§ 254.5 Misrepresentations of enrollment qualifications or limitations.

(a) It is deceptive for an industry member to misrepresent the nature or extent of any prerequisites or qualifications for enrollment in a course or program of instruction.

(b) It is deceptive for an industry member to misrepresent that the lack of a high school education or prior training or experience is not an impediment to successful completion of a course or obtaining employment in the field for which the course provides training.

9. Section 254.6 is revised to read as follows:

§ 254.6 Deceptive use of diplomas, degrees, or certificates.

(a) It is deceptive for an industry member to issue a degree, diploma, certificate of completion, or any similar document, that misrepresents, directly or indirectly, the subject matter, substance, or content of the course of study or any other material fact concerning the course for which it was awarded or the accomplishments of the student to whom it was awarded.

(b) It is deceptive for an industry member to offer or confer an academic, professional, or occupational degree, if the award of such degree has not been authorized by the appropriate State educational agency or approved by a nationally recognized accrediting agency, unless it clearly and conspicuously discloses, in all advertising and promotional materials that contain a reference to such degree, that its award has not been authorized or approved by such an agency.

(c) It is deceptive for an industry member to offer or confer a high school diploma unless the program of instruction to which it pertains is substantially equivalent to that offered by a resident secondary school, and unless the student is informed, by a clear and conspicuous disclosure in writing prior to enrollment, that the industry member cannot guarantee or otherwise control the recognition that will be accorded the diploma by institutions of higher education, other schools, or prospective employers, and that such recognition is a matter solely within the discretion of those entities.

10. Section 254.7 is revised to read as follows:

§ 254.7 Deceptive sales practices.

(a) It is deceptive for an industry member to use advertisements or promotional materials that misrepresent, directly or by implication, that employment is being offered or that a talent hunt or contest is being conducted. For example, captions such as, ''Men/women wanted to train for * * *,'' ''Help Wanted,'' ''Employment,'' ''Business Opportunities,'' and words or terms of similar import, may falsely convey that employment is being offered and therefore should be avoided.

(b) It is deceptive for an industry member to fail to disclose to a prospective student, prior to enrollment, the total cost of the program and the school's refund policy if the student does not complete the program.

(c) It is deceptive for an industry member to fail to disclose to a prospective student, prior to enrollment, all requirements for successfully completing the course of program and the circumstances that would constitute grounds for terminating the student's enrollment prior to completion of the program.

11. Section 254.8 is removed.

12. Section 254.9 is removed.

13. Section 254.10 is removed.

By direction of the Commission, Commissioner Swindle dissenting.

Donald S. Clark,

Secretary.

DISSENTING STATEMENT OF COMMISSIONER ORSON SWINDLE in *Regulatory Reform-Vocational School Guides,* File No. P964220

The Commission today has issued revised Guides for Private Vocational and Distance Schools (''Guides'') to address certain claims that private vocational schools make to their students and prospective students. I have voted against the Guides for two reasons. One reason is that the Guides are not likely to promote voluntary compliance because they do not resolve any demonstrated uncertainly among private vocational schools over what claims are likely to be considered deceptive. The other reason is that any need for Commission action would be largely eliminated if other government regulations and private oversight schemes were more actively enforced.

The Commission has a number of weapons in its arsenal to prevent unfair or deceptive acts and practices, each designed to be used for a specific purpose. Guides are issued when the Commission believes that guidance as to legal requirements ''would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission.'' Commission Rule of Practice 1.6. The purpose of such guidance is to ''provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry.'' Commission Rule of Practice 1.5.

The Commission has successfully used guides and policy statements to provide industry with standards that eliminate or substantially reduce uncertainty over what the Commission is likely to consider deceptive. *See, e.g.,* Guides for the Use of Environmental Marketing Claims, 16 C.F.R. Part 260; Federal Trade Commission Enforcement Policy Statement on Food Advertising (May 1994). However, there is no reason to believe here that private vocational schools are uncertain over what claims the Commission is likely to consider deceptive. Indeed, the public comments we received from schools did not reveal any such uncertainty that needs to be resolved by the Commission to promote voluntary compliance.[1]

Perhaps a better way of combatting misrepresentations would be for the government agencies and private bodies that directly regulate this industry to more vigorously enforce their own prohibitions. The Department of Education (''DOE'') can bar a private vocational school from receiving federal financial assistance if it makes misrepresentations in violation of DOE regulations. 34 C.F.R. Part 668. DOE's regulatory requirements provide a particularly powerful incentive for most private vocational schools not to make misrepresentations, given the critical importance to most of them of continuing to participate in federal financial assistance programs. State licensing boards and private accrediting bodies also can revoke the license or accreditation of a private vocational school that make misrepresentations.

Some private vocational schools may make misrepresentations notwithstanding these layers of regulation and oversight. When this occurs, DOE, state licensing boards, and private accreditation bodies should use their authority and their standards to address these misrepresentations in the first instance. Although Commission law enforcement action may also be needed to address such misrepresentations in discrete circumstances, I do not believe this possibility justifies our issuance of the Guides.

I dissent.

[FR Doc. 98–21296 Filed 8–7–98; 8:45am]

BILLING CODE 6750–01–M

[1] The comments received from private vocational schools overwhelmingly complained that reissuing the Guides would be confusing, frustrating, and burdensome in light of existing regulatory and oversight schemes—not an auspicious beginning for fostering voluntary industry compliance.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–022–FOR]

Oklahoma Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Oklahoma regulatory program (hereinafter referred to as the ''Oklahoma program'') under the

Surface Mining Control and Reclamation Act of 1977 (SMCRA). Oklahoma proposed revisions to its regulations pertaining to normal husbandry practices and nonaugmentative reclamation activities. The amendment identifies seeding, planting, fertilizing, and other practices that may be performed without restarting the five-year period of operator responsibility for reclamation success.

EFFECTIVE DATE: August 10, 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, extension 23. Internet: mwolfrom@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. Background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 936.15 and 936.16.

II. Submission of the Proposed Amendment

By letter dated July 3, 1997 (Administrative Record No. OK–978), Oklahoma submitted an amendment to its program pursuant to SMCRA. Oklahoma submitted the amendment at its own initiative. Oklahoma amended the Oklahoma Administrative Code (OAC) for surface mining operations at OAC 460:20–43–46(c)(4) and underground mining operations at OAC 460:20–45–46(c)(4) by adding normal husbandry practice and nonaugmentative reclamation activity criteria. The normal husbandry practice criteria relate to the levels of reseeding, fertilizing, liming, weed and pest control, mulching, irrigation, pruning, transplanting and replanting trees and shrubs, and repair of rills and gullies that may be performed without restarting the five-year period of operator responsibility for reclamation success. The nonaugmentative reclamation activity criteria relate to liming, fertilization, mulching, seeding or stocking of areas where temporary roads and sediment control structures are removed and of areas unavoidably disturbed because of third-party activities or interference.

OSM announced receipt of the proposed amendment in the August 8, 1997, **Federal Register** (62 FR 42715), 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 amendment. The public comment period closed on September 8, 1997. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified concerns in OAC 460:20–43–46(c)(4) and 460:20–45–46(c)(4) relating to the requirement that OSM approve normal husbandry practices used in the State; OAC 460:20–43–46(c)(4)(D) and 460:20–45–46(c)(4)(D) relating to a discrepancy between the proposed language and Appendix R of Oklahoma's Bond Release Guidelines for the repair of rills and gullies; and OAC 460:20–43–46(c)(4)(E) and 460:20–45–46(c)(4)(E) relating to the nonaugmentative reclamation activities proposed for temporary structures. OSM notified Oklahoma of these concerns by letters dated November 19, 1997, and March 23, 1998, and discussed the concerns with Oklahoma during telephone conferences held on February 10, 1998, and March 19, 1998 (Administrative Record Nos. OK–978.05, OK–978.10, OK–978.06, and OK–978.09, respectively).

By letters dated March 4, 1998, April 22, 1998, April 30, 1998, and May 12, 1998 (Administrative Record Nos. OK–978.08, OK–978.13, OK–978.14, and OK–978.11, respectively), Oklahoma responded to OSM's concerns by submitting additional explanatory information, technical guidelines, and revisions to its program amendment.

Based upon the additional explanatory information and revisions to the amendment submitted by Oklahoma, OSM reopened the public comment period in the May 28, 1998, **Federal Register** (63 FR 29174). The public comment period closed on June 12, 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 amendment. Only substantive changes are discussed in detail. Revisions that are not discussed below concern nonsubstantive wording changes or revised cross-references and paragraph notations to reflect organizational changes. The revisions not specifically discussed are no less stringent than SMCRA and no less effective than the Federal regulations.

1. Normal Husbandry Practices and Nonaugmentative Reclamation Activities

Oklahoma proposed substantively identical revisions to its regulations at OAC 460:20–43–46(c)(4) for surface coal mining operations and OAC 460:20–45–46(c)(4) for underground mining operations. Accordingly, findings concerning the revisions are combined. Oklahoma proposes to reorganize OAC 460:20–43–46(c)(4) and 460:20–45–46(c)(4) and to add new regulatory language in order to clarify the management practices and activities that may be performed without restarting the five-year period of operator responsibility for reclamation success.

OAC 460:20–43–46(c)(4) and OAC 460:20–45–46(c)(4). These sections provide that the Department and the Office of Surface Mining have approved selective husbandry practices and nonaugmentative reclamation activities that, when accomplished in accordance with subsections (A) through (G), do not extend the period of responsibility for revegetation success and bond liability.

In its letter dated April 22, 1998, Oklahoma stated that it understands that any normal husbandry practice not included in its March 4, 1998, revised amendment will be submitted to OSM for approval in accordance with 30 CFR 732.17 (Administrative Record No. OK–978.13). These sections also provide that approved normal husbandry practices shall be expected to continue as part of the postmining land use and shall be considered normal husbandry practices within the region for unmined lands having uses similar to the approved postmining land use of the disturbed area. To determine whether husbandry and conservation practices used by surface and underground mining operations are normal husbandry practices, Oklahoma will judge management practices on mined lands against the recommended normal husbandry practices for unmined lands provided by the Oklahoma State University (OSU) and the United States Department of Agriculture, Natural Resources Conservation Service (NRCS). OSU establishes and publishes recommended fertility and management practices for row crops, hayland, and grazingland that are tailored for soil conditions, crop rotations, tillage and

application practices. OSU has extension offices throughout the State to provide more site specific recommendations, if needed. In order to support its proposed regulations relating to normal husbandry practices at OAC 460:20–43–46(c)(4) and 460:20–45–46(c)(4), Oklahoma submitted several guidelines published by the OSU and NRCS relating to agricultural and conservation management practices for unmined lands in the State of Oklahoma (Administrative Record Nos. OK–978.08 and OK–978.11). Oklahoma will review and assess whether site specific activities are outside the normal husbandry practice guidelines through its routine inspection process. Evaluations will be made using professional judgement that will incorporate the guidelines provided by the OSU and the NRCS.

The Federal regulations at 30 CFR 816.116(c)(4) for surface mining operations and 817.116(c)(4) for underground mining operations allow the regulatory authority to approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, under specified conditions. The regulatory authority must obtain prior approval from OSM in accordance with 30 CFR 732.17 that the practices are normal husbandry practices that can be expected to continue as part of the postmining land use, or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices must be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area.

The Director finds that Oklahoma's requirements at OAC 460:20–43–46(c)(4) and 460:20–45–46(c)(4) are no less effective than the requirements of the counterpart Federal regulations. The Director also finds that the guidelines published by OSU and the NRCS represent normal husbandry practices in the State and is approving their use by Oklahoma in determining whether the fertility and management practices used by surface and underground mining operations are normal husbandry practices.

OAC 460:20–43–46(c)(4)(A) and 460:20–45–46(c)(4)(A). These subsections specify the types of practices that will not be considered augmentative. Oklahoma will consider limited reseeding and associated fertilizing and liming as nonaugmentative if the area is small in relation to the permit area, watershed, or surface property boundary, whichever is smaller. The size of the area relative to the surrounding area and the ability of the reclaimed area to meet the postmining land use will also be considered. Removal and reclamation of temporary structures identified at subsection (E) would not be considered augmentation under specified circumstances. Repair of rills and gullies that are not in excess of the stipulations at subsection (D) would not be considered augmentation. Oklahoma will require any minor reseeded areas to be fully established and meet the requirements of OAC 460:20–43–46(a) and (b) or 460:20–45–46(a) and (b) at the time of bond release.

The normal husbandry practice guidelines submitted by Oklahoma and OSM's policy outlined in the May 29, 1996, **Federal Register** (61 FR 26792) support the types of practices that Oklahoma will not consider augmentative. This provision ensures that the vegetation of these areas will be subject to Oklahoma's counterparts to the Federal regulations at 30 CFR 816.116 and 817.116 relating to the attainment of revegetation success. Therefore, the Director finds that OAC 460:20–43–46(c)(4)(A) and 460:20–45–46(c)(4)(A) are no less effective than 30 CFR 816.116(c)(4) and 817.116(c)(4).

OAC 460:20–43–46(c)(4)(B) and 460:20–45–46(c)(4)(B). These subsections provide that approved agricultural practices published by the OSU Cooperative Extension Service, including fertilizing, liming, weed and pest control, and mulching, are not considered augmentation. Oklahoma submitted several documents in support of this provision for cropland. The documents included OSU guidelines for management of wheat, grain sorgham, alfalfa, and soybean crops; guidelines for fertilizing and liming; and guidelines for weed control. Specific fertilizing and liming application levels are based on soil testing and yield goals. OSU guidelines for weed control recommend a complete program involving good cultural practices, mechanical control, and herbicides. Specific recommendations were provided for application of herbicides for crops of soybeans, winter wheat, alfalfa, corn, cotton, grain sorgham, sugar, mungbeans, peanuts, small grains, south peas, and sunflowers.

OSM concluded in its review of the documentation submitted by Oklahoma in support of this revision that the agricultural practice guidelines published by OSU are representative of normal husbandry practices for unmined cropland in Oklahoma. Therefore, the Director finds that OAC 460:20–43–46(c)(4)(B) and 460:20–45–46(c)(4)(B) are no less effective than 30 CFR 816.116(c)(4) and 817.116(c)(4).

OAC 460:20–43–46(c)(4)(C) and 460:20–45–46(c)(4)(C). These subsections provide that on all lands with a postmining land use other than cropland, any areas reseeded or replanted as a part or result of a normal husbandry practice must be small in size and limited in extent of occurrence, or a part of a hay management plan. A hay management plan is an agricultural practice described by the OSU Cooperative Extension Service. The reestablished vegetation must be in place for a sufficient length of time to not adversely affect Oklahoma's ability to make a valid determination at the time of bond release as to whether the site has been properly reclaimed.

This provision will ensure that Oklahoma will require that any reseeding or replanting of pasture, grazingland, rangeland, or other noncropland land use areas are done in accordance with OSU or NRCS normal husbandry practice guidelines. Oklahoma will also consider the size and extent of the reseeded or replanted areas before determining whether the period of responsibility for revegetation success and bond liability must restart for noncropland land use areas. This provision will also ensure that the vegetation is fully established before the release of bond as required in OAC 460:20–43–46(c)(4)(A) and OAC 460:20–45–56(c)(4)(A) for all land uses. Therefore, the Director finds that OAC 460:20–43–46(c)(4)(C) and 460:20–45–46(c)(4)(C) are no less effective than 30 CFR 816.116(c)(4) and 817.116(c)(4).

OAC 460:20–43–46(c)(4)(D) and 460:20–45–46(c)(4)(D). These subsections specify that the repair of rills and gullies will not be considered an augmentation practice if the occurrences and treatment of such rills and gullies constitute a normal conservation practice in the region. In the coal mining region of Oklahoma, the normal range of precipitation during fall or spring seeding seasons may result in the formation of rills and gullies. The NRCS in Oklahoma has prepared guidelines for the treatment of such rills and gullies for the State. Oklahoma determined that the NRCS plan for repair of these rills and gullies constitutes the treatment practice which is the usual degree of management customarily performed to prevent exploitation, destruction, or neglect of the soil resource and to maintain the productivity of the land use for unmined lands in Oklahoma. After initial vegetation establishment,

Oklahoma defines the treatment of rills and gullies requiring permanent reseeding of more than 10 acres in a contiguous block or 10 percent of a permit area initially seeded during a single year to be an augmentative practice because of the potential for delayed seeding of large areas to reduce the probability of revegetation success. The rills and gullies should be contoured or smoothed if the site is large. The area must be seeded during the appropriate seeding season with approved perennial species followed by an application of mulch. If permanent seeding of the area must be delayed due to weather conditions, then appropriate temporary erosion control measures must be used. These subsections also specify the methods of treatment for repair of rills and gullies, including seeding, mulching, and erosion control measures. These methods are based on the NRCS guidelines for repair of rills and gullies entitled ''State Standard and Specifications for Critical Area Treatment'' and ''Critical Area Planting.''

OSM concluded in its review of the documentation submitted by Oklahoma, in support of this revision, that repair of rills and gullies is a normal conservation practice in Oklahoma and that the guidelines published by NRCS for repair of rills and gullies are representative of normal husbandry practices for unmined land in Oklahoma. Therefore, the Director finds that OAC 460:20–43–46(c)(4)(D) and 460:20–45–46(c)(4)(D) are no less effective than 30 CFR 816.116(c)(4) and 817.116(c)(4).

OAC 460:20–43–46(c)(4)(E) and 460:20–45–46(c)(4)(E). These subsections provide that liming, fertilizing, mulching, seeding or stocking following the reclamation of temporary roads, temporary sediment or hydraulic control structures, areas disturbed by the installation or removal of oil and gas wells or utility lines, and areas where the vegetation was disturbed by non-mine related vehicular traffic not under the control of the permittee will not be considered augmentation.

As discussed above, Oklahoma's regulations at OAC 460:20–43–46(c)(4)(A) and 460:20-45–46(c)(4)(A) also apply to these areas. The provisions at subsections (A) that any minor reseeded areas be fully established and meet the requirements of OAC 460:20–43-46(a) and (b) or 460:20–45–46(a) and (b) at the time of bond release will ensure that the vegetation of these areas will be subject to Oklahoma's counterparts to the Federal regulations at 30 CFR 816.116 and 817.116 related to the attainment of revegetation success. It will also discourage the removal of ponds, roads, or diversions toward the end of the liability period for the surrounding area because these areas would not qualify for final bond release until vegetative cover is fully established and meets Oklahoma's revegetation standards.

Oklahoma's reference to temporary roads in its regulation is interpreted by OSM to mean those roads necessary for maintenance of sediment ponds, diversions, and reclamation areas. Ancillary roads used for maintenance do not include haul roads or other primary roads which should have been removed upon completion of mining. In its letter dated April 22, 1998, Oklahoma stated that in accordance with the Department's approved Bond Release Guidelines, haul roads must be removed prior to Phase I release.

Although Oklahoma's amendment is primarily concerned with defining normal husbandry practices, the term ''nonaugmentative reclamation activities'' is used with reference to the removal and reclamation of structures used in support of reclamation and the repair and reclamation of areas disturbed by the installation or removal of oil and gas wells or utility lines and areas where the vegetation was disturbed by non-mine related vehicular traffic not under the control of the permittee. OSM interprets this to mean Oklahoma does not consider reclamation of these areas as a normal husbandry practice. OSM agrees that reclamation of these areas, while being nonaugmentative, is not a normal husbandry practice.

OSM's policy concerning the term of liability for reclamation of roads and temporary sediment control structures. As outlined in the May 29, 1996, **Federal Register** (61 FR 26792), OSM has adopted the policy published for comment in the September 15, 1993, **Federal Register** (58 FR 48333). Section 515(b)(20) of SMCRA provides that the revegetation responsibility period shall commence ''after the last year of augmented seeding, fertilizing, irrigation, or other work'' needed to assure revegetation success. In the absence of any indication of Congressional intent in the legislative history, OSM interprets this requirement as applying to the increment or permit area as a whole, not individually to those lands within the permit area upon which revegetation is delayed solely because of their use in support of the reclamation effort on the planted area. As implied in the preamble discussion of 30 CFR 816.46(b)(5), which prohibits the removal of ponds or other siltation structures until two years after the last augmented seeding, planting of the sites from which such structures are removed need not itself be considered an augmented seeding necessitating an extended or separate liability period (48 FR 44038–44039, September 26, 1983).

The purpose of the revegetation responsibility period is to ensure that the mined area has been reclaimed to a condition capable of supporting the desired permanent vegetation. Achievement of this purpose will not be adversely affected by this interpretation of section 515(b)(20) of SMCRA because the lands involved are relatively small in size and either widely dispersed or narrowly linear in distribution and the delay in establishing revegetation on these sites is due not to reclamation deficiencies or the facilitation of mining, but rather to the regulatory requirement that ponds and diversions be retained and maintained to control runoff from the planted area until the revegetation is sufficiently established to render such structures unnecessary for the protection of water quality.

In addition, the areas affected likely would be no larger than those which could be reseeded (without restarting the revegetation period) in the course of performing normal husbandry practices, as that term is defined in 30 CFR 816.116(c)(4) and explained in the preamble to that rule (53 FR 34636, 34641; September 7, 1988; 52 FR 28012, 28016; July 27, 1987). Areas this small would have a negligible impact on any evaluation of the permit area as a whole. Most importantly, this interpretation is unlikely to adversely affect the regulatory authority's ability to make a statistically valid determination as to whether a diverse, effective permanent vegetative cover has been successfully established in accordance with the appropriate revegetation success standards. From a practical standpoint, it is usually difficult to identify precisely where such areas are located in the field once revegetation is established in accordance with the approved reclamation plan.

Based on the above discussion, the Director finds that Oklahoma's provisions for removal and reclamation of temporary roads and sediment control structures are consistent with and no less effective than the Federal regulations at 30 CFR 816.46(b)(5) and (6), 817.46(b)(5) and (6), 816.150(f)(6), 817.150(f)(6), and sections 515(b)(19) and (20) of SMCRA, as clarified by OSM in the September 15, 1993, **Federal Register** (58 FR 48333).

If the areas limed, fertilized, mulched, seeded or stocked following reclamation

of land disturbed by installation or removal of oil and gas wells or utility lines and following reclamation of land where the vegetation was disturbed by non-mine related vehicular traffic not under the control of the permittee are no larger than those which would be reseeded or stocked in the course of performing normal husbandry practices, then these activities too would not be considered augmentation under sections 515(b)(19) and (20) of SMCRA. Oil and gas well installations are common occurrences in the State of Oklahoma and usually affect only a small area of land. As discussed above, areas this small would have a negligible impact on any evaluation of the permit area as a whole. Most importantly, this interpretation is unlikely to adversely affect the regulatory authority's ability to make a statistically valid determination as to whether a diverse, effective permanent vegetative cover has been successfully established in accordance with the appropriate revegetation success standards. Oklahoma's regulations at OAC 460:20–43–46(c)(4)(A) and 460:20–45–46(c)(4)(A) require that any minor reseeded areas be fully established and meet the requirements of OAC 460:20–43–46(a) and (b) or 460:20–45–46(a) and (b) at the time of bond release. These provisions ensure that the vegetation of these areas will be subject to Oklahoma's counterparts to the Federal regulations at 30 CFR 816.116 and 817.116 relating to the attainment of revegetation success. Therefore, the Director is also approving liming, fertilizing, mulching, seeding or stocking following reclamation of these disturbed areas as nonaugmentative activities that will not restart the five-year period of operator responsibility for reclamation success.

OAC 460:20–43–46(c)(4)(F) and 460:20–45–46(c)(4)(F). These subsections specify that irrigation, reliming, and refertilization of revegetated areas; reseeding cropland; and renovating pastureland by overseeding with legumes after Phase II bond release shall be considered normal husbandry practices if the amount and frequency of these practices do not exceed normal husbandry practices used on unmined land within the region.

Documentation was submitted by Oklahoma to support these activities as normal husbandry practices on cropland and pastureland within the State. Therefore, the Director finds that Oklahoma's proposal is no less effective than the Federal requirements at 30 CFR 816.116(c)(4) and 817.116(c)(4), and is approving subsections (F).

OAC 460:20–43–46(c)(4)(G) and 460:20–45–46(c)(4)(G). At subsections (G), Oklahoma provides that other normal husbandry practices that may be conducted on postmining land uses of fish and wildlife habitat, recreation, and forestry without restarting the liability period are disease, pest, and vermin control; pruning; and transplanting and replanting trees and shrubs in accordance with OAC 460:20–43–46(b)(3) and 460:20–45–46(b)(3).

The Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) allow the regulatory authority to approve normal husbandry practices, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting specifically necessitated by such actions. The documentation submitted by Oklahoma shows that these types of activities are normal husbandry practices within the State for unmined lands. Therefore, the Director is approving the provisions at subsections (G).

2. Oklahoma Bond Release Guidelines

Oklahoma revised Appendices A and R of its bond release guidelines to reflect the changes made to OAC 460:20–43–46(c)(4) and 460:20–45–46(c)(4).

Appendix A, Definitions

The definition for ''augmentation'' was revised to reference Oklahoma's new guidelines for repair of rills and gullies at OAC 460:20–43–46(c)(4) and 460:20–45–46(c)(4). The definition for ''initial establishment of permanent vegetative cover'' was deleted because it is no longer applicable to Oklahoma's revised revegetation requirements.

The Director finds that the proposed revisions are consistent with the changes being approved for Oklahoma's regulations at OAC 460:20–43–46(c)(4) and 460:20–45-46(c)(4).

Appendix R, Guidelines for the Repair of Rills and Gullies in Oklahoma

Oklahoma is deleting Appendix R from its Bond Release Guidelines because the provisions for repair of rills and gullies were added to its program at OAC 460:20–43–46(c)(4)(D) for surface mining operations and 460:20–45–46(c)(4)(D) for underground mining operations in this rulemaking.

The Director finds that this deletion will not make Oklahoma's program less effective than the Federal regulations at 30 CFR 816.116(c)(4) or 817.116(c)(4).

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 Oklahoma program. No comments were received.

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

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from the EPA (Administrative Record No. OK–978.01). 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. OK–978.01). 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 Oklahoma on July 3, 1997, and as revised on March 4 and April 22, 1998.

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

The Federal regulations at 30 CFR Part 936, codifying decisions concerning the Oklahoma program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

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

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on 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 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 28, 1998.

Brent Wahlquist,

Regional Director, Mid-Contient Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 936 is amended as set forth below:

PART 936—OKLAHOMA

1. The authority citation for Part 936 continues to read as follows:

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

2. Section 936.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 936.15 Approval of Oklahoma regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
July 3, 1997	8–10–98	OAC 460:20–43–46(c)(4) (A) through (G); 460:20–45–46(c)(4) (A) through (G); Oklahoma Bond Release Guidelines—Appendices A and R.

[FR Doc. 98–21292 Filed 8–7–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–98–002]

RIN 2115–AE46

Special Local Regulations for Marine Events; Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending permanent special local regulations established for marine events held annually in the Delaware River adjacent to Penns Landing, Philadelphia, Pennsylvania, by increasing the regulated area and by identifying specific events for which the regulated area will be in effect. This action is intended to update the regulation in order to enhance the safety of life and property during the events.

DATES: This final rule is effective on September 9, 1998.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Operations Division, Auxiliary Section, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 27, 1998, the Coast Guard published a notice of proposed rulemaking entitled Special Local Regulations for Marine Events; Delaware River, Philadelphia, Pennsylvania, in the **Federal Register** (63 FR 9977). The Coast Guard received no comments on the proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

33 CFR 100.509 established special local regulations for marine events held annually in Delaware River adjacent to Penns Landing, Philadelphia, Pennsylvania. The purpose of these regulations is to control vessel traffic during marine events to enhance the