

records. Under this authority, effective September 6, 1990, the FBI Criminal Justice Information Services (CJIS) Division has made all data on identification records available for such purposes. Records obtained under this authority may be used solely for the purpose requested and cannot be disseminated outside the receiving departments, related agencies, or other authorized entities. Officials at the governmental institutions and other entities authorized to submit fingerprints and receive FBI identification records under this authority must notify the individuals fingerprinted that the fingerprints will be used to check the criminal history records of the FBI. The officials making the determination of suitability for licensing or employment shall provide the applicants the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. These officials also must advise the applicants that procedures for obtaining a change, correction, or updating of an FBI identification record are set forth in 28 CFR 16.34. Officials making such determinations should not deny the license or employment based on information in the record until the applicant has been afforded a reasonable time to correct or complete the record, or has declined to do so. A statement incorporating these use-and-challenge requirements will be placed on all records disseminated under this program. This policy is intended to ensure that all relevant criminal record information is made available to provide for the public safety and, further, to protect the interests of the prospective employee/licensee who may be affected by the information or lack of information in an identification record.

Dated: September 16, 1999.

**Janet Reno,**

*Attorney General.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 936

[SPATS No. OK-020-FOR]

#### Oklahoma Regulatory Program

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

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

**SUMMARY:** OSM is approving an amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Oklahoma proposed revisions to and additions of rules concerning burden of proof in civil penalty proceedings, petitions for review of proposed individual civil penalty assessments, permit conditions, verification of ownership or control application information, review of ownership or control and violation information, procedures for challenging ownership or control links shown in Applicant Violator System (AVS), and standards for challenging ownership or control links and the status of violation. Oklahoma intends to revise its program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** September 28, 1999.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6548. Telephone: (918) 581-6430. Internet: mwolfrom@mcrwgw.osmre.gov.

**SUPPLEMENTARY INFORMATION:**

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

#### **I. Background on the Oklahoma Program**

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

#### **II. Submission of the Proposed Amendment**

By letter dated September 28, 1998 (Administrative Record No. OK-982), Oklahoma sent us an amendment to its program under SMCRA. Oklahoma proposed to amend the Oklahoma Administrative Code (OAC). Oklahoma sent the amendment in response to a letter dated January 6, 1997 (Administrative Record No. OK-977), that we sent to Oklahoma under 30 CFR 732.17(c). The amendment also includes

changes made at Oklahoma's own initiative.

We announced receipt of the amendment in the October 20, 1998, **Federal Register** (63 FR 55979). 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. The public comment period closed on November 19, 1998. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment, we identified concerns relating to OAC 460:2-8-8, elements, burden of proof; OAC 460:2-8-9, decision by administrative hearing officer; OAC 460:2-8-10, petition for discretionary review; OAC 460:20-15-11, verification of ownership and control application information; OAC 460:20-15-12, review of ownership or control violation information; OAC 460:20-15-13, procedures for challenging ownership or control links in AVS; and OAC 460:20-15-14, standards for challenging ownership or control links and the status of violations. Further, we identified editorial concerns at OAC 460:2-8-10(f); OAC 460:20-15-11(a)(2)(B); OAC 460:20-15-13(d)(1); OAC 460:20-15-13(d)(2)(B); OAC 460:20-15-14(b)(1); OAC 460:20-15-14(d). We notified Oklahoma of these concerns by faxes dated December 3, 1998 and July 14, 1999 (Administrative Record Nos. OK-982.03 and OK-982.06, respectively).

By letters dated June 23, 1999, and July 20, 1999 (Administrative Record Nos. OK-982.05 and OK-982.07, respectively), Oklahoma sent us revisions to its program amendment. Based upon Oklahoma's revisions to its amendment, we reopened the public comment period in the August 10, 1999 **Federal Register** (64 FR 43327). The public comment period closed on August 25, 1999.

#### **III. Director's Findings**

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment.

Any revisions that we do not discuss below are about minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

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

as or similar to the corresponding sections of the Federal regulations. Differences between the State rules and the Federal regulations are minor.

The State rules listed in the table below contain language that is the same

Topic	State rule	Federal counterpart regulation
Burden of proof in civil penalty proceedings .....	OAC 460:2-7-6 .....	43 CFR 4.1155.
Petitions for review of proposed individual civil penalty assessments.	OAC 460:2-8-1 through 10 .....	43 CFR 4.1300 through 4.1309.
Verification of ownership or control application information.	OAC 460:20-15-11 .....	30 CFR 773.22(a).
Review of ownership or control and violation information.	OAC 460:20-15-12 .....	30 CFR 773.23.
Procedures for challenging ownership or control links shown in AVS.	OAC 460:20-15-13 .....	30 CFR 773.24.
Standards for challenging ownership or control links and the status of violations.	OAC 460:20-15-14 .....	30 CFR 773.25.

Because the above State rules have the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

*B. OAC 460:20-15-7, Permit Conditions*

Oklahoma proposes to remove paragraph 5 of this section which prohibits the discharge or discrimination of any employee or authorized representative of employees that files for or institutes any proceedings under the Act, testifies at any proceeding or investigation, or exercises any rights granted by the Act.

Section 703 of SMCRA prohibits reprisals against "whistleblower" employees. This provision is further implemented by 30 CFR Part 865 by requiring each employer conducting operations which are regulated under SMCRA to provide a copy of 30 CFR Part 865 to all current and new employees. However, States are not required to adopt a counterpart to 30 CFR Part 865. If a State does not adopt a counterpart, OSM is responsible for administering the requirements of 30 CFR Part 865. Oklahoma's removal of OAC 460:20-15-7(5) does not effect the Oklahoma program. Therefore, we approve Oklahoma's removal of this provision.

**IV. Summary and Disposition of Comments**

*Public Comments*

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

*Federal Agency Comments*

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the

Oklahoma program (Administrative Record No. OK-982.12). By letter date October 30, 1998, the U.S. Army Corps of Engineers responded to our request by stating that it found Oklahoma's amendment satisfactory (Administrative No. OK-982.02).

*Environmental Protection Agency (EPA)*

Under 30 CFR 732.17(h)(11)(ii), we are required to get written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Oklahoma proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. OK-982.10). The EPA did not respond to our request.

*State Historical 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 October 9, 1998, we requested comments on Oklahoma's amendment (Administrative Record No. OK-982.11), but neither responded to our request.

**V. Director's Decision**

Based on the above findings, we approve the amendment as sent to us by Oklahoma on September 28, 1998, and as revised on June 23, 1999 and July 20, 1999. We approve the rules that Oklahoma proposed with the provision

that they be published in identical form to the rules sent 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 are making this final rule effective immediately to expedite the State program amendment process and to encourage Oklahoma to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

**VI. Procedural Determinations**

*Executive Order 12866*

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

*Executive Order 12988*

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

requirements of 30 CFR Parts 730, 731, and 732 have been met.

**National Environmental Policy Act**

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

**Paperwork Reduction Act**

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

**Regulatory Flexibility Act**

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

**Unfunded Mandates**

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, state, or tribal governments or private entities.

**List of Subjects in 30 CFR Part 936**

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 15, 1999.

**Charles E. Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

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

**PART 936—OKLAHOMA**

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

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

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

**§ 936.15 Approval of Oklahoma regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
*	*	*
September 28, 1998	September 28, 1999	OAC 460:2-7-6; 2-8; 20-15-11 through 14.

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

[CGD01-99-163]

RIN 2115-AA97

**Safety Zone: Wedding on the Lady Windridge Fireworks, New York Harbor, Upper Bay**

**AGENCY:** Coast Guard, DOT.  
**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the Wedding on the Lady Windridge Fireworks Display located in Federal Anchorage 20C, New York Harbor, Upper Bay. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Federal Anchorage 20C.

**DATES:** This rule is effective from 8 p.m. until 9:30 p.m., on Sunday, October 3, 1999. For rain dates, refer to the regulatory text set out in this rule.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354-4193.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York, (718) 354-4193.

**SUPPLEMENTARY INFORMATION:**

**Regulatory History**

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM and publish the final rule 30 days before its effective date. Any delay encountered in this regulations effective date would be contrary to public interest since immediate action is needed to close the waterway and protect the maritime public from the

hazards associated with this fireworks display.

**Background and Purpose**

Fireworks by Grucci Inc. has submitted an application to hold a fireworks program on the waters of Upper New York Bay in Federal Anchorage 20C. The fireworks program is being sponsored by Eye Patch Productions. This regulation establishes a safety zone in all waters of Upper New York Bay within a 360 yard radius of the fireworks barge in approximate position 40°41'16.5"N 074°02'23"W (NAD 1983), approximately 360 yards east of Liberty Island, New York. The safety zone is in effect from 8 p.m. until 9:30 p.m. on Sunday, October 3, 1999. The rain date for this event is Monday, October 4, 1999, at the same time and place. The safety zone prevents vessels from transiting a portion of Federal Anchorage 20C and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Recreational and commercial vessel traffic will be able to anchor in the unaffected northern and southern portions of Federal Anchorage 20C. Federal Anchorages 20A and 20B, to the north, and Federal Anchorages 20D and 20E, to the south, are also available for vessel use. Marine traffic will still be