

Dated: May 14, 2002.

**Acting 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 936**

[OK-029-FOR]

**Oklahoma Regulatory Program**

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

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

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Oklahoma Department of Mines (Department or Oklahoma) proposed revisions to its rules about areas designated by act of congress as unsuitable for mining and coal exploration operations. Oklahoma intends to revise its program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** May 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Wolf from, Director, Tulsa Field Office. Telephone: (918) 581-6430. Internet: [mwolf from@osmre.gov](mailto:mwolf from@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

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

**I. Background on the Oklahoma Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal

and non-Indian lands within its borders by demonstrating that its program includes, among other things, " \* \* \* a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \* ; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Oklahoma program on January 19, 1981. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program in the January 19, 1981, **Federal Register** (46 FR 4902). You can also find later actions concerning Oklahoma's program and program amendments at 30 CFR 936.15 and 936.16.

**II. Submission of the Amendment**

By letter dated November 20, 2001 (Administrative Record No. OK-988.02), Oklahoma sent us an amendment to its approved regulatory program under SMCRA (30 U.S.C. 1201 *et seq.*). Oklahoma sent the amendment in response to an August 23, 2000, letter (Administrative Record No. OK-988) that we sent to Oklahoma in accordance with 30 CFR 732.17(c).

We announced receipt of the amendment in the December 21, 2001, **Federal Register** (66 FR 65858). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on January 22, 2002. We received comments from one Federal agency and one State agency.

During our review of the amendment, we identified concerns relating to definitions at OAC 460:20-7-3, procedures at OAC 460:20-7-5, and various editorial errors. We notified Oklahoma of the concerns by letters dated December 13, 2001, January 16, 2002, and March 6, 2002 (Administrative Record Nos. OK-988.06, OK-988.08, and OK-988.12).

On February 21 and March 26, 2002, Oklahoma sent us revisions to its amendment (Administrative Record Nos. OK-988.10 and OK-988.14). Based upon Oklahoma's revisions, we reopened the public comment period in the April 5, 2002, **Federal Register** (67 FR 16341). The public comment period ended on April 22, 2002. We did not receive any comments.

**III. OSM's Findings**

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

*A. Minor Revisions to Oklahoma's Rules*

Oklahoma proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved rules:

OAC 460:20-7-5(b)(2), rights determination and OAC 460:20-7-5(g), applicability to lands designated as unsuitable by Congress.

Because these changes are minor, we find that they will not make Oklahoma's rules less effective than the Federal regulations.

*B. OAC 460:20-7-3 Definitions*

Oklahoma deleted its definition of "surface coal mining operations which exist on the date of enactment" because this term no longer appears in its rules.

We are approving Oklahoma's deletion because it is consistent with OSM's deletion of the Federal counterpart definition of "surface coal mining operations which exist on the date of enactment." See 64 FR 70766, dated December 17, 1999.

*C. Revisions To Oklahoma's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations*

The State rules listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations.

Topic	State rule	Federal counterpart regulation
Authority .....	OAC 460:20-7-2 .....	30 CFR 761.3.
Definition of Community or Institutional Building .....	OAC 460:20-7-3 .....	30 CFR 761.5.
Definition of Valid Existing Rights .....	OAC 460:20-7-3 .....	30 CFR 761.5.
Areas Where Surface Coal Mining Operations are Prohibited or Limited ..	OAC 460:20-7-4 Introductory paragraph, (2), (3), and (4)(B).	30 CFR 761.11 Introductory paragraph, (b), (c), (d)(2).
Exception for Existing Operations .....	OAC 460:20-7-4.1 .....	30 CFR 761.12(a).
Procedures—Obligations at Time of Permit Application Review .....	OAC 460:20-7-5(a), (b)(1), (f)(1) and (3).	30 CFR 761.17(a), (b), (d)(1) and (3).

Topic	State rule	Federal counterpart regulation
Procedures—Compatibility Findings for Surface Coal Mining Operations on Federal Lands in National Forests.	OAC 460:20–7–5(c) .....	30 CFR 761.13.
Procedures—Relocating or Closing a Public Road or Waiving the Prohibition on Surface Coal Mining Operations Within the Buffer Zone of a Public Road.	OAC 460:20–7–5(d) .....	30 CFR 761.14.
Procedures—Waiving the Prohibition on Surface Coal Mining Operations Within the Buffer Zone of an Occupied Dwelling.	OAC 460:20–7–5(e) .....	30 CFR 761.15.
Procedures—Submission and Processing of Requests for Valid Existing Rights Determinations.	OAC 460:20–7–5(h) .....	30 CFR 761.16.
Permit Requirements for Exploration Removing More Than 250 Tons of Coal.	OAC 460:20–13–5(b)(14), (d)(2)(D).	30 CFR 772.12(b)(14), (d)(2)(iv).

Because Oklahoma's proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

#### 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 December 5, 2001, and February 26, 2002, 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 Nos. OK–988.03 and OK–988.11). We did not receive any comments.

##### Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain the written concurrence of EPA for those provisions of the program amendment that relate to air or water quality standards issued 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, we did not ask EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record Nos. OK–988.03 and OK–988.11). EPA responded on January 2, 2002 (Administrative Record No. OK–988.04), that it had no comments.

##### State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic

properties. On December 5, 2001, and February 26, 2002, we requested comments on Oklahoma's amendment (Administrative Record Nos. OK–988.03 and OK–988.11). The SHPO responded on January 3, 2002 (Administrative Record No. OK–988.05). The SHPO was concerned that several of Oklahoma's proposed rules did not consider properties that are "eligible for inclusion on the National Register of Historic Places."

On January 29, 2002 (Administrative Record No. 988.09), we sent a letter telling the SHPO that Oklahoma's proposed rules are consistent with Section 522(e)(3) of SMCRA and the Federal regulations. We also explained that even though SMCRA and the Federal regulations do not require consideration of properties eligible for listing on the National Register of Historic Places when making a determination of whether a person has valid existing rights to mine in areas where surface coal mining operations are normally prohibited or limited, the permit application requirements and other provisions of the Oklahoma rules and the Federal regulations do require this consideration for these areas.

#### V. Director's Decision

Based on the above findings, we approve the amendment Oklahoma sent to us on November 20, 2001, and as revised on February 21 and March 26, 2002.

We approve the rules proposed by Oklahoma with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR part 936, which codify decisions concerning the Oklahoma program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its

purposes. Making this final rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

#### VI. Procedural Determinations

##### Executive Order 12630—Takings

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in Part XXIX.E of the preamble to that rule. See 64 FR 70766, 70822–27, December 17, 1999.

##### Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

##### Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that 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 because each 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 the Federal regulations at 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.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because 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 certifies 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 counterpart 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. 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 counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This

determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 26, 2002.

Charles E. Sandberg, Acting Regional Director, Mid-Continent 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
* * * * *	* * * * *	* * * * *
November 20, 2001 .....	May 24, 2002 .....	OAC 460:20-7-2; 20-7-3; 20-7-4 Introductory paragraph, (2), (3), and (4)(B); 20-7-4.1; 20-7-5(a), (b)(1) and (2), (c), (d), (e), (f)(1) and (3), (g), (h); 20-13-5(b)(14), (d)(2)(D).