PART 200 —ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 subpart A is revised as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended; sec. 20, 49 Stat. 833; sec. 319, 53 Stat. 1173; secs. 38, 211, 54 Stat. 841, 855; sec. 308, 101 Stat. 1254 (15 U.S.C. 77s, 78d–1, 78d–2, 78w, 79t, 77sss, 80a–37, 80b–11), unless otherwise noted.

Section 200.30–11 is also issued under 15 U.S.C. 78d–1, 78d–2.

§ 200.30–1 [Amended]

2. Section 200.30–1 is amended by removing paragraphs (g) and (h) and redesignating paragraph (i) to become paragraph (g) and paragraph (j) to become paragraph (h).

3. Section 200.30–11 is amended by adding paragraph (e) as follows:

§ 200.30–11 Delegation of authority to Director, Office of Applications and Reports Services.

* * * * *

(e) To authenticate all Commission documents produced for administrative or judicial proceedings.

By the Commission.

Dated: March 19, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–6835 Filed 3–26–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 803, 807, 812, 813, 814, 820, and 860

Medical Device Regulations; Address Changes

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending certain of its regulations on medical devices to update mailing addresses of certain organizational units. FDA is also amending its premarket notification regulations for medical devices to clarify that certain submissions are to be made to FDA's Center for Biologics Evaluation and Research (CBER) instead of FDA's Center for Devices and Radiological Health (CDRH).

EFFECTIVE DATE: March 27, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Land, Rockville, MD 20857, 301–443–4874.

SUPLEMENTARY INFORMATION: In the **Federal Register** of September 8, 1989 (54 FR 37377), FDA announced that the Office of Device Evaluation (ODE), CDRH had completed the move from its former Silver Spring, MD 20910, location to Rockville, MD 20850. As a result, FDA is amending certain medical device regulations to update mailing addresses. The affected regulations are 21 CFR 803.33(b), 807.22(a), 807.37(a) and (b)(2), 807.90(a), 812.19, 813.20(a), 814.20(h), 820.1(d), and 860.123(b)(1).

FDA is also revising § 807.90(a) to clarify the mailing address for certain submissions for medical devices regulated by CBER. These devices are identified in a document entitled "Working Relationships Agreement Among the Bureaus of Medical Devices (BMD), Radiological Health (BRH), Biologics (BOB)" made available by FDA on April 9, 1982 (47 FR 15412). Since this working relationships' document was made available, BMD and BRH have been merged as CDRH. The responsibility for regulating certain devices under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 210 *et seq.*) was assigned to the Bureau of Biologics, now CBER.

The following devices are regulated by CBER.

Section	Regulation name
864.9050	Blood bank supplies.
864.9100	Empty container for the collection and processing of blood and blood components.
864.9125	Vacuum-assisted blood collection system.
864.9145	Processing system for frozen blood.
864.9160	Blood grouping substances of nonhuman origin for in vitro diagnostic use.
864.9175	Automated blood grouping and antibody test system.
864.9185	Blood grouping view box.
864.9195	Blood mixing devices and blood weighing devices.
864.9205	Blood and plasma warming device.
864.9225	Cell-freezing apparatus and reagents for in vitro diagnostic use.
864.9245	Automaticed blood cell separator.
864.9275	Blood bank centrifuge for in vitro diagnostic use.
864.9285	Automated cell-washing centrifuge for immuno-hematology.
864.9300	Automated Coombs test system.
864.9320	Cooper sulfate solution for specific gravity determinations.
864.9400	Stabilized enzyme solution.
864.9550	Lectins and protectins.
864.9575	Environmental chamber for storage of platelet concentrate.
864.9600	Potentiating media for in vitro diagnostic use.
864.9650	Quality control kit for blood banking reagents.
864.9700	Blood storage refrigerator and blood storage freezer.
864.9750	Heat-sealing device.
864.9875	Transfer set.

Because these amendments are nonsubstantive, notice and public procedure and delayed effective date are unnecessary.

List of Subjects

21 CFR Part 803

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 807

Confidential business information, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 813

Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 820

Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 860

Administrative practice and procedure, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Radiation Control for Health and Safety Act of 1968, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 803, 807, 812, 813, 814, 820, and 860 are amended as follows:

PART 803—MEDICAL DEVICE REPORTING

1. The authority citation for 21 CFR part 803 continues to read as follows:

Authority: Secs. 502, 510, 519, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 371, 374).

§ 803.33 [Amended]

2. Section 803.33 *Where to submit a report* is amended in paragraph (b) by removing "(HFZ–343)" and replacing it

with "(HFZ–351)" and by removing "8757 Georgia Ave., Silver Spring, MD 20910" and replacing it with "1390 Piccard Dr., Rockville, MD 20850".

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS OF DEVICES

3. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: Secs. 301, 501, 502, 510, 513, 515, 519, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 371, 374).

§ 807.22 [Amended]

4. Section 807.22 *How and where to register establishments and list devices* is amended in paragraph (a) by removing "8757 Georgia Avenue, Silver Spring, MD 20910" and replacing it with "1390 Piccard Dr., Rockville, MD 20850".

§ 807.37 [Amended]

5. Section 807.37 *Inspection of establishment registration and device listings* is amended in paragraphs (a) and (b)(2) by removing "8757 Georgia Avenue, Silver Spring, MD 20910" and replacing it with "1390 Piccard Dr., Rockville, MD 20850".

6. Section 807.90 is amended by revising paragraph (a) to read as follows:

§ 807.90 Format of a premarket notification submission.

* * * * *

(a) (1) For devices regulated by the Center for Devices and Radiological Health, be addressed to the Food and Drug Administration, Center for Devices and Radiological Health (HFZ–401), 1390 Piccard Dr., Rockville, MD 20850.

(2) For devices regulated by the Center for Biologics Evaluation and Research, be addressed to the Food and Drug Administration, Center for Biologics Evaluation and Research, Division of Product Certification (HFB–240), 8800 Rockville Pike, Bethesda, MD 20892.

(3) All inquiries regarding a premarket notification submission should be in writing and sent to one of the addresses above.

* * * * *

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

7. The authority citation for 21 CFR part 812 continues to read as follows:

Authority: Secs. 301, 501, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701, 702, 704, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 372, 374, 376, 381); secs. 215, 301, 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b–263n).

§ 812.19 [Amended]

8. Section 812.19 *Address for IDE correspondence* is amended by removing "8757 Georgia Ave., Silver Spring, MD 20910" and replacing it with "1390 Piccard Dr., Rockville, MD 20850".

PART 813—INVESTIGATIONAL EXEMPTIONS FOR INTRAOCULAR LENSES

9. The authority citation for 21 CFR part 813 continues to read as follows:

Authority: Secs. 301, 501, 502, 520, 701, 704, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 360j, 371, 374, 381).

§ 813.20 [Amended]

10. Section 813.20 *Application* is amended in paragraph (a) by removing "8757 Georgia Ave., Silver Spring, Md. 20910" and replacing it with "1390 Piccard Dr., Rockville, MD 20850".

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

11. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: Secs. 501, 502, 503, 510, 513–520, 701, 702, 703, 704, 705, 706, 708, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 376, 379, 381).

§ 814.20 [Amended]

12. Section 814.20 *Application* is amended in paragraph (h) by removing "8757 Georgia Ave., Silver Spring, MD 20910" and replacing it with "1390 Piccard Dr., Rockville, MD 20850".

PART 820—GOOD MANUFACTURING PRACTICE FOR MEDICAL DEVICES: GENERAL

13. The authority citation for 21 CFR part 820 continues to read as follows:

Authority: Secs. 501, 502, 515, 518, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360e, 360h, 360i, 360j, 371, 374).

§ 820.1 [Amended]

14. Section 820.1 *Scope* is amended in paragraph (d) by removing "8757 Georgia Ave., Silver Spring, MD 20910; telephone 301–427–7194" and replacing it with "1390 Piccard Dr., Rockville, MD 20850; telephone 301–427–1128".

PART 860—MEDICAL DEVICE CLASSIFICATION PROCEDURES

15. The authority citation for 21 CFR part 860 continues to read as follows:

Authority: Secs. 513, 514, 515, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c, 360d, 360e, 360i, 360j, 371, 374).

§ 860.123 [Amended]

16. Section 860.123 *Reclassification petition: Content and form* is amended in paragraph (b)(1) by removing "Document Mail Center (HFZ–401), 8757 Georgia Avenue, Silver Spring, Md. 20910" and replacing it with "Office of Standards and Regulations (HFZ–84), 5600 Fishers Lane, Rockville, MD 20857".

Dated: March 20, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–6863 Filed 3–26–90; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Permanent Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Director of OSM is approving, with certain exceptions, a proposed amendment submitted by the State of Oklahoma as a modification to its permanent regulatory program (hereinafter referred to as the Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises the Oklahoma Department of Mines' rules and regulations to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: March 27, 1990.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background

The Oklahoma program was conditionally approved by the Secretary of the Interior on January 19, 1981. Information on the general background, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments,

and detailed explanation of the conditions of approval of the Oklahoma program was published in the January 19, 1981, **Federal Register** (46 FR 4910). Subsequent actions on program amendments are identified at 30 CFR 936.15 and 936.30.

II. Submission of Program Amendment

In accordance with the provisions of 30 CFR 732.17(d), OSM notified Oklahoma by letters dated July 15, 1985, and June 9, 1987 (Administrative Record Nos. OK–681 and OK–811), of the changes that were necessary to ensure that the approved regulatory program was no less effective than SMCRA and its implementing regulations as revised since January 19, 1981, when the Oklahoma program was originally approved.

In response to the 30 CFR part 732 letters identified above, by letter dated May 18, 1988 (Administrative Record No. OK–843), Oklahoma submitted a proposed amendment to its approved program. Oklahoma proposed rules for the Oklahoma Department of Mines' rules and regulations at parts 700, 701, 705, 707, 761, 762, 764, 772–775, 777–780, 783–785, 795, 800, 810, 815–817, 819, 823, 824, 827, 828, 842, 843, 845, 846, and 850 that would replace Parts 700, 701, 705, 707, 760–762, 764, 770, 771, 776, 778–780, 782–788, 795, 800, 801, 805–808, 810, 815–819, 823, 824, 826–828, 842, 843, 845, and 850 of the previously-approved rules. The initial program rules as adopted by Oklahoma on July 11, 1978 (Executive Order No. 78–24; Administrative Record No. OK–839), the abandoned mine land reclamation plan as approved by OSM on January 21, 1982 (47 FR 2991), and the blaster training, examination, and certification program as approved by OSM on April 28, 1986 (51 FR 15767), remain in effect and are unchanged by this amendment.

During the review of the proposed amendment submitted on May 18, 1988, OSM identified several concerns. In response to OSM's concerns and two additional 30 CFR part 732 letters dated October 6, 1988, and May 11, 1989 (Administrative Record Nos. OK–873 and OK–886), Oklahoma submitted revisions to the proposed amendment on June 8, 1988, November 14, 1988, June 22, 1989, August 8, 1989, and December 15, 1989 (Administrative Record Nos. OK–847, OK–866, OK–888, OK–890, and OK–903).

OSM announced receipt of the revisions to the proposed amendment in the June 28, 1988, January 9, 1989, July 7, 1989, August 24, 1989, and December 26, 1989, publications of the **Federal Register** (53 FR 24321, 54 FR 633, 54 FR 29583, 54 FR 35206, and 54 FR 52957). In all but the December 26, 1989, notice, OSM opened a 30-day public comment period and provided an opportunity for a public hearing on the substantive adequacy of the revisions to the proposed amendment. In the December 26, 1989, notice, OSM opened a 15-day public comment period and provided an opportunity for a public hearing. This last public comment period closed on January 10, 1990.

III. Director's Findings

1. General

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, with certain exceptions, that the proposed amendment as submitted on May 18, 1988, and revised on June 8, 1988, November 14, 1988, June 22, 1989, August 8, 1989, and December 15, 1989, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations.

In general, with minor changes to improve clarity and specificity and to replace Federal references and terms with State references and terms, Oklahoma's proposed rules are identical to the corresponding Federal regulations. The proposed rules deviate from the Federal language to (1) reflect the decisions of the U.S. District Court for the District of Columbia (*In re: Permanent Surface Mining Regulation Litigation (II), Rounds II and III*, No. 79–1144 (D.D.C. Oct. 1, 1984), 21 Env't Rep. Cas. 1724 and 620 F. Supp. 1519 (D.D.C. 1985), hereinafter referred to, respectively, as *PSMRL II, Round II, and PSMRL II, Round III*); (2) conform to State requirements concerning administrative procedures and reviews (Oklahoma's Rules of Practice and Procedure for the Coal Reclamation Act of 1979 replaces the Federal references to 43 CFR part 4); and (3) retain certain previously-approved hydrology performance standards which were part of the original program approval and which do not conflict with newly-approved hydrology performance standards.

Only those provisions of the proposed amendment not encompassed by this general finding are discussed below. Any provisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations, although the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and his ongoing oversight of the Oklahoma program. Provisions that are not discussed either contain language substantively identical to the corresponding Federal regulations, or involve provisions that add specificity or lack a Federal counterpart which do not adversely affect other aspects of the program.

2. Section 700.11, Extraction of Coal Incidental to the Extraction of Other Minerals

Section 701(28) of SMCRA excludes from the definition of surface coal mining operations "the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ per centum of the tonnage of minerals removed for purposes of commercial use or sale." On December 20, 1989, OSM promulgated new regulations at 30 CFR 700.11(a)(4) and 30 CFR part 702 implementing the incidental mining exemption of section 701(28) of SMCRA (54 FR 52092). These revised regulations replaced the previous Federal regulations at 30 CFR 700.11(a)(4) (47 FR 33424, August 2, 1982). More specifically, the newly revised Federal regulations at 30 CFR 700.11(a)(4) include a cross-reference to 30 CFR part 702. 30 CFR part 702 establishes comprehensive criteria and procedures for determining whether an operation qualifies initially and on a continuing basis for the 16⅔ percent exemption.

Oklahoma proposes at § 700.11(a)(4) a rule that would exempt from regulation operations involving the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the mineral tonnage removed for commercial use or sale. This proposal is substantively identical to the previous Federal regulation at 30 CFR 700.11(a)(4) (47 FR 33424, August 2, 1982). However, Oklahoma's proposed rule does not include the detailed exemption criteria, application and reporting requirements, and other general requirements set forth in the recently promulgated Federal regulations at 30 CFR part 702.

Therefore, the Director finds that Oklahoma's proposed § 700.11(a)(4) is less effective than the newly promulgated Federal regulation at 30 CFR 700.11(a)(4). He is not approving § 700.11(a)(4) to the extent that it does not include or reference rules implementing the incidental mining exemption. On February 7, 1990, in accordance with 30 CFR 732.17 (d) through (f), the Director sent to Oklahoma a notification of the revised Federal regulation (Administrative Record No. OK–909). Consistent with the February 12, 1990, 30 CFR part 732 letter, he is requiring that Oklahoma amend its approved program to include rules

corresponding to the newly promulgated Federal regulations at 30 CFR 700.11(a)(4) and 30 CFR part 702.

Until Oklahoma's program is modified by the incorporation of rules corresponding to the newly revised Federal regulations at 30 CFR 700.11(a)(4) and 30 CFR part 702, Oklahoma should, in implementing the incidental mining exemption, rely on OSM's May 7, 1984, guidelines at 49 FR 19338, as interpreted by recent legal decisions, particularly *McNabb Coal Co.* v. *OSMRE* (181 IBLA 282 at 289, March 15, 1988). (For further clarification, see OSM's discussion of this issue in its December 20, 1989 **Federal Register** notice (54 FR 52092 at 52094).)

3. Section 700.11, Applicability—2-Acre Exemption

Oklahoma proposes to delete § 700.11(b) from its rules. This subsection exempts from the requirements of the State surface mining law those operations that extract coal for commercial purposes and affect 2 acres or less. Section 700.11 is, with only nonsubstantive changes, identical to the Federal regulations at 30 CFR 700.11.

As originally enacted, section 528(2) of SMCRA (30 U.S.C. 1278) exempted from the requirements of SMCRA coal extraction operations affecting 2 acres or less. However, on May 7, 1987, the President signed Public Law 100–34, which repealed this exemption and pre-empted any corresponding acreage-based exemptions included in State laws or regulations (52 FR 21228, June 4, 1987).

Oklahoma's proposed revision would remove from section 700.11 the language pre-empted by Public Law 100–34. Removal of the acreage exemption from the Oklahoma rules will preclude confusion on the part of the public, which may not be aware of the Federal pre-emption.

The Director finds that the proposed deletion of Oklahoma's § 700.11(b) regarding the 2-acre exemption is no less stringent than SMCRA, as amended by Public Law 100–34.

4. Section 701.5, Definitions

(a) *Definition of Affected Area.* Oklahoma proposes a definition of "affected area" at § 701.5 that is substantively identical to the Federal definition at 30 CFR 701.5. However, in *PSMRL II, Round III,* the U.S. District Court remanded the Federal definition of "affected area" because it excluded all roads with more than incidental public use, an exclusion which the court found to be inconsistent with the definition of "surface coal mining operations" at section 701(28) of SMCRA (51 FR 41952 at 41953, November 20, 1986). Oklahoma did not incorporate this remand into its proposed definition.

Therefore, because Oklahoma's proposed definition of "affected area" does not conform to the court's decision, the Director finds that the Oklahoma definition of "affected area" at § 701.5 is less stringent than section 701(28) of SMCRA. He is not approving the proposed definition to the extent that it generally excludes public roads without regard to the effect of mining use upon the roads. The Director will, pursuant to 30 CFR 732.17(d) inform Oklahoma of the regulatory changes needed to amend this definition.

(b) *Definition of Alluvial Valley Floors (AVF's).* Oklahoma proposes a definition for AVF at § 701.5 that is identical to the Federal definition at 30 CFR 701.5. However, Oklahoma has not proposed any additional AVF rules corresponding to the Federal regulations at 30 CFR part 822 that are applicable west of the 100th meridian and address special permanent program standards for operations in AVF's.

Although there are coal deposits west of the 100th meridian that passes through the panhandle of western Oklahoma, there has never been and there currently is no proposed mining in this area. Oklahoma has submitted a policy statement committing it to revise its program to include AVF rules if mining is proposed west of the 100th meridian (Administrative Record No. OK–903). On this basis, the Director finds that Oklahoma's proposed definition of AVF at § 701.5 is no less effective than the corresponding Federal definition at 30 CFR 701.5.

(c) *Definition of Previously Mined Areas.* At § 701.5 of its proposed rules, Oklahoma defines "previously mined area" as "land previously mined on which there were no surface coal mining operations subject to the standards of the Federal Act."

Oklahoma's proposed definition of "previously mined area" is substantively identical to the Federal definition at 30 CFR 701.5. However, in the case of *National Wildlife Fed'n* v. *Lujan,* Nos. 87–1051, 87–1814, and 88–2788 (D.D.C. Feb. 12, 1990), the court addressed two concerns pertaining to the Federal definition. The first was whether "previously mined" means that mining occurred (1) before the date Congress enacted SMCRA (August 3, 1977), or (2) before the various dates that SMCRA's substantive requirements began to apply to specific mining operations or sites. This issue is important because pursuant to 30 CFR 816.106(b), 817.106(b), and 819.19(b) (which sections are identical to Oklahoma's proposed rules at §§ 816.106(b), 817.106(b) and 819.19(b)), operators remining previously mined areas do not need to completely eliminate reaffected or enlarged highwalls if there is not enough reasonably available spoil to do the job. Rather, in such situations, the operator's duty is to eliminate the highwalls only to the "maximum extent technically practical". Given this limited exception to the requirement to completely remove all highwalls, the second related concern was that the current definition might allow an operator to remine an area that had once been fully and satisfactorily reclaimed, and then to leave the area only partially reclaimed by not completely eliminating any remined or reaffected highwalls.

The court found that "a definition using the date of SMCRA's enactment more closely conforms to the Act and the court's previous ruling on the issue" (*National Wildlife Fed'n,* Mem. Op. at 42, citing to *In re: Permanent Surface Mining Regulation Litigation II, Round I,* No. 79–1144, Mem. Op. (D.D.C. July 6, 1984, 21 Env't Rep. Cas. 1193)). Consequently, the court held that the date of enactment of SMCRA (August 3, 1977) "must be the time from which the temporal concepts of 'preexisting' and 'previous' are measured." (*Id.,* Mem. Op. at 50). With respect to the second issue, the court held that a "definition cannot stand that lets full reclamation be undone for a later partial effort. The definition must be rewritten to make this impossible." (*Id.,* Mem. Op. at 48). Accordingly, the court remanded "the definition of prevously mined area to the Secretary to correct both of the flaws identified above." (*Id.,* Mem. Op. at 51).

Although OSM has not yet actually suspended the above definition, OSM may not, because of the court's remand, use the existing Federal definition of "previously mined area" at 30 CFR 701.5 in evaluating the sufficiency of Oklahoma's proposed definition. Accordingly, OSM has evaluated the proposed amendment based upon its consistency with the appropriate provisions of SMCRA as interpreted by the court.

Based on the above and the court's remand of the Federal definition of "previously mined area" to "correct both of the flaws identified" in the decision, the Director finds that to the extent Oklahoma's proposed definition of "previously mined area" (1) interprets or contemplates the temporal concept of "previously" as being any other date than August 3, 1977 (the date of enactment of SMCRA), or (2) allows lands which have once been fully and

satisfactorily reclaimed to be remined and then only partially reclaimed, such definition is less stringent than the general provisions of SMCRA. The Director is, therefore, not approving Oklahoma's proposed definition of "previously mined area" at section 701.5 to the extent that the definition (1) interprets or contemplates the temporal concept of "previously" as being any other date than August 3, 1977, or (2) allows lands which have once been fully and satisfactorily reclaimed to be remined and then only partially reclaimed. The Director will, pursuant to 30 CFR 732.17(d), inform Oklahoma, of regulatory changes needed to amend this definition.

5. Section 705.21, Appeals Procedures for Restriction on Financial Interests of State Employees

The Federal regulations at 30 CFR 705.21(b) provide for appeals procedures when OSM requires the head of a State regulatory authority to resolve prohibited interests in accordance with 30 CFR 705.19(b). This provision specifies that a head of a State regulatory authority may file his or her appeal with the Director of OSM. 30 CFR 705.21(a) provides for appeals procedures for employees other than the head of the State regulatory authority and states that such employees may file appeals in writing through established procedures within their particular State.

Oklahoma proposes at § 705.21 a corresponding rule to the Federal regulation at 30 CFR 705.21(a) that all employees may file appeals in accordance with the Appeals Board established in § 705.22. However, Oklahoma proposes no corresponding rule to the Federal regulation at 30 CFR 705.21(b).

The Federal regulations at 30 CFR 705.21(b) afford the head of the Oklahoma regulatory authority a right to appeal, and this right still exists even though it is not specified in Oklahoma's approved program. Additionally, because the appeals procedures outlined in 30 CFR 705.21(b) are the only ones available to the head of the Oklahoma regulatory authority for actions taken under 30 CFR 705.19(b), OSM would not recognize appeals made through other procedures, and any required remedial actions to resolve prohibited interests would remain in effect unless/until the head of Oklahoma's regulatory authority perfected a procedurally correct appeal. For these reasons, it is not necessary for Oklahoma to include a corresponding requirement in its program.

Based on the above discussion, the Director finds that Oklahoma's proposed § 705.21 is no less effective than the Federal regulations at 30 CFR 705.21.

6. Section 762.5, Definition of Fragile Lands

Oklahoma's proposed definition of "fragile lands" at § 762.5 is identical to the Federal definition at 30 CFR 762.5 except that Oklahoma adds to the listed examples of "fragile lands" "buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited." This clause was included in Oklahoma's original program. Oklahoma extends environmental protection beyond the minimum limits of the Federal regulations. Therefore, the Director finds that Oklahoma's proposed definition of "fragile lands" at § 762.5 is no less effective than the Federal definition at 30 CFR 762.5.

7. Section 777.14, Maps and Plans

Oklahoma proposes a rule at § 777.14 that is, with one exception, substantively identical to the Federal regulation at 30 CFR 777.14. The exception is that Oklahoma requires maps of the permit area to be submitted at a scale of 1:200. The Federal regulation requires permit area maps at a scale of 1:6000 or larger. Because maps at a scale of 1:200 provide more detail, clarity, and accuracy than maps at a scale of 1:6000, the Director finds that Oklahoma's proposed § 777.14 is no less effective than the Federal regulation at 30 CFR 777.14.

8. Sections 780.21 and 784.14, Probable Hydrologic Consequences (PHC) Determinations

The Federal regulations regarding the PHC determinations at 30 CFR 780.21(f) and 784.14(e) were challenged in *PSMRL II, Round III* on the grounds that they were wrongly limited to activities occurring during the "life of the permit" as opposed to the "life of the mine." Rather than ruling on the substance of this argument, the court instead remanded the rules on procedural grounds. As a result of the court decision, OSM suspended the PHC regulations (51 FR 41952 at 41957, November 20, 1986). OSM reexamined the regulations and on September 19, 1988, promulgated regulations at 30 CFR 780.21(f) and 784.14(e) identical to those that had been previously suspended (53 FR 36394 at 36400).

However, in the preamble to the new regulations, OSM clarified how its interpretation to limit the PHC determination to the permit and adjacent areas ("life of the permit") was appropriate. OSM interprets the PHC determination to apply to all activities authorized under the permit for the permit and adjacent areas. The PHC determination need not consider those activities that may occur during the life of the mine that would be authorized under future permitting activities. A new PHC determination would be required for any additional surface mining activity that could impact the hydrologic regime authorized during the initial permit term or in future permitting actions. A renewal of the initial permit with no changes would not necessitate a new PHC determination. Therefore, OSM considers the PHC determination to be "spatial" rather than "temporal" in nature (53 FR 36394 at 36396–36399, September 19, 1988).

Oklahoma's proposed rules at §§ 780.21(f) and 784.14(e) are substantively identical to the Federal regulations at 30 CFR 780.21(f) and 784.14(e). Additionally, Oklahoma has submitted a policy statement specifying that its interpretation of the PHC rules is "spatial" in nature (Administrative Record No. OK–903). On this basis, the Director finds that Oklahoma's proposed §§ 780.21(f) and 784.14(e) are no less effective than the corresponding Federal regulations at 30 CFR 780.21(f) and 784.14(e).

9. Parts 779, 780, 783, 784, 816, and 817, Inspections of Impoundments by Qualified Professional Land Surveyors

Oklahoma proposes (1) At §§ 779.25(b), 783.25(b), 780.14(c), and 784.23(c) to allow qualified, registered, professional land surveyors to prepare and certify cross sections, maps, and plans required in surface coal mining and reclamation permit applications; (2) at §§ 780.25(a)(1) and (a)(3)(i), and 784.16(a)(1)(i) and (a)(3)(i) to allow qualified, registered, professional land surveyors to prepare and certify general plans for each proposed sediment pond, water impoundment, and coal processing waste bank, dam or embankment within the proposed permit area, and to certify detailed plans for structures not meeting the size or other criteria of 30 CFR 77.216(a) (except for coal processing waste dams and embankments, which must be certified by an engineer); (3) at §§ 816.46(b)(3), 817.46(b)(3), 816.49(a)(2), and 817.49(a)(2) to allow qualified, registered, professional land surveyors to certify upon construction siltation structures and to prepare and/or certify the design of impoundments in accordance with section 780.25(a); and (4) at §§ 784.24(b), 816.151(a), and 817.151(a) to allow qualified, registered, professional land surveyors to prepare and/or certify

primary roads of underground and surface mines.

On April 24, 1985, and November 8, 1988, OMS published the following final regulations implementing an amendment to section 507(b)(14) of SMCRA: 30 CFR 779.25(b), 783.25(b), 780.14(c), 784.23(c), 780.25(a)(1) and (a)(3)(i), 784.16(a)(1)(i) and (a)(3)(i), 816.46(b)(3), 817.46(b)(3), 816.49(a)(2), 817.49(a)(2), 784.24(b), 816.151(a), and 817.151(a) (50 FR 16194, 53 FR 45190). These regulations authorize qualified, registered, professional land surveyors (1) To prepare and certify cross sections, maps, and plans; (2) to prepare and certify general plans for siltation structures and to prepare and/or certify impoundments in accordance with 780.25(a); and (3) to prepare and/or certify construction of primary roads in any State which authorizes land surveyors to prepare and certify such documents. Oklahoma's proposed rules are substantively identical to the corresponding Federal regulations.

On September 16, 1988, Oklahoma submitted to OSM the by-laws of the State Board of Registration for Professional Engineers and Surveyors (Administrative Record No. OK–862). These by-laws state that registered land surveyors can provide services "comprising the determination of the location of land boundaries and land boundary corridors, incidental topography, the preparation of maps showing the type and area of tracts of land and their subdivisions into smaller tracts; the prepartion of maps showing the layout of roads, tracts, and rights-of-ways of same to give access to smaller tracts; and the preparation of official plats and maps of said land hereof in this State." At the same time, Oklahoma submitted the statutes regulating professional engineers and land surveyors. These statutes define the term "practice of land surveying" to include "the application of special knowledge of the principles of mathematics, the related physical and applied sciences and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting of property and land boundaries and for the platting and layout of lands and subdivisions thereof, including the topography, and for the preparation and perpetuation of maps, record plats, field note records and property descriptions that represent these surveys" (Okla. Stat. tit. 59, sections 475.1–475.22b, Supp. 1982). These documents do authorize registered land surveyors in Oklahoma to prepare and certify cross sections, maps and plans that are required under proposed §§ 779.25(b), 783.25(b), 780.14(c), and 784.23(c), but they do not, either directly or indirectly, authorize registered land surveyors in Oklahoma to prepare and/or certify engineered designs for siltation structures, impoundments, and roads.

Therefore, the Director finds Oklahoma's proposed §§ 779.25(b), 783.25(b), 780.14(c), and 784.23(c) to be no less effective than the Federal regulations at 30 CFR 779.25(b), 783.25(b), 780.14(c), and 784.23(c), and no less stringent than section 507(b)(14) of SMCRA (as amended). However, the Director finds Oklahoma's proposed §§ 780.25 (a)(1) and (a)(3)(i), 784.16 (a)(1)(i) and (a)(3)(i), 816.46(b)(3), 817.46(b)(3), 816.49(a)(2), 817.49(a)(2), 784.24(b), 816.151(a), and 817.151(a) to be less effective than the corresponding Federal regulations at 30 CFR 780.25 (a)(1) and (a)(3)(i), 784.16 (a)(1)(i) and (a)(3)(i), 816.46(b)(3), 817.46(b)(3), 816.49(a)(2), 817.49(a)(2), 784.24(b), 816.151(a), and 817.151(a), and less stringent than section 507(b)(14) of SMCRA (as amended). He is not approving these subsections and is requiring that Oklahoma revise these subsections to delete the authorization for land surveyors to prepare and/or certify plans for siltation structures, impoundments, and roads.

10. Sections 784.20 and 817.121, Subsidence Control

Oklahoma's proposed rule at § 817.121(c)(2) provides that *to the extent required under applicable provisions of State law*, operators must either (1) correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage, or (2) compensate the owner of such structures or facilities in the full amount of the diminution in value resulting from the subsidence (emphasis supplied).

Oklahoma's proposed rule at subsection 817.121(c)(2) is identical to the Federal regulation at 30 CFR 817.121(c)(2). However, in the case of *National Wildlife Fed'n* v. *Lujan*, Nos. 87–1051, 87–1814, and 88–2788 (D.D.C. Feb. 12, 1990), the court held that the Federal regulations may not limit, by making reference to State law, the duty of an underground operator to correct material damage to structures caused by subsidence. More specifically, the court held that 30 CFR 817.121(c)(2) is inconsistent with sections 102(b) and 516(b)(1) of SMCRA which generally provide, respectively, that rights of surface landowners and other persons with a legal interest in land be fully protected from surface coal mining operations, and that operators be required to adopt measures in order to (1) prevent subsidence to the extent technologically and economically feasible, (2) maximize mine stability, and (3) maintain the value and reasonably foreseeable use of surface lands. The court reasoned that in enacting these provisions, Congress did not differentiate, based upon State law, between the duties of underground operators with respect to subsidence damage to land or structures. (*Id.*, mem. op. at 12). Accordingly, the court remanded "this rule to the Secretary to be revised by striking the reference to state law." (*Id.*, mem. op. at 20).

Although OSM has not yet actually suspended the above Federal regulation, OSM may not, because of the court's remand, use the regulations at 30 CFR 817.121(c)(2) in evaluating the sufficiency of Oklahoma's proposed rule. Accordingly, OSM has evaluated the proposed amendments based upon its consistency with the appropriate provisions of SMCRA as interpreted by the court.

Based on (1) the court's finding that the "State-law limitation" on the duty to correct subsidence damage to structures is contrary to the provisions of SMCRA, and (2) the court's specific instruction to revise 30 CFR 817.121(c)(2) by "striking the reference to State law", the Director finds that to the extent Oklahoma's proposed rule at § 817.121(c)(2) references requirements under State law, it is less stringent than sections 102(b) and 516(b)(1) of SMCRA. The Director is, therefore, not approving Oklahoma's proposed rule at § 817.121(c)(2) to the extent that it references requirements under State law.

The Director also notes that 30 CFR 784.20(g)(2) requires that permit applications contain a description of measures to be taken in accordance with 30 CFR 817.121(c) to mitigate or remedy any subsidence-related damage to, or diminution in value or reasonably foreseeable use of, structures or facilities *to the extent required under State law* (emphasis supplied). In other words, this permitting requirement contains a "State-law limitation" identical to that remanded by the court in 30 CFR 817.121(c)(2). Although the court did not specifically make a ruling with regard to 30 CFR 784.20(g)(2), the Director finds that the remand of 30 CFR 817.121(c)(2) also affects 30 CFR 784.20(g)(2).

Oklahoma's proposed rule at § 784.20(g)(2) is identical to the Federal regulation at 30 CFR 784.20(g)(2). Therefore, the Director finds that to the extent that Oklahoma's proposed rule at § 784.20(g)(2) references requirements under State law, the rule is less stringent than sections 102(b) and 516(b)(1) of SMCRA. Consequently, the Director is not approving Oklahoma's proposed rule at § 784.20(g)(2) to the extent that it references requirements under State law.

The Director will, pursuant to 30 CFR 732.17(d), inform Oklahoma of the regulatory changes needed to amend the above rules.

11. Section 800.40, Inspections to Release Performance Bonds

Oklahoma proposes at § 800.40(b)(1) a rule regarding inspections for release of performance bonds that with one exception is identical to the Federal regulation at 30 CFR 800.40(b)(1). Oklahoma has excluded a requirement that, upon request by any person with an interest in bond release, the regulatory authority may arrange with the permittee to allow access to the permit area for the purpose of gathering information relevant to the performance bond release proceeding.

The preamble to the Federal regulation states that (1) the intent of this provision is to parallel that under section 513 of SMCRA relating to informal conferences on permit applications, and (2) the Federal regulation does not presume the right of citizen access, but the procedure is set forth to assist citizens in supporting their possible contention of reclamation inadequacy (48 FR 32932 at 32952, July 19, 1983). The regulatory authority is only required to determine on a case-by-case basis whether to make such an arrangement with the permittee. Therefore, the arrangement is discretionary on the part of the regulatory authority.

Because the language in Oklahoma's proposed rule, with exception of the excluded provision, is substantively identical to the Federal regulation, the Director finds that Oklahoma's proposed § 800.40(b)(1), with the exception of the excluded provision, is no less effective than the Federal regulation at 30 CFR 800.40(b)(1). However, because the exclusion of this provision would prohibit citizens from knowledge of a possible right of access, the Director is requiring Oklahoma to amend § 800.40(b)(1) to clearly set forth that Oklahoma has discretionary authority to arrange with the permittee to allow access to any person with an interest in the areas under consideration for bond release.

12. Sections 816.89 and 817.89, Disposal of Noncoal Wastes

Oklahoma proposes at § 816.89(d) and 817.89(d) rules requiring that noncoal mine waste, defined as "hazardous" under section 3001 of the Federal Resource Conservation and Recovery Act (RCRA) and 40 CFR part 261, be handled in accordance with Subtitle C of RCRA and any implementing regulations. Okkahoma's proposed requirements are identical to the language of the Federal regulations at 30 CFR 816.89(d) and 817.89(d). However, the Federal regulations at 30 CFR 816.89(d) and 817.89(d) were suspended on November 20, 1986 (51 FR 41952), to implement the decision of the U.S District Court for the District of Columbia in *PSMRL II, Round III.* The court remanded these rules because OSM failed to comply with the public notice and public comment requirements of the Administrative Procedure Act in promulgating these Federal regulations. No substantive issues were involved (51 FR 41952 at 41959). Because of the court's remand of 30 CFR 816.89(d) and 817.89(d), OSM may not use these regulations in evaluating the sufficiency of Oklahoma's proposed rules. Accordingly, OSM evaluated Oklahoma's proposed amendments based upon their consistency with the court's decision and the applicable provisions of SMCRA.

As stated previously, the court's decision to remand the Federal regulations was based solely on procedural rather than substantive grounds. Since the Oklahoma rulemaking process has provided for adequate public participation, the promulgation by Oklahoma of its proposed rules is not inconsistent with the court's ruling. Additionally, the adoption by Oklahoma of a Federal provision that was suspended on procedural rather than substantive grounds does not, by itself, make this portion of Oklahoma's program less effective than the corresponding Federal regulations. Rather, a determination as to whether Oklahoma's proposed rules are consistent with SMCRA must also be made.

Section 515(b)(14) of SMCRA generally states that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are to be treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters. Because Oklahoma's proposed rules at §§ 816.89 and 817.89 provide for the handling/disposal of toxic or "hazardous" noncoal mine wastes in a manner designed to prevent contamination of ground or surface waters, *i.e.*, pursuant to the provisions of subtitle C of RCRA, the Director finds that Oklahoma's proposed subsections 816.89 and 817.89 are no less stringent than section 515(b)(14) of SMCRA.

13. Sections 816.100, Contemporaneous Reclamation

Oklahoma proposes at § 816.100 requirements that reclamation operations occur as contemporaneously as practicable with mining operations, except when such operations are conducted in accordance with a variance for combined surface and underground mining activities issued under § 785.18. Oklahoma also proposes at § 816.100(a) schedules including time and distance factors for contour mining and area strip mining, and an allowance for a time schedule to be approved by Oklahoma for open-pit mining with thin overburden.

Oklahoma's proposed rule requires (1) for contour mining that rough backfilling and grading follow coal removal by not more than 60 days or 1,500 linear feet, (2) for open-pit mining with thin overburden that Oklahoma shall approve a schedule, on the basis of materials submitted under § 780.18(b)(3), by which time rough backfilling and grading shall occur, and (3) for area strip (surface) mining that rough backfilling and grading be completed within 180 days following coal removal and not more than four spoil ridges behind the pit being worked.

OSM's contemporaneous reclamation regulation at 30 CFR 816.100 (48 FR 24638, June 1, 1983) was remanded by the U.S. District Court for the District of Columbia in *PSMRL II, Round II* to the extent that it did not specify both time and distance factors defining contemporaneous reclamation (*PSMRL II, Round II,* Mem. Op. at 52). The Federal regulation at 30 CFR 816.101(a) (44 FR 15312 at 15411, March 13, 1979), which had been in effect prior to OSM's promulgation of the remanded regulation at 30 CFR 816.100, did specify such time and distance factors.

Although OSM never actually suspended the remanded regulation, OSM may not, because of the court's remand, use the June 1, 1983, Federal regulation in evaluating the sufficiency of Oklahoma's proposed rule. Accordingly, OSM evaluated the proposed amendment based upon its consistency with the court's decision and the applicable provisions of SMCRA.

Oklahoma's proposed § 816.100(a) is substantively identical to the March 13, 1979, Federal regulation at 30 CFR 816.101(a). Thus, Oklahoma's proposed § 816.100(a) is consistent with the court's decision in that it does specify objective and reasonable time and distance factors defining contemporaneous reclamation.

Section 515(b)(16) of SMCRA provides that reclamation efforts are to proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations. It does not expressly define contemporaneous reclamation. The Director therefore finds that Oklahoma's proposed section 816.100 is no less stringent than section 515(b)(16) of SMCRA.

14. Sections 816.104 and 816.105, Backfilling and Grading of Thin and Thick Overburden Surface Mines

Oklahoma proposes requirements at § 816.104(c) and § 816.105, respectively, that provisions for thin overburden apply when the final thickness of the overburden is less than 0.8 of the initial thickness, and that provisions for thick overburden apply when the final thickness of the overburden is greater than 1.2 of the initial thickness.

On October 1, 1984, the U.S. District Court for the District of Columbia in *PSMRL II, Round II* remanded OSM's backfilling and grading regulations for thin and thick overburden surface mines at 30 CFR 816.104(a) and 816.105(a) (48 FR 23356 at 23369, May 24, 1983) because the regulations did not provide objective formulae for defining thick and thin overburden (*PSMRL II, Round II,* Mem. Op. at 53). The Federal regulations at 30 CFR 816.104(a) and 816.105(a) (44 FR 15312 at 15411, March 13, 1979) that had been in effect prior to OSM's promulgation of the remanded regulations at 30 CFR 816.104(a) and 816.105(a) did specify such objective formulae.

Although OSM never actually suspended the remanded rules, OSM may not, because of the court's remand, use the May 24, 1983, Federal regulations in evaluating the sufficiency of Oklahoma's proposed rules. Accordingly, OSM evaluated the proposed amendments based upon their consistency with the court's decision and the applicable provisions of SMCRA.

Oklahoma's proposed § 816.104(c) and § 816.105, respectively, are substantively identical to the March 13, 1979, Federal regulations at 30 CFR 816.104(a) and § 816.105(a). Thus, Oklahoma's proposed rules are consistent with the court's decision in that they do specify objective and reasonable formulae for defining thick and thin overburden.

Section 515(b)(3) of SMCRA creates a limited exception, with regard to areas of thin and thick overburden, from the general statutory requirement to restore disturbed lands to approximate original contour. More specifically, section 515(b)(3) states that if the overburden is either insufficient or more than sufficient to restore approximate original contour, then operators must use overburden and other spoil and waste materials to attain the lowest practical grade, but not more than the angle of repose. Section 515(b)(3) of SMCRA does not expressly define thin and thick overburden. The Director therefore finds that Oklahoma's proposed §§ 816.104 and 816.105 are no less stringent than section 515(b)(3) of SMCRA.

15. Sections 816.116 and 817.116, Standards of Revegetation Success.

(a) *Subsections 816.116(a)(1) and 817.116(a)(1), Bond Release Guidelines.* The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for revegetation success and statistically valid sampling techniques for measuring vegetation ground cover, production, and stocking be selected by the regulatory authority and included in the approved regulatory program. The preamble to these regulations (48 FR 40140 at 40150, September 2, 1983) further explains that the selected sampling techniques and success standards are to be subject to public review and comment.

Oklahoma proposes §§ 816.116(a)(1) and 817.116(a)(1) that reference success standards identified in the Bond Release Guidelines published by the Department of Mines. However, Oklahoma has not submitted these guidelines to OSM for approval. Therefore, the Director finds that Oklahoma's proposed §§ 816.116(a)(1) and 817.116(a)(1) are less effective than the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1). He is not approving the proposed §§ 816.116(a)(1) and 817.116(a)(1) and is requiring Oklahoma to submit the Bond Release Guidelines to OSM for approval.

(b) *Subsections 816.116(b)(3)(iii) and 817.116(b)(3)(iii), Revegetation Ground Cover.* Oklahoma proposes at §§ 816.116(b)(3)(iii) and 817.116(b)(3)(iii) a technical standard for revegetative ground cover of 80 percent on areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products. The proposed rules also require that in no case shall vegetative ground cover be less than that required to achieve the postmining land use.

The corresponding Federal regulations at 30 CFR 816.116(b)(3)(iii) and 817.116(b)(3)(iii) do not specify a percentage of ground cover but do require that vegetative ground cover shall not be less than that required to achieve the approved postmining land use. The Federal regulation was written in general form because of the variation in natural ground cover conditions throughout the United States; therefore, a specific percentage of ground cover was not required. It was anticipated that each State would either require the use of reference areas, specify minimum levels of ground cover as a percentage of surface area, or adopt some other acceptable standard (48 FR 40140 at 40152, September 2, 1983). OSM recognizes that extensive ground cover may be incompatible with maximum tree survival and growth since trees and herbaceous plants compete for moisture, nutrients, and light. In situations where the long-term vegetative cover is forest, a light herbaceous cover would be acceptable if it was adequate to protect the soil surface from erosion (48 FR 40140 at 40142, September 2, 1983).

Because the land uses require woody plants, the Director finds that Oklahoma's proposed 80 percent ground cover on areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products is an acceptable standard, but only insofar as it is adequate to control erosion. Based on the above qualification, the Director finds that Oklahoma's proposed §§ 816.116(b)(3)(iii) and 817.116(b)(3)(iii) are not less effective than the corresponding Federal regulations at 30 CFR 816.116(b)(3)(iii) and 817.116(b)(3)(iii).

(c) *Subsections 816.116(c)(4) and 817.116(c)(4), Normal Husbandry Practices.* Oklahoma proposes at §§ 816.116(c)(4) and 817.116(c)(4) that the Director of the Oklahoma program may approve selective husbandry practices if such practices 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. Oklahoma further proposes in these rules that approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control, and any pruning, reseeding and transplanting specifically necessitated by such actions. With one exception, Oklahoma's proposed rules are substantively identical to the

corresponding Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4). The exception is that the corresponding Federal regulations require that the regulatory authority may approve selective husbandry practices provided it obtains prior approval from the Director of OSM in accordance with 30 CFR 732.17. While Oklahoma notes in its proposed §§ 816.116(c)(4) and 817.116(c)(4) that it has not identified any husbandry practices which must be approved in accordance with 30 CFR 732.17, Oklahoma's proposed rules require approval only by the Director of the Oklahoma program.

On September 7, 1988, OSM revised its regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) to require OSM approval of normal husbandry practices (53 FR 34636). OSM concluded that (1) singular approval by regulatory authorities would grant flexibility that was inappropriate in a national performance standard, and (2) the requirement for OSM approval of normal husbandry practices proposed by State regulatory authorities based upon State-specific documentation of local husbandry practices would ensure that augmentive practices are not allowed to occur without restarting the operator's period of responsibility (53 FR 34636 at 34641).

Therefore, the Director finds that Oklahoma's proposed §§ 816.116(c)(4) and 817.116(c)(4) are less effective than the corresponding Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) to the extent that they do not require prior OSM approval of any husbandry practices. On Feruary 12, 1990, the Director sent to Oklahoma a notification in accordance with 30 CFR 732.17(f)(1) of the need for a program amendment pertaining to normal husbandry practices (Administrative Record No. OK–910). Consistent with the February 12, 1990, 30 CFR part 732 letter, the Director is requiring Oklahoma to amend its rules to require that any husbandry practices which Oklahoma may wish to adopt must be first approved by the Director in accordance with 30 CFR 732.17.

16. Section 823.12, Prime Farmland Restoration

Oklahoma proposes at § 823.12(a)(1) a rule pertaining to reclamation of prime farmland that would allow suitable soil materials other than the original topsoil to *equal or exceed* the original soil in productive capacity (emphasis added). The Federal regulation at 30 CFR 823.12(c)(1) requires that any soil substituted for the original topsoil during prime farmland reclamation *exceed* the original topsoil in productive capacity (emphasis added). OSM revised 30 CFR 823.12(c)(1) on May 12, 1983 (48 FR 21446) and, in order to be consistent with section 515(b)(7)(A) of SMCRA (*Id.* at 21455), deleted from the previous 1979 regulation the provision that prime farmland topsoil substitute material could equal the original soil in productive capacity.

Because Oklahoma's proposed rule would allow soil substituted for the original topsoil in areas classified as prime farmland to just equal, and not exceed, the original soil productivity, the Director finds that Oklahoma's proposed rule at § 823.12(a)(1) is less effective than the Federal regulation at 30 CFR 823.12(c)(1) and less stringent than section 515(b)(7)(A) of SMCRA. Therefore, he is not approving § 823.12(a)(1), and is requiring Oklahoma to amend this rule to require that, when the operator does not salvage and store the original prime farmland topsoil, the productive capacity of the reclaimed substituted soil exceed that which existed prior to mining.

17. Section 827, Coal Preparation Plants

With the exception, Oklahoma proposes rules at section 827 that are substantively identical to the corresponding Federal regulations at 30 CFR part 827 regulating coal preparation plants not located within the permit area of a mine. The exception is that Oklahoma has not proposed a counterpart rule to 30 CFR 827.13. 30 CFR 827.13 sets forth interim performance standards for coal preparation plants not located within the permit of a mine (*i.e.* those coal preparation plants not located within the permit area of a mine which were in existence prior to the effective date of SMCRA, *National Wildlife Fed'n* v. *Lujan*, Nos. 87–1051, 87–1814, and 88–2788 (D.D.C. Feb. 12, 1990)). All coal preparation plants not located within the permit of a mine, in Oklahoma, are regulated under the permanent program performance standards; therefore, Oklahoma did not propose interim standards for coal preparation plants. Based on this reason, the Director finds that Oklahoma's proposed section 827 is no less effective than the corresponding Federal regulations at 30 CFR part 827.

18. Section 845.21, Use of Civil Penalty Fees

The Federal regulation at 30 CFR 845.21(a) authorizes the expenditure of money, collected pursuant to the assessment of civil penalties under section 518 of SMCRA, for reclamation of lands adversely affected by coal mining practices after August 3, 1977. Oklahoma's proposed § 834.21(a) is substantively identical to the Federal regulation at 30 CFR 845.21(a).

However, at 30 CFR 845.21(b) (1)–(4), the Federal regulations list by priority four criteria by which the fees may be allocated. They are (1) emergency projects as defined at 30 CFR 870.5, (2) reclamation projects that qualify as priority 1 under section 403 of SMCRA, (3) reclamation projects that qualify as priority 2 under section 403 of SMCRA, and (4) reclamation of bond forfeiture sites. Oklahoma's proposed rules at §§ 845.21(b) (1) and (2) include only the first and last of the four criteria listed in the Federal regulations. Oklahoma's proposed rules would now allow civil penalty fees to be used for reclamation projects which qualify as priority 1 and 2 under section 403 of SMCRA, as specified at 30 CFR 845.21(b) (2) and (3).

Priority 1 and 2 reclamation projects under section 403 of SMCRA are the same as those listed in section 740 of the Oklahoma Coal Reclamation Act of 1979. These projects would be those post-August 3, 1977, abandoned mined sites that involve protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices (priority 1) and protection of public health, safety, and general welfare from adverse effects of coal mining practices (priority 2).

Because Oklahoma would, in effect, be using civil penalty fees for bond forfeiture sites without first giving consideration to priority 1 and 2 post-August 3, 1977, abandoned mined sites, the Director finds that Oklahoma's proposed § 845.21(b) is less effective than the Federal regulation at 30 CFR 845.21(b). Therefore, he is not approving § 845.21(b), and is requiring Oklahoma to amend § 845.21(b) to include as the second and third criteria for expenditure of civil penalty fees for reclamation of lands adversely affected by post-August 3, 1977, coal mining practices, reclamation projects that qualify as priority 1 and 2 under section 740 of Oklahoma's Coal Reclamation Act of 1979.

19. 30 CFR 936.10(b), Provisions of the State Regulatory Program Affirmatively Disapproved To Comply With the Order of the District Court

In the **Federal Register** notice announcing the Department's approval of Oklahoma's original program, the Secretary, at 30 CFR 936.10(b), affirmatively disapproved several provisions of Oklahoma's program that incorporated suspended or remanded Federal regulations (See 46 FR 4902 at 4911, January 19, 1981). The affirmative

disapprovals were based upon an order of the U.S. District Court for the District of Columbia that the Secretary "affirmatively disapprove . . . those segments of a State program that incorporate a suspended or remanded regulation" (*In re: Permanent Surface Mining Regulation Litigation,* Civil Action 79–1144, May 16, 1980, Mem. Op. at 49).

On August 15, 1980, however, the court partly stayed its May 16, 1980, order and allowed the Secretary to approve State program provisions similar to remanded or suspended Federal regulations when the State adopted such provisions in a rulemaking or legislative proceeding which occurred before the enactment of SMCRA or after the date of the District Court decision (May 16, 1980), since such State rules clearly were not based solely upon the suspended or remanded Federal regulations. In addition, the court stated that the Secretary need not affirmatively disapprove provisions based upon suspended or remanded Federal regulations if a responsible State official requested the Secretary to approve them.

The proposed Oklahoma amendments being considered in this rulemaking consist of a completely new set of rules which will replace those approved earlier and to which the affirmative disapprovals at 30 CFR 936.10(b) applied. These Oklahoma proposed rules are based on the Federal rules as revised in response to the 1980 remands, not on the remanded 1979 language. Since the proposed regulations were drafted well after the 1980 Federal court decisions resulting in the affirmative disapprovals, the Director finds that Oklahoma has had adequate opportunity to revise its rules to reflect the judicial remands. Furthermore in submitting this amendment, the head of the Oklahoma regulatory authority has specifically requested approval of the proposed rules. Hence, under the terms of the court's August 15, 1980, ruling, the affirmative disapprovals at 30 CFR 936.10(b) are no longer necessary and the Director is removing them.

Accordingly, the proposed amendments submitted by the State will be reviewed on their own merits without regard to the earlier affirmative disapprovals.

IV. Public and Agency Comments

1. Public Comments

The Director solicited public comment on the proposed amendment and provided opportunity for public hearing (June 28, 1988, January 9, 1989, July 7, 1989. August 24, 1989, and December 26, 1989, publications of the **Federal Register** at 53 FR 24321, 54 FR 633, 54 FR 29583, 54 FR 35206, and 54 FR 52957). Because no one requested an opportunity to testify at a public hearing, no hearing was held. The only comments received were from the National Wildlife Federation (NWF, Administrative Record No. OK–904). NWF's comments pertained to the coal exploration and incidental mining provisions of Oklahoma's proposed amendment.

(a) *Adequacy of Coal Exploration Rules.* NWF commented that OSM's coal exploration regulations (especially as such regulations are implemented by Oklahoma) are inadequate. In this regard, NWF noted that it has challenged the Federal coal exploration rules as being illegal in a pending Federal court suit (*NWF* v. *Hodel,* Civ. No. 89–0504–TAF (D.D.C. filed Feb. 24, 1989)). In its comments, NWF incorporated by reference its complaint in this case and its August 5, 1988, comments on the adequacy of the then-proposed Federal coal exploration rules.

It is not proper, in the context of the subject rulemaking, to consider the sufficiency or the legality of the Federal regulations. Rather, this rule making is limited solely to a consideration of the adequacy of Oklahoma's proposed rules. Furthermore, there is no requirement, as NWF suggests, that Oklahoma's proposed State program amendment rules be consistent with the issues raised in a pending Federal court case challenging the legality or sufficiency of the underlying Federal regulations. Consequently, the Director has determined that NWF's comments regarding the adequacy of OSM's coal exploration regulations are beyond the scope of this rulemaking, and that no further action need be taken with regard to these comments.

In addition to attacking the adequacy of the Federal coal exploration rules, NWF also noted purported deficiencies in Oklahoma's proposed rules. In support of the comments, NWF cited examples from OSM's annual evaluation reports of purported abuses by Oklahoma of its (Oklahoma's) coal exploration rules. As explained in more detail below, the Director has decided to not take any further action with regard to these comments. Therefore, the specific nature of the comments will not be discussed. Suffice it to say that NWF generally noted eight examples of apparent abuse of Oklahoma's coal exploration rules as they pertain to test burns. NWF furthermore suggested specific language needed to reform Oklahoma's proposed coal exploration rules for the following topics: information required for notices of intent to explore for operations removing less than 250 tons of coal, information required on maps, information required in permit applications for exploration operations removing more than 250 tons of coal, public notice requirements, availability of information under section 772, required bond amounts, expiration limits for notices of intent to explore, bond release criteria, and performance standards regarding vehicular travel, blasting, hydrologic protection, and buffer zones.

The Director's standards for evaluation of State program amendments are the provisions of SMCRA and the implementing Federal regulations. That is, State submittals must be evaluated to ensure that they are in accordance with the provisions of SMCRA and are consistent with the duly promulgated Federal regulations. (See 30 CFR 732.15(a).) Consequently, notwithstanding NWF's pending legal challenge to the sufficiency of the Federal rules, unless or until the court determines that such rules are illegal or inadequate, the Director will utilize the duly promulgated provisions of 30 CFR part 772 to determine whether Oklahoma's proposed coal exploration rules can be approved. Additionally, the Director has no authority, as NWF suggests, to require Oklahoma to adopt rules which are more effective than the existing Federal regulations, or more stringent than the provisions of SMCRA.

Oklahoma's proposed coal exploration rules at section 772 are substantively identical to the corresponding Federal regulations at 30 CFR part 772. For this reason, the Director is approving Oklahoma's proposed coal exploration rules at section 772 as being no less effective than the Federal regulations at 30 CFR part 772. (See finding No. 1.) For this same reason, the Director is not accepting the comments of NWF concerning the purported inadequacy of Oklahoma's proposed rules, and is not taking any further action with regard to the same.

(b) *Permit Application Information and Inspections.* NWF also commented that OSM (1) must require Oklahoma to require and maintain complete and accurate application and inspection information for all exploration operations, and (2) should require Oklahoma to conduct inspections of all exploration operations. NWF suggests that Oklahoma has failed to adequately implement its approved program.

The purpose of this rulemaking is an evaluation of Oklahoma's proposed

rules and a determination of whether they are no less effective than the corresponding Federal regulations and no less stringent than SMCRA. Oklahoma's actual implementation of its adopted rules is not the subject of this rulemaking; rather, Oklahoma's implementation of its program is subject to OSM's continuing annual evaluation pursuant to section 521 of SMCRA and the Federal regulations at 30 CFR 733.11.

Oklahoma's proposed rules at §§ 772.12(d) and 772.15(a), respectively, require that (1) a decision on an application for exploration of greater than 250 tons of coal must be based on a complete and accurate application, and (2) except for confidential information all information submitted to the State under section 772 shall be made available for public inspection and copying at the offices of the Department. Oklahoma's proposed rule at § 842.11(c) requires inspections of coal operations that substantially disturb the land as necessary to ensure compliance with the State Program. These proposed rules require Oklahoma to maintain complete and accurate application and inspection information.

Oklahoma's proposed rules are substantively identical to the corresponding Federal regulations at 30 CFR 772.12(d), 772.15(a), and 842.11(c)(3). Therefore, the Director is approving these proposed rules. (See finding No. 1.) For the above reasons, the Director has determined that at this time, no further action is required with regard to these comments.

(c) Coal Exploration on Lands Designated as Unsuitable. NWF further commented that because section 522(e) of SMCRA prohibits surface coal mining and reclamation operations on lands designated as unsuitable for mining by Federal statute, unless there is a determination of valid existing rights (VER), there should be no approval of coal exploration unless there is a prior, clear, and convincing demonstation of VER.

The Federal regulations at 30 CFR 762.14 state that the designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to section 522 of SMCRA and the implementing Federal regulation, does not prohibit coal exploration operation in the area, if such operations are conducted in accordance with SMCRA, the implementing Federal regulations, any approved State or Federal program, and other applicable requirements. These Federal regulations further provide that to ensure that exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining, exploration operations on lands designated as unsuitable for surface coal mining operations must be approved by the regulatory authority under 30 CFR part 772.

Oklahoma's proposed rule at § 762.14 is substantively identical to the Federal regulation at 30 CFR 762.14. Therefore, the Director is approving the proposed rule. (See finding No. 1.) The adequacy of OSM's "lands unsuitable" regulations, and consequently of substantively identical rules proposed by Oklahoma, is beyond the scope of this rulemaking. The Director has therefore determined that at this time, no further action is required with regard to these comments.

(d) *16⅔ Exemption.* NWF noted that OSM, on December 20, 1989 (54 FR 52092), promulgated revised regulations implementing the exemption, from the definition of surface coal mining and reclamation operations, of coal extraction incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale. (See section 701(28) of SMCRA.)

NWF further commented that Oklahoma's proposed amendment, as revised on December 15, 1989, did not include corresponding rules no less effective than the revised Federal regulations. Furthermore, NWF concluded that Oklahoma's failure to adopt similar rules to OSM's revised regulations (1) conflicts with section 503(a)(7) of SMCRA (which requires States to submit rules and regulations consistent with regulations issued by the Secretary pursuant to SMCRA); and (2) therefore requires the Secretary, pursuant to section 504(a)(3) of SMCRA, to implement a Federal program in Oklahoma.

With respect to the Oklahoma program, the Director agrees, consistent with section 503(a)(7) of SMCRA, that Oklahoma must submit rules no less effective than the revised Federal regulations. As part of his consideration of Oklahoma's proposed amendment, the Director is not approving proposed § 700.11(a)(4) to the extent that it does not include or reference rules implementing the incidental mining exemption. The Director, on February 7, 1990, in accordance with 30 CFR 732.17 (d) through (f), required that Oklahoma submit rules implementing the statutory exemption for the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale. Consistent with the February 7, 1990, 30 CFR part 732 letter, the Director is codifying the same requirement at 30 CFR 936.16(a). (See finding No. 2.)

The Director's required program amendment is consistent with 30 CFR 732.17 which requires that the Director promptly notify State regulatory authorities of all changes in SMCRA and the Secretary's regulations which will require amendments to State programs. In this particular context, i.e., the Director's imposition of a required program amendment, pursuant to 30 CFR 732.17(f)(2), it is only after a State has failed to submit a required amendment that the Director could initiate proceedings under 30 CFR part 733 to either enforce that part of the State program affected, or withdraw approval, in whole or in part, of the State program and implement a Federal program. Therefore, NWF's request that a Federal program be implemented in Oklahoma is premature; fairness and the regulations dictate that prior to the Director exercising this option, Oklahoma first be given an opportunity to respond to the required amendment, and to promulgate rules that are no less effective than the revised Federal regulations.

For the above reasons, the Director has determined (1) that his actions pertaining to this portion of Oklahoma's program are correct and consistent with the relevant portions of SMCRA and the implementing Federal regulations, and (2) that it is not necessary, as NWF suggests, to implement a Federal program in Oklahoma. To the extent, however, that Oklahoma fails to take appropriate action with regard to the Director's required program amendment, the Director will take whatever steps are necessary to ensure compliance with the appropriate provisions of SMCRA and the Federal regulations.

2. Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Oklahoma program. Comments were also solicited from various State agencies. No comments were received from the State and Federal agencies.

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), an initial concurrence was solicited and received from the EPA (Administrative Record No. OK–871) for those aspects of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act and the Clean Air Act. Subsequent to the initial concurrence,

on February 20, 1990 (Administrative Record No. OK–911), EPA qualified its concurrence to the extent that Oklahoma's rules should not be interpreted so as to provide full authorization for instream treatment of point source discharges.

EPA noted certain situations related to instream treatment which could result in conditions that would not assure compliance with applicable State water quality standards as required by the Clean Water Act. By instream treatment, EPA referred to two activities. The first activity is one in which mine wastes are discharged into waters of the United States for the primary purpose of waste disposal but with the effect of fill. The second activity involves instream waste treatment impoundments. These impoundments are built in waters of the United States for the purpose of creating a waste treatment system. Such impoundments may be used for the chemical treatment of mine waste water as well as solids settling.

EPA's definition of "waters of the United States" at 40 CFR 122.2 includes not only perennial, but also intermittent and ephemeral streams. EPA noted that the creation of any impoundments or sediment ponds in waters of the United States does not itself remove those waters from the definition of "waters of the United States" under the Clean Water Act. The Clean Water Act requires that all discharges of pollutants from point sources into waters of the United States obtain a permit as appropriate under either section 402 or 404 of the Clean Water Act.

The Director acknowledges that nothing in SMCRA supercedes the requirements of the Clean Water Act. The Director's approval of Oklahoma's proposed rules should not be construed to authorize any actions inconsistent with the Clean Water Act. Additionally, on March 9, 1990, Oklahoma stated that it will not approve any instream treatment activities (Administrative Record No. OK–912).

4. State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation Comments (ACHP)

30 CFR 732.17(h)(4) requires that all amendments that may have an effect on historic properties be provided to the SHPO and ACHP for comment. Comments were solicited from these offices. The SHPO responded that he had no objections to the proposed amendment (Administrative Record No. OK–869). No comments were received from ACHP.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment submitted by Oklahoma on May 18, 1988, as revised on June 8, 1988, November 14, 1988, June 22, 1989, August 8, 1989, and December 15, 1989, with the exceptions of (1) the exemption of coal extraction incidental to the extraction of other minerals at § 700.11(a)(4), (2) the definition of "affected area" and "previously mined areas" at § 701.5; (3) the authorization of land surveyors to prepare and/or certify plans for siltation structures, impoundments, and roads at §§ 780.25 (a)(1) and (a)(3)(i), 784.16 (a)(1)(i) and (a)(3)(i), 816.46(b)(3), 817.46(b)(3), 816.49(a)(2), 817.49(a)(2), 784.24(b), 816.151(a), and 817.151(a); (4) the standards for revegetation success at §§ 816.116(a)(1), 817.116(a)(1), 816.116(c)(4), and 817.116(c)(4); (5) the correction of material damage resulting from subsidence at §§ 784.20(g)(2) and 817.121(c)(2); (6) the standard for prime farmland restoration at §§ 823.12(a)(1); and (7) the use of civil penalties at § 845.21(b). As discussed in findings Nos. 2, 4, 9, 10, 15, 16, and 18, the Director has determined that the proposed rules specified above are less effective than the Federal regulations and/or less stringent than SMCRA. He is therefore not approving them, and, as discussed in findings Nos. 2, 9, 15, 16, and 18, he is requiring further regulatory program amendments. In addition, as discussed in finding No. 11, the Director is requiring that Oklahoma amend § 800.40(b) (1) regarding bond release inspections. And, as discussed in finding No. 19, the Director is removing the affirmative disapprovals at 30 CFR 936.10(b) (1)–(28). Except as noted, the Director is approving the proposed rules with the provision that they be fully promulgated in identical form to the rules 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.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Oklahoma program, the Director will recognize only the statutes, regulations, and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Oklahoma of only such provisions.

VI. Procedural Requirements

1. Compliance with the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of a State regulatory program. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review of OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 936

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

Dated: March 19, 1990.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations 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. By revising the text of § 936.10 to read as follows:

§ 936.10 State program approval.

The Oklahoma State Program, as submitted on February 28, 1980, amended on June 11, 1980, and resubmitted on December 8, 1980, is conditionally approved on January 19, 1981. Copies of the approved program are available at:

(a) Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 East Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone (918) 581–6430.

(b) Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859.

3. Section 936.15 is amended by adding paragraph (i) as follows:

§ 936.15 Approval of regulatory program amendments.

* * * * *

(i) With the exceptions of (1) § 700.11(a)(4) (exemption of coal extraction incidental to the extraction of other minerals); (2) § 701.5 (definitions of "affected area" and "previously mined areas"); (3) §§ 780.25(a)(1) and (a)(3)(i), 784.16(a)(1)(i) and (a)(3)(i), 816.46(b)(3), 817.46(b)(3), 816.49(a)(2), 817.49(a)(2), 784.24(b), 816.151(a), and 817.151(a) (authorization of land surveyors to prepare and/or certify plans for siltation structures, impoundments, and roads); (4) §§ 816.116(a)(1), 817.116(a)(1), 816.116(c)(4), and 817.116(c)(4) (standards for revegetation success); (5) §§ 784.20(g)(2) and 817.121(c)(2) (subsidence control); (6) § 823.12(a)(1) (prime farmland restoration); and (7) § 845.21(b) (use of civil penalty fees), the revisions to the following sections of Oklahoma's permanent regulatory program rules submitted to OSM on May 18, 1988, as revised by Oklahoma on June 8, 1988, November 14, 1988, June 22, 1989, August 8, 1989, and December 15, 1989, are approved effective March 27, 1990.

700.1–.5, .11–.15
701.1–.5, .11
705.1–.6, .11, .13, .15, .17–.19, .21, .22
707.1, .4, .5, .10–.12
761.1, .3, .5, .11, .12
762.1, .4, .5, .11–.14
764.1, .11, .13, .15, .17, .19, .21, .23, .25
772.1–.3, .11–.16
773.1, .5, .11–.13, .15, .17, .19, .20, .21
774.1, .11, .13, .15, .17
775.1, .11, .13
777.1, .11, .13–.15, .17
778.1, .13–.18, .20, .21
779.1, .2, .4, .11, .12, .18, .19, .21, .22, .24, .25
780.1, .2, .4, .11–.16, .18, .21–.23, .25, .27, .29, .31, .33, .35, .37, .38
783.1, .2, .4, .11, .12, .18, .19, .21, .22, .24, .25
784.1, .2, .4, .11–.26, .29, .30, .200
785.1, .2, .13–.15, .17, .18, .20–.22
795.3, .5–.9, .12
800.1, .4, .5, .11–.17, .20, .21, .23, .30, .40, .50, .60
810.1, .2, .4, .11
815.1, .13, .15
816.1, .2, .11, .13–.15, .22, 41–.43, .45–.47, .49, .56, .57, .59, .61, .62, .64, .66–.68, .71–.74, .79, .81, .83, .84, .87, .89, .95, .97, .99, .100, .102, .104–.107, .111, .113, .114, .116, .121, .122, .131–.133, .150, .151, .180, .181, .200
817.1, .2, .11, .13–.15, .22, .41–.43, .45–.47, .49, .56, .57, .59, .61, .62, .64, .66–.68, .71–.74, .81, .83, .84, .87, .89, .95, .97, .99, .100, .102, .106, .107, .111, .113, .114, .116, .121, .122, .131–.133, .150, .151, .180, .181, .200
819.1, .11, .13, .15, .17, .19, .21
823.1, .2, .4, .11–.15
824.1, .2, .11
827.1, .11, .12
828.1, .2, .11, .12
842.1, .11–.16
843.1, .5, .11–.18, .20, .22
845.1, .2, .11–.21
846.1, .5, .12, .14, .17, .18
850.1, .5, .12–.15

4. Section 936.16 is added.

§ 936.16 Required regulatory program amendments.

(a) By April 9, 1990, Oklahoma must submit for OSM approval an amendment revising § 700.11(a)(4) to include rules corresponding to 30 CFR 700.11(a)(4) and 30 CFR part 702, or otherwise demonstrate a means of implementing the exemption for coal extraction incidental to the extraction of other minerals where coal does not exceed 16⅔ percent that is no less effective than the revised Federal regulations.

(b) By May 29, 1990, Oklahoma must submit for OSM approval an amendment revising §§ 780.25 (a)(1) and (a)(3)(i), 784.16 (a)(1)(i) and (a)(3)(i), 816.46(b)(3), 817.46(b)(3), 816.49(a)(2), 817.49(a)(2), 784.24(b), 816.151(a), and 817.151(a) to remove the authorization of land surveyors to prepare and/or certify plans for siltation structures, impoundments, and roads.

(c) By May 29, 1990, Oklahoma must submit for OSM approval an amendment revising § 800.40(b)(1), or otherwise propose to OSM a means of ensuring that any person with an interest in the bond release will at Oklahoma's discretion on a case-by-case basis be given access to the areas under consideration for bond release.

(d) By May 29, 1990, Oklahoma must submit for OSM approval the Bond Release Guidelines referenced at §§ 816.116(a)(1) and 817.116(a)(1), or otherwise propose to OSM for approval as part of Oklahoma's approved program, standards for revegetation success and statistically valid sampling techniques for measuring vegetation ground cover, production, and stocking.

(e) By April 13, 1990, Oklahoma must submit for OSM approval an amendment revising §§ 816.116(c)(4) and 817.116(c)(4), or otherwise propose to OSM a means of ensuring that any husbandry practices will be approved by the Director of OSM in accordance with 30 CFR 732.17 prior to being approved by the Director of the Oklahoma program.

(f) By May 29, 1990, Oklahoma must submit for OSM approval an amendment revising § 823.12(a)(1), or otherwise propose to OSM a means of ensuring that, in those instances where an operator is not required to separately salvage and store the topsoil of a prime farmland soil, the productive capacity of the reclaimed substituted prime farmland soil will exceed, rather than equal or exceed the productive capacity of the prime farmland soil that existed prior to mining.

(g) By May 29, 1990, Oklahoma must submit for OSM approval an amendment revising § 845.21(b), or otherwise propose to OSM a means of ensuring that, when allocating expenditures of civil penalty fees for reclamation of lands affected by post-August 3, 1977, coal mining practices, before considering allocation of such fees for bond forfeiture sites, priority consideration will be given to reclamation projects that qualify as priority 1 and 2 under section 740 of the Oklahoma Coal Reclamation Act of 1979.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–90–07]

Special Local Regulations for Marine Events; Waterside Beach Party; Elizabeth River, Town Point Park, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the Waterside Beach Party to be held at Town Point Park adjacent to "Waterside", at Norfolk, Virginia. The festival will consist of a