

#### *E. Section 460:20–5–6. Penalties*

Oklahoma proposed to revise section 460:20–5–6(a) by including advisory board members and commissioners on the list of persons subject to criminal penalties if they perform any function or duty under the State's program and have a direct or indirect financial interest in any underground or surface coal mining operation. The counterpart Federal regulation for this provision is found at 30 CFR 705.6(a). Oklahoma's proposed provision has the same meaning as the Federal provision except that Oklahoma's provision applies to employees, advisory board members, and commissioners and sets the fine at no more than \$5,000 (the dollar amount that we previously approved), whereas, the Federal provision applies only to employees and sets the fine at no more than \$2,500. Because the inclusion of the advisory board members and commissioners is not inconsistent with the Federal provision, we find that the above State regulation is no less effective than the corresponding Federal regulation and we are approving it.

#### *F. Section 460:20–5–13. Appeals Procedures*

Oklahoma proposed to add new paragraph (b) to provide that members of advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests should follow any appeals process provided for by the Oklahoma Governor's Office, Director of Appointments. The counterpart Federal regulation at 30 CFR 705.21(a) provides for employees to file their appeal, in writing, through established procedures within their particular State. Because Oklahoma's provision provides appeal rights to members of advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests, we find that this provision is not inconsistent with the counterpart Federal provision and we are approving it.

#### *G. Section 460:20–15–4. Regulatory Coordination With Requirements Under Other Laws*

In this section, Oklahoma proposed to add the phrase "along with all state, federal, and local permitting and licensing [sic] requirements." With the addition of this phrase, the revised paragraph reads as follows:

Each regulatory program shall, to avoid duplication, provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Fish and Wildlife

Coordination Act, as amended (16 U.S.C. 661 *et seq.*); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 *et seq.*); The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); the Bald Eagle Protection Act, as amended (16 U.S.C. 668a), along with all state, federal, and local permitting and licensing [sic] requirements; for Federal programs only, the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*); and the Archeological Resources Protection Act of 1979 (16 U.S.C. 470a *et seq.*) where Federal and Indian lands covered by that Act are involved.

The counterpart Federal regulation at 30 CFR 773.5 contains all of the same provisions as Oklahoma's regulation except for the phrase that provides coordination of review and issuance of permits with applicable requirements of all State, Federal, and local permitting and licensing requirements. Because Oklahoma's regulation is substantively the same as the counterpart Federal regulation and the phrase added to this section is not inconsistent with the counterpart Federal regulation, we are approving the revision.

#### *H. Section 460:20–43–46. and Section 460:20–45–46. Revegetation: Standards for Success*

At the ends of paragraphs (b)(6), Oklahoma proposed to add the phrase "of approved vegetation species." With the addition of this phrase, the revised paragraphs read as follows:

For areas previously disturbed by mining that were not reclaimed to the requirements of this Chapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion. In general this is considered to be at least 70% vegetative ground cover of approved vegetation species.

The counterpart Federal regulations at 30 CFR 816.116(b)(5) and 817.116(b)(5) require, at a minimum, that the vegetative ground cover be not less than the ground cover existing before redisturbance and that it be adequate to control erosion. Because Oklahoma's addition of the phrase "of approved vegetation species" only serves to clarify that the ground cover must consist of approved vegetation species and because the phrase is not inconsistent with the counterpart Federal regulations, we are approving this revision.

### **IV. Summary and Disposition of Comments**

#### *Public Comments*

We asked for public comments on the amendment, but did not receive any.

#### *Federal Agency Comments*

On November 19, 2001, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Oklahoma program (Administrative Record No. OK–993.03). The U.S. Department of Labor, Mine Safety and Health Administration responded on November 27, 2001 (Administrative Record No. OK–993.01), with a comment regarding the definition for "auger mining" found in Section 460:20–3–5. Oklahoma did not propose to amend its definition for "auger mining." We previously found that Oklahoma's definition for "auger mining" is no less effective than the counterpart Federal definition at 30 CFR 701.5.

Also, in a letter dated August 5, 2002 (Administrative Record No. OK–993.10), the U.S. Department of the Interior, Fish and Wildlife Service (FWS) commented that it believes that the proposed amendment regarding remining and reclamation of previously mined and certain inadequately reclaimed lands would be protective of the environment and federally threatened and endangered species. In addition, the agency recommended that all proposed remining and reclamation activities of previously mined and certain inadequately reclaimed lands be submitted to them "for review for the potential to adversely affect threatened and endangered species." The State regulation at 460:20–33–12, concerning lands eligible for remining, requires that any application for a remining permit must be made according to all the requirements applicable to surface coal mining and reclamation operations. This includes the State regulations at 460:20–15–5(a)(3)(B) and 460:20–27–9(a), (b), and (c). The State regulation at 460:20–15–5(a)(3)(B) requires the regulatory authority to send a notice of receipt of an application to State and Federal fish and wildlife agencies with an opportunity to comment. The State regulations at 460:20–27–9(a) and (b) require applications to include fish and wildlife resource information, including information on threatened and endangered species. Further, the State regulation at 460:20–27–9(c) requires the regulatory authority to send fish and wildlife application information to the FWS for review within 10 days if requested by the FWS. Because coal operators must have a valid permit before conducting surface coal mining and reclamation operations and these permits must include the above coordination of review with State and