

FEDERAL REGISTER: 48 FR 6332 (February 11, 1983)

DEPARTMENT OF THE INTERIOR

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Part 900

Programs for the Conduct of Surface Mining Operations within Each State

ACTION: Final rule.

SUMMARY: Subchapter T contains the Secretary of the Interior's final decisions regarding State or Federal programs governing surface mining and reclamation operations. This rule adds a new Part 900 to Subchapter T which provides an introduction to the synopsis of the approved State programs, the abandoned mined lands reclamation programs, the cross referencing provisions of Federal programs and the full texts of State and Federal cooperative agreements for regulation of mining on Federal lands. The introduction explains the content and authority of the permanent regulatory programs.

EFFECTIVE DATE: March 14, 1983.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Chief, Division of State Program Assistance, Program Operations and Inspection, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; telephone (202) 343-5351.

SUPPLEMENTARY INFORMATION:

Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) requires the implementation of permanent programs to regulate coal exploration and surface coal mining and reclamation operations. The Office of Surface Mining Reclamation and Enforcement (OSM) promulgated national permanent program regulations in 30 CFR Chapter VII which establish the minimum standards for the regulatory programs.

Under sections 501-503 of the Act and 30 CFR Part 731, the States were provided the opportunity to submit programs for approval by the Secretary and thus achieve primary responsibility for regulating coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands. Each program includes laws, regulations and systems governing the designating of lands as unsuitable for surface coal mining, permitting and performance standards for surface and underground mining operations, bonding, conflicts of interest, the protection of government employees, blasting and inspection and enforcement. A deadline of August 3, 1979, was established by 30 CFR 731.12 for submittal of State programs. However, on August 22, 1979, the District Court for the District of Columbia issued an opinion extending the deadline for States to file their submissions to March 3, 1980 (see *In re: Permanent Surface Mining Reclamation Litigation*, 13 ERC 1586). By March 3, 1980, 24 of the States with known coal reserves had submitted programs to obtain primary regulatory responsibility. As of this date, all 24 State programs have been approved by the Secretary. The Secretary's decisions on these programs appear in 30 CFR Chapter VII, Subchapter T, in Parts 901-950.

In addition, the State of Alaska submitted its proposed program on July 23, 1982 (47 FR 33520). The Secretary is scheduled to make his decision whether to approve Alaska's program soon.

Under Section 504 of SMCRA and 30 CFR 736.11 (and in conjunction with the August 22, 1979, opinion of the District Court for the District of Columbia), OSM must promulgate and implement a Federal program for each State that did not submit a program by March 3, 1980, and in which the Director, OSM, reasonably expects coal exploration or surface coal mining and reclamation operations to exist on non-Federal and non-Indian lands at any time before June, 1985. Federal programs have been promulgated for Georgia (47 FR 36396), Michigan (47 FR 47158), and Oregon (47 FR 18267), and have been proposed for the States of California (47 FR 32686), Idaho (47 FR 30214), Nebraska (47 FR 57236), Nevada (47 FR 47792), Rhode Island (47 FR 57246), South Dakota (47 FR 34760), and Washington (47 FR 26794), and are also being considered for other States. Coal exploration programs have been promulgated for Massachusetts (47 FR 18238), and Rhode Island (47 FR 18282).

Once a State's Title V regulatory program has been approved, it becomes eligible to have its Title IV Abandoned Mine Land program approved which then entitles the State to receive funds for reclamation projects.

Also, upon approval of a State's Title V regulatory program, the State may enter into a cooperative agreement with OSM for the regulation of coal mining on Federal lands by the State.

The OSM actions on each State program, Federal program (or coal exploration program), abandoned mine land program, and Federal lands program will be codified under 30 CFR Chapter VII, Subchapter T, Parts 901-950. Rules for each Federal program for a State will be included in Subchapter T under the appropriate Part number assigned to that State. The rules for Federal programs for each State cross reference pertinent program rules in Subchapters F, G, J, K and L.

When OSM proposed 30 CFR Part 900, it specifically requested public comments on the most appropriate means to facilitate Federal enforcement of State program provisions. At that time, OSM indicated that it was considering several options: (1) Publishing the full text of each State program, (2) incorporating by reference the approved State regulatory programs, or (3) publishing a notification of approval for State programs, which would include specific details about the Secretary's approval decision. After considering the several options, OSM has decided to continue publishing notifications of approval for State programs. Additionally, OSM has modified the proposed Section 901.12 to make clear that the Secretary may enforce provisions of approved State programs and permits issued pursuant to State programs directly in instances when a State is not adequately enforcing its program. See the sections of this notice entitled "Disposition of Comments" and "Differences Between the Proposed and Final Versions of This Rule" for more information on OSM's decision.

DISPOSITION OF COMMENTS

1. The Associated Electric Cooperative, Inc. and the Consolidation Coal Company suggested that OSM codify the full text of each State program. The commentors suggested that full text codification would enhance the availability of State programs to persons and would ensure format uniformity with the codification of other programs such as Federal programs and cooperative agreements.

OSM estimates that it would cost nearly \$2,000,000 to publish the complete text of all required State laws and regulations and other provisions in the Code of Federal Regulations. The expense does not appear justified when there are other means to ensure availability of programs to interested persons, such as by making hard copies of approved programs available. Further, full text codification would not enhance format uniformity between State regulatory programs and other programs codified under Subchapter T. OSM has found that each State program is unique, particularly in codification methods for its laws and regulations. OSM does not believe that full text publication would enhance uniformity in format codification.

2. The American Mining Congress and the National Coal Association (Joint NCA-AMC Committee) felt the rule should be amended so that it is clear that a copy of a State program would be available from OSM and the State regulatory authority free of charge.

When OSM codifies a Secretarial decision approving a State's regulatory program, the promulgated rule effecting the Secretary's decision specifies locations where copies of the approved program are available for inspection and copying. OSM believes that it would be beyond the scope of this rulemaking to prohibit both OSM and the States from recovering normal costs associated with the reproduction of lengthy documents. OSM cannot compel the States to provide free copies of their programs. However, as a matter of policy, OSM attempts to provide requestors copies of specific parts of State programs relevant to their interests at no charge and encourages the States to do the same.

DIFFERENCES BETWEEN THE PROPOSED AND FINAL VERSIONS OF THIS RULE

OSM has made changes from the proposed to the final version of this rule.

1. Paragraph (d) of the proposed rule has been redesignated as paragraph (e) and a new paragraph (d) has been added under Section 900.4, "Responsibilities," which describes those responsibilities that pertain to Title IV of SMCRA, the abandoned mine land programs.

2. Section 900.11 has been shortened without any substantive change.

3. Section 900.12 has been restructured by labeling the original paragraph as paragraph (a) and by adding a new paragraph (b) which sets forth the legal authority by which the Secretary may enforce provisions of the Act and conditions of permits issued under approved State regulatory programs. The new paragraph provides notice to the public that the Secretary may enforce provisions of the Act or conditions of permits issued pursuant to State programs. Section

504(b) provides that when a State is not enforcing any part of its approved State program, the Secretary may provide for Federal enforcement pursuant to Section 521. Section 521(a) provides for Federal enforcement of the Act in a State with an approved regulatory program and conditions of a permit issued pursuant to a program if after a citizen brings to the Secretary's attention a violation of the Act or permit condition and after notice to the State, the State fails to act within 10 days. New paragraph (b) will allow the Secretary to take direct and immediate enforcement action. This procedure is separate from the State program withdrawal of approval procedure provided for in Section 521(b) of the Act and Part 733 of the regulations, of which substituted Federal enforcement of the State program, or portion thereof, is a part.

4. Section 900.13 has been modified to make clear the distinction between a Federal program and a coal exploration program.

PROCEDURAL MATTERS

Paperwork Reduction Act

There are no information collection requirements in 30 CFR Part 900 requiring approval by the Office of Management and Budget under 44 U.S.C. 3507.

National Environmental Policy Act

The Secretary has determined that this rulemaking is not a major Federal action that would significantly affect the human environment under 43 U.S.C. 4231 *et seq.* Therefore, an environmental impact statement has not been prepared.

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

LIST OF SUBJECTS IN 30 CFR PART 900

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 10, 1983.

Daniel N. Miller, Jr.,

Assistant Secretary for Energy and Minerals.

Accordingly, 30 CFR Chapter VII is amended as follows:

1. Subchapter T is amended by revising the heading to read as follows:

SUBCHAPTER T -- PROGRAMS FOR THE CONDUCT OF SURFACE MINING OPERATIONS WITHIN EACH STATE

2. Subchapter C is further amended by adding a new Part 900 to read as follows:

PART 900 -- INTRODUCTION

Section

900.1	Scope.
900.2	Objectives.
900.4	Responsibilities.
900.11	Organization of the Subchapter.
900.12	State regulatory programs.
900.13	Federal programs and Federal coal exploration programs.
900.14	Abandoned mine land programs.
900.15	Federal lands program cooperative agreements.

Authority: Sections 102, 201, 405, 503, 504, 505 and 523 of Pub. L. 95-87 (30 U.S.C. 1202, 1211, 1235, 1253, 1254, and 1273).

SECTION 900.1 - SCOPE.

This Part sets forth the purpose and organization of Parts 901-950 of this Subchapter.

SECTION 900.2 - OBJECTIVES.

The objective of this Part is to provide an introduction to the synopsis of the approved State programs, the Abandoned Mined Lands Reclamation programs, the cross referencing provisions of Federal programs and the full texts of State and Federal cooperative agreements for regulation of mining on Federal lands. The introduction explains the content and authority of the permanent regulatory programs.

SECTION 900.4 - RESPONSIBILITIES.

(a) Each State that has surface coal mining and reclamation operations or coal exploration activities on non-Federal, non-Indian lands must have either an approved State program or a promulgated Federal program as required by Title V of the Act and 30 CFR Chapter VII, Subchapter C. Approval of a State program and promulgation of a Federal program are described in the paragraphs below.

(b) Under Section 503 of the Act and 30 CFR Parts 730, 731 and 732 a State in which there are coal exploration activities or surface mining and reclamation operations must submit a State program to the Secretary for approval if it wishes to assume exclusive regulatory jurisdiction on non-Federal and non-Indian lands within its borders. The State programs must meet the requirements of the Act and 30 CFR Chapter VII, Subchapter C.

(c) Pursuant to Section 504 of SMCRA and 30 CFR 736.11, OSM must promulgate and implement a Federal program in each State in which the Director reasonably expects coal exploration or surface coal mining and reclamation operations to exist on non-Federal and non-Indian lands at any time before June, 1985, and either: (1) The State does not submit a State program, (2) the Secretary of the Interior finally disapproves the program submitted by the State, or (3) the Secretary of the Interior withdraws approval of the State program.

(d) Under Section 405 of SMCRA and 30 CFR Part 884, each State having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA, may submit to the Secretary a State Reclamation Plan, demonstrating its capability for administering an abandoned mine reclamation program. Title IV provides that the Secretary may approve the plan once the State has an approved regulatory program under Title V of SMCRA. If the Secretary determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of Title IV, the Secretary shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of SMCRA (30 U.S.C. 1235) contains the requirements for State reclamation plans.

(e) States with approved programs may enter into cooperative agreements with OSM in order to become the regulatory authority for coal mining on Federal lands, in accordance with 30 CFR Chapter VII, Subchapter D.

SECTION 900.11 - ORGANIZATION OF THE SUBCHAPTER.

Parts 901-950 are reserved for each State alphabetically. A part is reserved for each State. The programs applicable solely within each State will be codified in the applicable Part for that State under this Subchapter.

SECTION 900.12 - STATE REGULATORY PROGRAMS.

(a) Upon approval of a State regulatory program the Secretary will publish a final rule to be codified under the applicable part number assigned to the State. The full text will not appear below. Notification of the approval of the program and the dates on which any amendments were submitted will appear. Also included below are the addresses of OSM Headquarters, field and State Regulatory Authority offices where copies of the State programs are available for inspection and copying.

(b) Provisions of approved State regulatory programs or permits issued pursuant to an approved State regulatory program may be enforced by the Secretary or his authorized agents pursuant to Sections 504(b) and 521 of the Act and Part 842 of this Chapter.

SECTION 900.13 - FEDERAL PROGRAMS AND FEDERAL COAL EXPLORATION PROGRAMS.

The rules for each Federal program or coal exploration program are codified below under the assigned Part for the particular State.

SECTION 900.14 - ABANDONED MINE LAND PROGRAMS.

Programs for reclamation of abandoned mine lands are codified under the applicable Part for the State. The date of submittal and approval and the addresses at which copies of the program are available appear below in the applicable part for each State.

SECTION 900.15 - FEDERAL LANDS PROGRAM COOPERATIVE AGREEMENTS.

The full text of any State and Federal cooperative agreement for the regulation of coal exploration and mining on Federal lands is published below under the applicable Part. In addition, those requirements of a State program which are applicable on Federal lands in the State shall be specified.

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