

March 7, 1997, and the regulations are amended in 21 CFR 558.195(c) and (d) to reflect the approval.

The supplemental NADA does not contain added safety or effectiveness data. Therefore, a freedom of information (FOI) summary for the supplemental approval is not required. An FOI summary for the currently approved application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857, between 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on

the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

#### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.195 is amended by adding new paragraph (c)(2) and in the table in paragraph (d) a new entry for "13.6 to 535.7 (0.0015 to 0.059 pct)" to read as follows:

#### § 558.195 Decoquinatone.

\* \* \* \* \*

(c) \* \* \*

(2) Type A medicated articles containing 6 percent decoquinatone may be used to make dry or liquid Type B cattle (including veal calf), sheep, and goat feeds as in paragraph (d) of this section.

(d) \* \* \*

Decoquinatone in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
13.6 to 535.7 (0.0015 to 0.059 pct)		Cattle: prevention of coccidiosis in ruminating and nonruminating calves (including veal calves) and cattle caused by <i>Eimeria bovis</i> and <i>E. zurnii</i> .	Feed Type C feed (including dry milk replacer) to provide 22.7 mg per 100 lb body weight (0.5 mg per kg) per day. May be prepared from dry Type B feed containing 0.06 to 0.6 pct decoquinatone or liquid Type B feed containing 0.0125 to 0.05 pct decoquinatone. The liquid Type B feed must have pH 5.0 to 6.5 and contain a suspending agent to maintain a viscosity of not less than 500 centipoises. Feed at least 28 days during period of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to animals producing milk for food.	011526
		Young sheep: prevention of coccidiosis caused by <i>Eimeria ovinoidalis</i> , <i>E. parva</i> , <i>E. bakuensis</i> , <i>E. crandallis</i> .	do	do
		Young goats: prevention of coccidiosis caused by <i>Eimeria christenseni</i> , <i>E. ninakohlyakimovae</i> .	do	do
*	*	*	*	*

Dated: April 8, 1997.

**Robert C. Livingston,**

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.  
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#### DEPARTMENT OF THE INTERIOR

##### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 904

[SPATS No. AR-027-FOR]

#### Arkansas 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 Arkansas regulatory program and abandoned mine land reclamation plan (hereinafter referred to as the "Arkansas program") under the Surface Mining Control and Reclamation Act of 1997 (SMCRA). Arkansas proposed revisions to and additions of rules pertaining to termination of jurisdiction, permit fees, minimum required permit application information, remaining ownership and control, permit approval or denial, small operator assistance, bond and insurance, water replacement, subsidence damage repair/compensation, performance standards, inspections, and abandoned mine land reclamation requirements.

Arkansas also proposed to remove duplicated regulation sections for surface and underground mining permit applications pertaining to general requirements for the description of hydrology and geology, groundwater information, surface water information, alternative water supply information, fish and wildlife resources information, and land use information. The purpose of the amendment is to update the Arkansas program as a result of amendments to OSM's regulations and to enhance the enforcement of the State's program.

**EFFECTIVE DATE:** April 29, 1997.

**FOR FURTHER INFORMATION CONTACT:** Dwight Thomas, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6458, Telephone: (918) 581-6430.

#### **SUPPLEMENTARY INFORMATION:**

- I. Background on the Arkansas 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 Arkansas Program**

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas regulatory program. Background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the November 21, 1980, **Federal Register** (45 FR 77003). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 904.10, 904.12, 904.15, and 904.16.

On May 2, 1983, the Secretary of the Interior approved the Arkansas abandoned mine land reclamation plan. General background information on the Arkansas plan, including the Secretary's findings and the disposition of comments, can be found in the May 2, 1983, **Federal Register** (48 FR 19710). Subsequent actions concerning amendments to the plan can be found at 30 CFR 904.25 and 904.26.

#### **II. Submission of the Proposed Amendment**

By letter dated April 2, 1996 (Administrative Record No. AR-557), Arkansas submitted a proposed amendment to its program pursuant to SMCRA. Arkansas submitted the proposed amendment, at its own initiative, as a result of amendments to Title 30, Chapter VII of the Code of

Federal Regulations (CFR) and to enhance the enforcement of the State program. Arkansas proposed to revise the following sections of its regulations: ASCMRC Section 700.10(b), Termination of jurisdiction; ASCMRC Section 701.5, Definitions for "drinking, domestic or residential water supply," "lands eligible for reining," "material damage," "non-commercial building," "occupied residential dwelling and structures related thereto," "previously mined area," "replacement of water supply," and "unanticipated event or condition"; ASCMRC Section 761.12(h), Procedures; ASCMRC Section 771.25(b), Permit fees; ASCMRC Section 778.14(c), Compliance information; ASCMRC Section 778.18, Personal injury and property insurance information; ASCMRC Section 779.19(b), Vegetation information; ASCMRC Section 779.25(k), Cross-sections, maps, and plans; ASCMRC Section 780.21 and 784.14, Hydrologic information; ASCMRC Section 780.23 and 784.15, Land use information; ASCMRC Section 780.25 and 784.16, Ponds, impoundments, banks, dams and embankments; ASCMRC Section 784.20, Subsidence control; ASCMRC Section 784.25(a), Return of coal processing waste to abandoned underground workings; ASCMRC Section 785.25, Lands eligible for reining; ASCMRC Section 786.5(b), Definitions for "applicant/violator system or AVS," "federal violation notice," "ownership or control link," "state violation notice," and "violation notice"; ASCMRC Section 786.11(c)(2), Public notices of filing of permit applications; ASCMRC Section 786.17(c)(1), (c)(2), and (c)(4), Review of violations; ASCMRC Section 786.19(q)-(r), Criteria for permit approval or denial; ASCMRC Section 786.30, Improvidently issued permits: General procedures; ASCMRC Section 786.31, Improvidently issued permits: Rescission procedures; ASCMRC Section 786.32, Verification of ownership or control application information; ASCMRC Section 786.33, Review of ownership or control violation information; ASCMRC Section 786.34, Procedures for challenging ownership or control links shown in AVS; ASCMRC Section 786.35, Standards for challenging ownership or control links and the status of violations; ASCMRC Section 788.14(a)(3), Permit renewals: Completed applications; ASCMRC Section 795.12, Program services; ASCMRC Section 795.13(a)(2), Eligibility for assistance; ASCMRC Section 795.17, Qualified laboratories; ASCMRC Section 795.19, Applicant

liability; ASCMRC Part 800, General requirements for bonding of surface coal mining and reclamation operations under the state program; ASCMRC Section 816.41(e), Hydrologic balance protection; ASCMRC Section 816.46(a), (c)(2) through (c)(4), Hydrologic balance: Siltation structures; ASCMRC Section 816.49, Impoundments; ASCMRC Section 816.81, Coal mine waste: General requirements; ASCMRC Section 816.116(c)(2) through (c)(4), Revegetation: Standards for success; ASCMRC Section 816.121-U(a) through (g), Subsidence control: General requirements; ASCMRC Section 816.122-U, Subsidence control: Public notice; ASCMRC Section 827.12(e) and (g), Coal processing plants: Performance standards; ASCMRC Section 842.11(c) through (f), Inspections; ASCMRC Section 842.14, Review of adequacy and completeness of inspections; ASCMRC Section 874.5, Definition for "left or abandoned in either an unreclaimed or inadequately reclaimed condition"; and ASCMRC Section 874.12(a)(4) through (a)(8), Eligible lands and water.

Arkansas also proposed to remove the following sections from its regulations: ASCMRC Section 779.13 and 783.13, Description of hydrology and geology: General requirements; ASCMRC 779.15 and 783.15, Groundwater information; ASCMRC 779.16 and 783.16, Surface water information; ASCMRC 779.17 and 783.17, Alternative water supply information; ASCMRC 779.20 and 783.20, Fish and wildlife resources information; ASCMRC Section 779.22 and 783.22, Land use information; ASCMRC Section 795.16, Data requirements; ASCMRC Part 805, Amount and duration of performance bond; ASCMRC Part 806, Forms, conditions, and terms of performance bonds and liability insurance; ASCMRC Part 807, Procedures, criteria and schedule for release of performance bond; ASCMRC Part 808, Performance bond forfeiture criteria and procedures; ASCMRC Section 816.82, Coal processing waste banks: Site inspection; ASCMRC Section 816.85, Coal processing waste banks: Construction requirements; ASCMRC Section 816.86, Coal processing waste: Burning; ASCMRC Section 816.88, Coal processing waste: Return to underground workings; ASCMRC Section 816.89, Disposal of noncoal mine wastes; ASCMRC Section 816.91 through .93, Coal processing waste: Dams and embankments; ASCMRC Section 816.112, Revegetation: Use of introduced species; ASCMRC Section 816.124-U, Subsidence control: Surface owner protection; and ASCMRC Section

816.126-U, Subsidence control: Buffer zones.

OSM announced receipt of the proposed amendment in the May 3, 1996, **Federal Register** (61 FR 19881), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on June 3, 1996.

During its review of the amendment, OSM identified concerns relating to ASCMRC Section 786.34, Procedures for challenging ownership or control links shown in AVS; ASCMRC Section 816.49, Impoundments; typographical errors; and a number of incorrect reference citations. OSM notified Arkansas of these concerns by electronic mail (E-mail) dated October 22, 1996 (Administrative Record No. AR-557.07).

By letter dated December 9, 1996 (Administrative Record No. AR-557.06), and a telephone facsimile (fax) dated January 7, 1997 (Administrative Record No. AR-557.08), Arkansas responded to OSM's concerns by submitting revisions to its proposed program amendment. Arkansas proposed additional revisions to ASCMRC 786.34, Procedures for challenging ownership or control links shown in AVS; ASCMRC 795.19, Applicant liability; and ASCMRC 816.49, Impoundments, and proposed to correct typographical errors and a number of incorrect reference citations.

Based upon the revisions to the proposed program amendment submitted by Arkansas, OSM reopened the public comment period in the January 30, 1997, **Federal Register** (62 FR 4499). The public comment period closed on February 14, 1997.

In a letter dated February 19, 1997 (Administrative Record No. AR-557.12), Arkansas withdrew its proposed revisions concerning ownership and control. Therefore, the following proposed revisions originally submitted on April 2, 1996, are withdrawn and will not be addressed in this final rule: ASCMRC 778.14(c), Compliance information; ASCMRC 786.5(b), Definitions for "applicant/violator system or AVS," "federal violation notice," "ownership or control link," "state violation notice," and "violation notice"; ASCMRC 786.17(c)(1) and (c)(2), Review of violations; ASCMRC 786.30, Improvidently issued permits: General procedures; ASCMRC Section 786.31, Improvidently issued permits: Rescission procedures; ASCMRC Section 786.32, Verification of ownership or control application information; ASCMRC Section 786.33, Review of ownership or control violation information; ASCMRC Section 786.34, Procedures for challenging ownership or control links shown in AVS; and ASCMRC Section 786.35, Standards for challenging ownership or

control links and the status of violations.

### III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

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

#### A. Revisions to Arkansas's Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

##### 1. Revisions to Existing Regulations and New Regulations

a. *The proposed State regulations listed in the following table contain language that is the same as or similar to the corresponding sections of SMCRA and/or the Federal regulations.* The amendments contain additions and/or changes to the existing State regulations. Differences between the proposed State regulations and SMCRA and/or the Federal regulations are nonsubstantive, or the proposed State amendments involve provisions that add specificity and do not adversely affect other aspects of the program.

Topic	State regulation(s)	Federal counterpart regulation(s)
<b>General</b>		
Termination of jurisdiction .....	ASCMRC 700.10(b) .....	30 CFR 700.11(d)
<b>State Program</b>		
Definitions: Drinking, domestic or residential water supply; Lands eligible for remining; Material damage; Non-commercial building; Occupied residential dwelling and structures related thereto; Previously mined area; Replacement of water supply; Unanticipated event or condition.	ASCMRC 701.5 .....	30 CFR 701.5
<b>Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan</b>		
Reclamation plan: Hydrologic information .....	ASCMRC 780.21(f)(3)(v) ....	30 CFR 784.14(e)(3)(iv)
Reclamation plan: Land use information .....	ASCMRC 780.23 .....	30 CFR 780.23
Reclamation plan: Siltation structures, impoundments, banks, dams and embankments.	ASCMRC 780.25 .....	30 CFR 780.25
<b>Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan</b>		
Subsidence control plan .....	ASCMRC 784.20 .....	30 CFR 784.20
<b>Requirements for Permits for Special Categories of Mining</b>		
Lands eligible for remining .....	ASCMRC 785.25 .....	30 CFR 785.25
<b>Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions</b>		
Review of violations .....	ASCMRC 786.17(c)(4) .....	30 CFR 773.15(b)(4)
Criteria for permit approval or denial .....	ASCMRC 786.19 (q) and (r).	30 CFR 773.15(c)(12) and (c)(13)

Topic	State regulation(s)	Federal counterpart regulation(s)
<b>Small Operator Assistance</b>		
Program services and data requirements .....	ASCMRC 795.12 .....	30 CFR 795.9
Eligibility for assistance .....	ASCMRC 795.13 (a)(2), (a)(2)(i) and (a)(2)(ii).	30 CFR 795.6 (a)(2), (a)(2)(i) and (a)(2)(ii)
Qualified laboratory, General .....	ASCMRC 795.17(a)(1) .....	30 CFR 795.3
Applicant liability .....	ASCMRC 795.19(a)(1) .....	30 CFR 795.12
<b>Permanent Program Performance Standards</b>		
Drinking, domestic or residential water supply .....	ASCMRC 816.41(e) .....	30 CFR 816.41(j)
Hydrologic balance: Siltation structures—Definition for "other treatment facilities" .....	ASCMRC 816.46(a)(3) .....	30 CFR 701.5
Sedimentation ponds—Spillways .....	ASCMRC 816.46(c)(2) .....	30 CFR 816.46(c)(2)
Coal mine waste: General requirements .....	ASCMRC 816.81(a) and (c)(2).	30 CFR 816.81(a) and (c)(2)
Revegetation: Standards for success .....	ASCMRC 816.116(c)(2)(i) and (c)(2)(ii).	30 CFR 816.116(c)(2)(i) and (c)(2)(ii)
Subsidence control: Public notice .....	ASCMRC 816.122-U .....	30 CFR 817.122
Coal processing plants: Performance standards .....	ASCMRC 827.12(g) .....	30 CFR 827.12(e)
<b>Inspection and Enforcement Procedures</b>		
Inspections .....	ASCMRC 842.11(c)–(f) .....	30 CFR 842.11(c)–(f)
Review of adequacy and completeness of inspections .....	ASCMRC 842.14 .....	30 CFR 842.14
<b>Abandoned Mine Land Reclamation—General Reclamation Requirements</b>		
Definition: Left or abandoned in either an unreclaimed or inadequately reclaimed condition.	ASCMRC 874.5 .....	30 CFR 870.5
Eligible lands and water .....	ASCMRC 874.12(a)(4)– (a)(8).	30 CFR 874.12(d)–(h)

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Arkansas's proposed rules are no less effective than the Federal regulations and is approving them.

The Director is also removing the required program amendment at 30 CFR 904.16(a) concerning the definition of the term "lands eligible for reining" because Arkansas proposed the definition at ASCMRC Section 701.5 thereby meeting the requirement.

*b. ASCMRC Subchapter J, Bond and insurance requirements for surface coal mining and reclamation operations.* Arkansas proposed at subchapter J, to strike all existing language from Part 800, General requirements for bonding of surface coal mining and reclamation operations; to remove Part 805, Amount and duration of performance bond; to remove Part 806, Forms, conditions, and terms of performance bonds and liability insurance; to remove Part 807, Procedures, criteria and schedule for release of performance bond; to remove Part 808, Performance bond forfeiture criteria and procedures; and to consolidate the provisions of the removed Parts into amended Part 800. The language in amended Part 800 is substantively identical to 30 CFR Part 800, Bond and insurance requirements for surface coal mining and reclamation

operations under regulatory programs, with the exception of ASCMRC 800.40(b)(1) through (b)(3). At ASCMRC 800.40(b)(1) and (b)(2), Arkansas proposed to recodify previously approved State language regarding inspections and evaluations or reclamation work by the Arkansas Reclamation Review Committee that was formerly codified at now-removed ASCMRC 807.11(d)(1) and (d)(2). Arkansas also proposed to recodifying at ASCMRC 800.40(b)(3), previously approved State language that requires the Reclamation Review Committee to consider comments received from the Committee and other persons when evaluating reclamation work. This previously approved language was formerly codified at now-removed ASCMRC 807.11(e)(1)(D).

The Director is approving Arkansas' proposal because it is no less effective than the Federal regulations at 30 CFR Part 800 and because it contains previously approved language.

*c. ASCMRC 816.46(b)(2), Hydrologic balance: siltation structures, general requirements.* Arkansas proposed to add an editorial note that this paragraph is suspended. This is consistent with the editorial note located at the end of 30 CFR 816.46. Therefore, the Director is approving the addition of the editorial note.

*d. ASCMRC 816.49, impoundments.* Arkansas proposed to amend this section by redesignating existing paragraphs (a)(1) through (a)(8) as paragraphs (a)(2) through (a)(9), respectively; by redesignating existing paragraphs (a)(9) through (a)(11) as paragraphs (a)(11) through (a)(13), respectively; and by adding new paragraphs (a)(1) and (a)(10). In new paragraph (a)(1), Arkansas proposed to add language that is substantively identical to 30 CFR 816.49(a)(1) that pertains to impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210–VI–TR60, Oct. 1985). Language proposed in new paragraph (a)(10) is substantively identical to 30 CFR 816.49(a)(10) and pertains to the location of any remaining highwall in an impoundment. Arkansas also proposed to revise newly redesignated paragraphs (a)(2), (a)(4), (a)(5), (a)(6)(i), (a)(9), and (a)(12), and existing paragraphs (c)(2), (c)(2)(i), and (c)(2)(ii) by inserting references to the Soil Conservation Service criteria for dam classifications. In addition, Arkansas proposed to revise newly redesignated paragraph (a)(9) pertaining to spillways by replacing the existing language with language that is substantively identical to 30 CFR 816.49(a)(9).

The Director is approving these revisions because they are substantively the same as and are no less effective than the Federal regulations at 30 CFR 816.49. The Director notes that the word "highway" in paragraph (a)(10) should be "highwall," and he is requiring Arkansas to correct this spelling error before the final rule is promulgated.

e. *ASCMRC 816.121-U, subsidence control: general requirements.* Arkansas proposed to amend this section by deleting the existing language in ASCMRC 816.121-U; by deleting sections ASCMRC 816.124-U and ASCMRC 816.126-U; and by combining the provisions of ASCMRC 816.121-U, ASCMRC 816.124-U, and ASCMRC 816.126-U into revised section ASCMRC 816.121-U.

The Director is approving this revision because the revised section ASCMRC 816.121-U is substantively the same as and is no less effective than the Federal regulations at 30 CFR 817.121, Subsidence control.

## 2. Deletions of Existing Regulations

Arkansas' proposed deletions of the following regulations are consistent with OSM's repeal of the Federal counterpart regulations shown in brackets:

a. *ASCMRC 779.13 and 783.13, Description of hydrology and geology: General requirements* [30 CFR 779.13 and 783.13, 48 FR 43956, September 26, 1983]; *ASCMRC 779.15 and 783.15, Groundwater information* [30 CFR 779.15 and 783.15, 48 FR 43956, September 26, 1983]; *ASCMRC 779.16 and 783.16, Surface water information* [30 CFR 779.16 and 783.16, 48 FR 43956, September 26, 1983]; *ASCMRC 779.17 and 783.17, Alternative water supply information* [30 CFR 779.17 and 783.17, 48 FR 43956, September 26, 1983]; *ASCMRC 779.20 and 783.20, Fish and wildlife resources information* [30 CFR 779.20 and 783.20, 52 FR 47352, December 11, 1987]; *ASCMRC 779.22 and 783.22, Land use information* [30 CFR 779.22 and 783.22, 59 FR 27932, May 27, 1994]; *ASCMRC 779.25(k), Surface coal mining application requirements for premining land use information* [30 CFR 779.25(a)(11), 59 FR 27932, May 27, 1994]; *ASCMRC 816.82, Coal processing waste banks: Site inspection* [30 CFR 816.82, 48 FR 44006, September 26, 1983]; *ASCMRC 816.85, Coal processing waste banks: Construction requirements* [30 CFR 816.85, 48 FR 44006, September 26, 1983]; *ASCMRC 816.86, Coal processing waste: Burning* [30 CFR 816.86, 48 FR 44006, September 26, 1983]; *ASCMRC 816.88, Coal processing waste: Return to underground workings* [30 CFR 816.88,

48 FR 44006, September 26, 1983]; *ASCMRC 816.89, Disposal of noncoal mine wastes* [30 CFR 816.89, 56 FR 65623, December 17, 1991]; *ASCMRC 816.91, Coal processing waste: Dams and embankments: General requirements* [30 CFR 816.91, 48 FR 44006, September 26, 1983]; *ASCMRC 816.92, Coal processing waste: Dams and embankments: Site preparation* [30 CFR 816.92, 48 FR 44006, September 26, 1983]; *ASCMRC 816.93, Coal processing waste: Dams and embankments: Design and construction* [30 CFR 816.93, 48 FR 44006, September 26, 1983]; *ASCMRC 816.112, Revegetation: Use of introduced species* [30 CFR 816.112, 48 FR 40141, September 2, 1983]; *ASCMRC 816.124-U, Subsidence control: Surface owner protection* [30 CFR 817.124, 48 FR 14638, June 1, 1983]; and *ASCMRC 816.126-U, Subsidence control: Buffer zones* [30 CFR 817.126, 48 FR 14638, June 1, 1983].

Because the above proposed deletions are consistent with OSM's repeal of the Federal counterpart regulations, the Director finds that the proposed deletions will not render the Arkansas regulations less effective than the Federal regulations.

b. *ASCMRC 795.16, data requirements.* Arkansas proposed to remove this section from its regulations and to combine its provisions with ASCMRC 795.12, Program services and data requirements. The Director is approving this revision because the provisions that were combined with ASCMRC 795.12 are substantively identical to 30 CFR 795.9, Program services and data requirements, and will not render the Arkansas regulations less effective than the Federal regulations.

## B. Revisions to Arkansas's Regulations That Are Not Substantively Identical to the Corresponding Provisions of the Federal Regulations

### 1. ASCMRC 771.25 Permit Fees

The currently approved State regulation at ASCMRC 771.25 provides for the administration and enforcement fee to be equal to \$500.00 or \$30.00 per acre, whichever is greater, for all areas which will be affected during a 12-month period. Arkansas proposed to amend this section by replacing the current method of determining the annual administration and enforcement fee with one that charges a flat fee of \$600.00 per year through the life of the permit. Arkansas also proposed to allow the fee to be paid in two equal installments of \$300.00 each if the applicant chooses.

The Director finds that Arkansas' proposal regarding a fee structure and

the payment methods for the annual administration and enforcement fee are no less effective than the Federal regulation at 30 CFR 777.17, Permit fees, which allows application fees to be determined by the regulatory authority and to be paid over the term of the permit. The Director is approving this proposal.

### 2. ASCMRC 784.14 Hydrologic Information

Arkansas proposed to rename the heading to this section and add references to sections 780.21(e), 780.21(f)(3)(iii), and 780.21(f)(3)(v). Also, through an apparent typographical error, the heading for section 784.15 had been deleted making it appear that section 784.14 also referenced section 780.23. Moreover, the reference to ASCMRC 780.23 incorrectly excluded ASCMRC 780.23(a)(2) from consideration for underground mining operations. Arkansas proposed to correct this error by removing the reference to section 780.23.

The proposed changes are consistent with Federal regulations at 30 CFR 784.14, Hydrologic information, and will not render the Arkansas program less effective than the Federal regulations. Therefore, the Director is approving the changes.

### 3. ASCMRC 784.15 Reclamation Plan: Postmining Land Uses

As discussed above, the heading for ASCMRC 784.15 had been deleted. Arkansas proposed to reinsert the correct heading, "Reclamation Plan: Postmining Land Uses," for ASCMRC 784.15 and to add a reference to ASCMRC 780.23 under this heading.

The proposed changes are consistent with Federal regulations at 30 CFR 784.15, Reclamation plan: Land use information, and will not render the Arkansas regulations less effective than the Federal regulations. Therefore, the Director is approving the proposal.

### 4. ASCMRC 784.16 Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments

Arkansas proposed to amend the heading for this section by replacing the term "Ponds" with the term "Siltation Structures."

The proposed change is consistent with the Federal regulations at 30 CFR 784.16, Reclamation plan: Siltation structures, impoundments, banks, dams, and embankments. The Director is approving the revision.

#### 5. ASCMRC 816.116(c)(2)–(c)(3) Revegetation: Standards for Success

Arkansas proposed to amend ASCMRC 816.116(c)(2) by deleting the precipitation qualifier of “more than 26 inches of annual average precipitation”; by deleting paragraph (c)(3) which is applicable to lands that receive less than 26 inches of annual average precipitation; and by redesignating paragraph (c)(4) as (c)(3).

The Director finds that the proposed revisions at paragraph (c) will not make the Arkansas regulations less effective than the Federal regulations at 30 CFR 816.116(c) and is approving them because: (1) Arkansas experiences more than 26 inches of annual average precipitation throughout the State, so the qualifier in paragraph (c)(2) is unnecessary; (2) the State does not experience less than 26 inches of annual average precipitation so paragraph (c)(3) is not applicable for lands in Arkansas; and (3) with the removal of paragraph (c)(3), the redesignation of existing paragraph (c)(4) as new paragraph (c)(3) is acceptable.

#### C. Revisions to Arkansas's Regulations With No Corresponding Federal Regulations

##### 1. ASCMRC 816.81(c)(3) and (c)(4), Coal Mine Waste: General Requirements

Arkansas proposed to delete paragraphs (c)(3) and (c)(4) from its regulations. The Director is approving this deletion because these paragraphs contain provisions for which there are no counterpart Federal regulations at 30 CFR 816.81, Coal mine waste: General requirements, and because the deletion of these paragraphs will not render the Arkansas regulations less effective than the above Federal regulations.

#### IV. Summary and Disposition of Comments

##### Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

##### Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Arkansas program. OSM received two comments which were from the Department of Army, U.S. Army Corps of Engineers, Engineering Division (Administrative Record Nos. AR–557.05 and AR–

557.13). The comments were in response to the original and reopened Federal Register notices for the proposed rule. This agency responded in both comments that the changes in the State's program were satisfactory.

##### 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. 7410 *et seq.*).

None of the revisions that Arkansas proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. AR–557.01). 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. AR–557.01). Neither the SHPO nor the ACHP responded to OSM's request.

#### V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Arkansas on April 2, 1996, as revised on December 9, 1996 (Administrative Record No. AR–557.06, January 7, 1997 (Administrative Record No. AR–557.08), and February 19, 1997 (Administrative Record No. AR–557.12).

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

As discussed in finding number A.1.d., the Director is requiring Arkansas to correct the aforementioned spelling error before the State promulgates the final rule.

The Director is also taking this opportunity to revise 30 CFR 904.10 and 904.20.

The Federal regulations at 30 CFR Part 904, codifying decisions concerning the Arkansas 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.

#### IV. Procedural Determinations

##### Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

##### Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

##### National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

##### Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

##### Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal

which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

#### Unfunded Mandates

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

#### List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 8, 1997.

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

For the reasons set out in the preamble, 30 CFR Part 904 is amended as set forth below:

#### PART 904—ARKANSAS

1. The authority citation for Part 904 continues to read as follows:

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

2. Section 904.10 is revised to read as follows:

##### § 904.10 State regulatory program approval.

(a) The Arkansas regulatory program as submitted on February 18, 1980, and as amended on May 29, 1980, and July 2, 1980, and as clarified on July 29, 1980, August 8, 1980, August 14, 1980, and August 29, 1980, was conditionally approved, effective November 21, 1980. Beginning on that date, the Arkansas Department of Pollution Control and Ecology was deemed the regulatory

authority in Arkansas for all surface coal mining and all Coal exploration operations on non-Federal and non-Indian lands.

(b) The Arkansas regulatory program as amended on September 2, 1980, January 19, 1981, and March 12, 1981, was fully approved, effective January 22, 1982.

(c) Copies of the approved program are available at:

(1) Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547.

(2) Arkansas Department of Pollution Control and Ecology, Surface Mining and Reclamation Division, 8001 National Drive, Little Rock, Arkansas 72219-8913.

3. Section 904.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

##### § 904.15 Approval of Arkansas regulatory program amendments.

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
April 2, 1996	April 29, 1997	<p style="text-align: center;">* * * * *</p> ASCMRC 700.10(b); 701.5; 771.25(b); 779.13; .15; .16; .17; .20; .22; .25(k); 780.21(f)(3)(v); .23; .25(a)(2) through (f); 783.13; .15; .16; .17; .20; .22; 784.14; .15; .16; .20; 785.25; 786.16(c)(4); .19; 795.12; .13; .16; .17; .19; Parts 800, 805 through 808; 816.41(e); .46(a)(3), (b)(2), (c)(2); .49; .81(a), (c)(2), (3), (4); .82; .85; .86; .88; .89(d); .91; .92; .93; .112; .116(c)(2), (3), (4); .121-U(a), (c) through (g); .122-U; .124-U; .126-U; 827.12(g); 842.11(c)(1) through (4); (d), (e), (f); 842.14.

#### § 906.10 [Amended]

4. Section 904.16 is amended by removing and reserving paragraph (a).
5. Section 904.20 is revised to read as follows:

#### § 904.20 Approval of Arkansas abandoned mine land reclamation plan.

The Arkansas Reclamation Plan, as submitted on July 7, 1982, is approved, effective May 2, 1983. Copies of the approved program are available at:

(a) Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547.

(b) Arkansas Department of Pollution Control and Ecology, Surface Mining and Reclamation Division, 8001 National Drive, Little Rock, Arkansas 72219-8913.

6. Section 904.25 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

#### § 904.25 Approval of Arkansas abandoned mine land reclamation plan amendments.

*	*	*	*	*
Original amendment submission date	Date of final publication	Citation/description		
*	*	*	*	*
April 2, 1996	April 29, 1997	ASCMRC 874.5; .12(a)(4) through (8).		

[FR Doc. 97-10990 Filed 4-28-97; 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-030-FOR]

**Texas Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving a proposed amendment to the Texas regulatory program (hereinafter referred to as the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposed revisions to the Texas Coal Mining Regulations (TCMR) pertaining to the replacement of water supply where it has been adversely impacted by contamination, diminution, or interruption resulting from surface mining activities. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** April 29, 1997.

**FOR FURTHER INFORMATION CONTACT:** A. Dwight Thomas, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6548, Telephone: (918) 581-6430.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the 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 October 21, 1996 (Administrative Record No. TX-629), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to a July 8, 1996, letter (Administrative Record No. TX-618) that OSM sent to Texas in accordance with 30 CFR 732.17(c).

OSM announced receipt of the proposed amendment in the November 4, 1996, **Federal Register** (61 FR 56648), 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 December 4, 1996. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified a concern relating to the proposed definition of the term "replacement of water supply" at TCMR 701.008(77). Texas had proposed language at TCMR 701.088(77)(a) that appeared to place a restriction on the option for a one-time payment of any operation and maintenance costs of a replacement water delivery system that were in excess of customary and reasonable delivery costs for the premining water supply. The proposed language would have required the permittee and the water supply owner to enter into an agreement prior to commencement of mining operations. The counterpart Federal definition at 30 CFR 701.5 contains no restriction as to when the permittee and the water supply owner may enter into an agreement for the one-time payment option. OSM notified Texas of this concern by letter dated January 8, 1997 (Administrative Record No. TX-629.08).

By letter dated March 5, 1997 (Administrative Record No. TX-619.11), Texas responded to OSM's concern by requesting that its amendment be revised at TCMR 701.008(77)(a) to exclude the proposed phrase "at any time prior to commencement of mining operations."

**III. Director's Findings**

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

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

**1. TCMR 701.008(77) Definition of Replacement of Water Supply**

Texas' proposed definition of the term "replacement of water supply" requires that protected water supplies contaminated, diminished, or interrupted by coal mining operations be replaced. It provides for replacement of water supplies which are equivalent to the premining quantity and quality on both a temporary and permanent basis. Replacement includes provision of an equivalent water delivery system and compensation for operation and maintenance costs in excess of customary and reasonable delivery costs for the premining water supply. If agreed to by the water supply owner, a one-time payment based on the present worth of the increased annual operating and maintenance costs for a period of time agreed upon by the water supply owner and the permittee would fulfill the obligation to compensate the owner. The definition allows the water supply owner to waive replacement in circumstances where the water supply is not needed for the current or postmining land uses. If water replacement is waived, the permittee must demonstrate that a suitable alternative water source is available and could be developed if needed.

The Director finds that Texas' proposed definition at TCMR 701.008(77) is substantively identical to the corresponding Federal definition at 30 CFR 701.5. Therefore, Texas' proposed regulation is no less effective than the Federal regulation.

**2. TCMR 779.130 Alternative Water Supply Information**

Texas proposed to revise its alternative water supply regulation by clarifying the existing requirements and adding the requirement that the application identify the suitability of the alternative water sources for existing premine uses and approved postmine land uses.

The Director finds that the revised regulation at TCMR 779.130 has substantively identical regulatory requirements as the counterpart Federal regulation at 30 CFR 780.21(e). Therefore, it is no less effective than the Federal regulation.

**3. TCMR 816.352 Water Rights and Replacement**

Texas proposed to replace the word "affected" with the words "adversely impacted" to clarify that the specified water supply to be replaced must have been adversely impacted by contamination, diminution, or interruption proximately resulting from