulation	Federal counterpart regulation
General Reclamation Requirements-Contractor Responsibility	K.A.R. 47-16-9	30 CFR 874.16.
Noncoal Reclamation-Exclusion of Certain Noncoal Reclamation Sites	K.A.R. 47-16-10	30 CFR 875.16 and 875.20.

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 Reclaim. 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 at 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)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed

program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that 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 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 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.

Dated: February 23, 1998.
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:

Authority: 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.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
May 7, 1997	March 3, 1998	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.

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:

§ 916.25 Approval of Kansas abandoned mine land reclamation plan amendments.

Original amendment submission date	Date of final publication	Citation/description
May 7, 1997	March 3, 1998	K.A.R. 47-16-1 through 47-16-11.

[FR Doc. 98-5392 Filed 3-2-98; 8:45 am]
 BILLING CODE 4310-05-M

DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943
 [SPATS No. TX-036-FOR]

Texas 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 Texas regulatory program and abandoned mine land reclamation plan (hereinafter referred to as the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposed revisions to statutes pertaining to eligibility of land and water, small operator assistance, definitions, exemptions, applicability to governmental units, coal exploration

operations, prohibition on surface coal mining in certain areas, filing of a schedule of notices of violation, effect of past or present violation, improvidently issued permits, performance standards, and cessation orders. The amendment is intended to revise the Texas program to be consistent with SMCRA.

EFFECTIVE DATE: March 3, 1998.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, 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 Texas 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 Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. Background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, **Federal Register** (45 FR

12998). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 943.10, 943.15, and 943.16.

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 898 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.