

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[OK-028-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). Oklahoma proposed revisions to its regulations concerning employment and financial interests of State employees and members of advisory boards and commissions and remining and reclamation of previously mined and certain inadequately reclaimed lands. Oklahoma intends to revise its program to be consistent with the corresponding Federal regulations and/or statutes. Oklahoma also intends to correct some cross references and typographical and grammatical errors.

EFFECTIVE DATE: January 17, 2003.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581-6430. Internet: mwolfrom@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
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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 1, 2001 (Administrative Record No. OK-993), Oklahoma sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Oklahoma sent the amendment at its own initiative. Oklahoma proposed to amend the Oklahoma Administrative Code, Title 460, Chapter 20.

We announced receipt of the amendment in the December 11, 2001, **Federal Register** (66 FR 63968). 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 10, 2002. We received comments from one Federal agency (Administrative Record No. OK-993.01).

During our review of the amendment, we identified concerns regarding the review of permit applications and employment and financial interests of members of advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests. We notified Oklahoma of these concerns by letter dated March 25, 2002 (Administrative Record No. OK-993.04).

Oklahoma responded in a letter dated July 3, 2002, by sending us a revised amendment (Administrative Record No. OK-993.05). Based upon Oklahoma's revisions to its amendment, we reopened the public comment period in the August 27, 2002, **Federal Register** (67 FR 54979). The public comment period ended on September 11, 2002. We received comments from one Federal agency (Administrative Record No. OK-993.10).

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. Revisions to Oklahoma's Regulations That Have the Same Meaning as the Corresponding Federal Provisions

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

Topic	State regulation	Federal counterpart regulation and/or statute
Definition of "Lands eligible for remining"	Section 460:20-3-5(A) through (D), (F), (G), and (I).	30 CFR 701.5; sections 402(g)(4)(A) and (B)(i) through (ii), and 404 of SMCRA.
Definition of "Unanticipated event or condition"	Section 460:20-3-5	30 CFR 701.5.
Financial interest of State employees—Authority.	Section 460:20-5-3	30 CFR 705.3(a).
Financial interest of State employees—Who shall file.	Section 460:20-5-7(b)	30 CFR 705.11(b)
Review of permit application	Section 460:20-15-6(b)(4) through (b)(5), and (c)(13).	30 CFR 773.13(a) and (b), and 773.15(m).
Lands eligible for remining	Section 460:20-33-12	30 CFR 785.25.
Responsibility period	Section 460:20-43-46(c)(2) and (c)(3)	30 CFR 816.116(c)(2) and (c)(3)
Responsibility time frame	Section 460:20-45-46(c)(2) and (c)(3)	30 CFR 817.116(c)(2) and (c)(3).

Because the above State regulations have the same meaning as the corresponding Federal provisions, we

find that they are no less effective than the Federal regulations and/or no less

stringent than the Federal statutes. Therefore, we are approving them.

B. Revisions to Oklahoma's Regulations That Are Not Inconsistent With the Corresponding Federal Provisions

The State regulations listed in the table below contain language that is the

same as or similar to the corresponding sections of the Federal regulations except that Oklahoma expanded the persons to whom the provisions in the regulations apply to include one or

more of the following: members of advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests.

Topic	State regulation	Federal counterpart regulation and/or statute
Financial interest of State employees—Purpose	Section 460:20-5-1	30 CFR 705.1.
Financial interest of State employees—Objectives.	Section 460:20-5-2	30 CFR 705.2.
Financial interest of State employees—Responsibility.	Section 460:20-5-4(a)(7), (a)(8), and (c)	30 CFR 705.4(a)(7), (a)(8) and (c).
Financial interest of State employees—Penalties.	Section 460:20-5-6(b)	30 CFR 705.6(b).
Financial interest of State employees—Who shall file.	Section 460:20-5-7(a)	30 CFR 705.11(a).
Financial interest of State employees—When to file.	Section 460:20-5-8	30 CFR 705.13.
Financial interest of State employees—Where to file.	Section 460:20-5-9(b)	30 CFR 705.15.
Financial interest of State employees—What to report.	Section 460:20-5-10	30 CFR 705.17.

Because the inclusion of the advisory board members, the Oklahoma Mining Commission, and commissions representing multiple interests in Oklahoma's above regulations are not inconsistent with the counterpart Federal provisions, we find that the proposed State regulations are no less effective than the corresponding Federal regulations and we are approving them.

C. Section 460:20-5-3. Definitions

Paragraph (E) of the definition of "lands eligible for re-mining," provides that the lands eligible for re-mining are those lands mined for coal or affected by such mining or other coal mining processes that have been left or abandoned in an inadequate reclamation status between August 4, 1977, and January 19, 1981. The counterpart Federal definition found at 30 CFR 701.5 states that lands eligible for re-mining means those lands that would otherwise be eligible for expenditures under section 402(g)(4) of the Federal Act. The Federal statute at section 402(g)(4)(B)(i) of SMCRA states that in order to be eligible for re-mining, the coal mining operation must have occurred during the period beginning on August 4, 1977, and ending on or before the date on which the Secretary approved the State program. The Secretary approved the Oklahoma program on January 19, 1981. Because the lands eligible for re-mining under the Oklahoma program would also be eligible under the Federal program, we find that the Oklahoma provision is no less effective than the Federal regulation at 30 CFR 701.5 and no less stringent than the Federal statute at section

402(g)(4)(B)(i) of SMCRA. Therefore, we are approving this provision.

Also, paragraph (H) of the definition of "lands eligible for re-mining," provides that the lands eligible for re-mining are those lands mined for coal or affected by such mining or other coal mining processes that have been left or abandoned in an inadequate reclamation status between August 4, 1977, and November 5, 1990. The counterpart Federal definition found at 30 CFR 701.5 states that lands eligible for re-mining means those lands that would otherwise be eligible for expenditures under section 402(g)(4) of the Federal Act. The Federal statute at section 402(g)(4)(B)(ii) of SMCRA states that in order to be eligible for re-mining, the coal mining operation must have occurred during the period beginning on August 4, 1977, and ending on or before November 5, 1990. Because the lands eligible for re-mining under the Oklahoma program would also be eligible under the Federal program, we find that the Oklahoma provision is no less effective than the Federal regulation at 30 CFR 701.5 and no less stringent than the Federal statute at section 402(g)(4)(B)(ii) of SMCRA. Therefore, we are also approving this provision.

D. Section 460:20-5-4. Responsibility

Currently at section 460:20-5-4(a), Oklahoma's program contains provisions that pertain to the filing of financial interest statements by employees. Oklahoma proposed to expand the list of persons who are required to file financial interest. Oklahoma proposed to accomplish this by adding new paragraph (b). This new paragraph sets forth the responsibility of

the Oklahoma Governor's Office, Director of Appointments pertaining to the filing of financial interest statements by advisory board members, the Oklahoma Mining Commission, and commissions representing multiple interests. With the addition of this paragraph, the Oklahoma Governor's Office, Director of Appointments must (1) provide advice, assistance, and guidance to advisory board members and commissioners required to file the statement, (2) promptly review the statements to determine if prohibited financial interests exist, (3) resolve prohibited financial interest situations, (4) certify on each statement that the review has been made, and (5) report to the Director of OSM any advisory board member's or commissioner's failure to take remedial action to resolve any prohibited financial interest situations. The counterpart Federal regulations for these provisions are found at 30 CFR 705.4(a)(1) through (a)(4) and 705.19(a)(2)(ii) through (a)(3). Oklahoma's provisions have the same meaning as the Federal provisions except that Oklahoma's provisions also include members of advisory boards and commissions representing multiple interests, whereas, the Federal provisions pertain to employees. Because the provisions in Oklahoma's proposed new paragraph (b) are intended to expand the list of persons who must file financial interest statements and the inclusion of these persons is not inconsistent with the Federal provisions, we are approving this amendment.

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 licencing [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 licencing [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

Federal fish and wildlife agencies, the review that the FWS recommended should occur. Additionally, we forwarded the FWS's comments to the State for its consideration.

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-993.03 and OK-993.11). The EPA did not respond to our request.

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 November 19, 2001, and July 16, 2002, we requested comments on Oklahoma's amendment (Administrative Record Nos. OK-993.03 and OK-993.11, respectively), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Oklahoma sent to us on November 1, 2001, as revised on July 3, 2002. We approve the regulations proposed by Oklahoma with the provision that they be fully promulgated in identical form to the regulations 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

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

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: November 7, 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 follows:

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 1, 2001	January 17, 2003	Sections 460.20-3-5; 20-5-1; 20-5-2; 20-5-3; 20-5-4(a)(7) through (d); 20-5-6; 20-5-7(a) and (b); 20-5-8; 20-5-9(b); 20-5-10(a), (a)(2), (b)(1) through (c)(4); 20-5-13; 20-15-4; 20-15-6(b)(4), (b)(5), and (c)(13); 20-33-12; 20-43-46(b)(6) and (c)(2) through (c)(3)(B); 20-45-46(b)(6) and (c)(2) through (c)(3)(B).

[FR Doc. 03-977 Filed 1-16-03; 8:45 am]
BILLING CODE 4310-05-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP New Orleans-02-022]

RIN 2115-AA97

Safety Zone; Lower Mississippi River, Above Head of Passes, Mile Marker 88.1 to 90.4, New Orleans, LA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is amending the temporary final rule for the safety zone established for the transit of the cruise ship (C/S) CONQUEST beneath the Entergy Corporation power cable at mile marker 89.2 Lower Mississippi River (LMR), published November 22, 2002. These amendments reflect knowledge gained from several transits of the C/S CONQUEST through this area and generally reduce the size and length of time of the zone. We are also extending the effective period of this established rule to June 8, 2003. This temporary rule will continue to prohibit entry into this zone unless specifically authorized by the Captain of the Port, New Orleans or designated representative.

DATES: The amendments to § 165.T08-122 are effective on December 13, 2002. Section 165.T08-122, added at 67 FR 70315, November 22, 2002 effective from 4:30 a.m. November 12, 2002, through 8 p.m. March 2, 2003 is extended and will remain in effect through 11 p.m. on June 8, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP New Orleans-02-022] and are available for inspection or copying at Marine Safety Office New Orleans, 1615 Poydras Street, New Orleans, Louisiana, 70112 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) Matthew Dooris, Marine Safety Office New Orleans, at (504) 589-4251.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

The original temporary final rule was immediately required to respond to safety concerns associated with the transit of the C/S CONQUEST beneath the power cables at mile marker 89.2

LMR. The Coast Guard has continued to assess the situation after each transit of the vessel and has determined that the size of the zone and length of time the zone is enforced can be reduced, lessening the burden on the public. In addition, the assessments have revealed the need to have a small portion of the New Orleans General Anchorage clear of all vessels while the vessel is transiting beneath the power cables. This practice was initiated by the local pilots, and the Captain of the Port has decided to incorporate it in this rule. Because it is already a customary practice, and it is only applicable one day a week for a short period of time, this change should not create any additional burden for the public. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to continue to protect vessels and mariners from the hazards associated with the weekly upbound and downbound transit of the C/S CONQUEST under the power cable crossing.

Background and Purpose

On November 12, 2002 (67 FR 70313), the Captain of the Port, New Orleans established a temporary safety zone from mile 87.2 to 91.2 LMR extending the entire width of the river for the transit of the C/S CONQUEST beneath the Entergy Corporation power cable located at mile 89.2 LMR. The C/S CONQUEST is home ported in New Orleans at the Julia Street Wharf, mile