

Surface Mining Reclamation and Enforcement, Interior

§ 936.15

- 2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations, including 43 CFR part 3480.
- 3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR part 1500.
- 4. The Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR part 402.
- 5. The Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 *et seq.*, 48 Stat. 401.
- 6. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR part 800.
- 7. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.
- 8. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.
- 9. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.
- 10. The Reservoir Salvage Act of 1960, as amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*
- 11. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.
- 12. Executive Order 11988 (May 24, 1977), for flood plain protection.
- 13. Executive Order 11990 (May 24, 1977), for wetlands protection.
- 14. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.
- 15. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*
- 16. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa, *et seq.*
- 17. The Constitution of the United States.
- 18. The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, as amended.
- 19. 30 CFR chapter VII.
- 20. The Constitution of the State of Ohio.
- 21. Ohio Revised Code, Chapter 1531.
- 22. Ohio Administrative Code, Chapter 1501.

[49 FR 14739, Apr. 13, 1984, as amended at 54 FR 51743, Dec. 18, 1989]

PART 936—OKLAHOMA

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

§ 936.1 Scope.

This part contains all rules applicable only within Oklahoma that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[46 FR 4910, Jan. 19, 1981]

§ 936.10 State regulatory program approval.

The Secretary conditionally approved the Oklahoma regulatory program, as submitted on February 28, 1980, amended on June 11, 1980, and re-submitted on December 8, 1980, effective January 19, 1981. He fully approved the Oklahoma program, as amended on August 15, 1985, effective January 14, 1986. Copies of the approved program are available at:

- (a) Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, OK 73105.
- (b) Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 East Skelly Drive, Suite 470, Tulsa, OK 74135-6548.

[64 FR 20167, Apr. 26, 1999]

§ 936.15 Approval of Oklahoma regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
January 22, 1982	April 2, 1982	Permanent program regulations to replace those approved by the Secretary on January 19, 1981, and subsequently rescinded by the Oklahoma Legislature on February 12, 1981.

Original amendment submission date	Date of final publication	Citation/description
February 22, 1983	May 4, 1983	§§ 816.42(b) and 817.42(b).
May 13, 1983	August 28, 1984	45 O.S. 1981, §§ 745.2, 746.16, 774(c), 786(E), 788.17 through 788.19, 816.64; Parts 842, 843, 845; §§ 4.1000 through 4.1400; Sections governing the transfer, sale or assignment of rights under permits, inspection and enforcement provisions.
July 8, 1983	March 18, 1985	DOM/RR 776.12 through .15, .17, .18; 815.5, .11; 816.1, .2.
July 16, 1985	December 10, 1985	45 O.S. 1981.
August 15, 1985	January 14, 1986	Administration and funding of the Small Operator Assistance Program.
September 11, 1985	January 16, 1986	DOM/RR 700.5: definition of "surface coal mining operations", 701.5: definitions of "coal preparation" and "coal preparation plant".
August 8, 1985	April 28, 1986	DOM/RR Part 850 establishing blaster training, examination and certification program.
May 18, 1988	March 27, 1990, May 15, 1990.	DOM/RR 700.1 through .5, .11 through .15; 701.1 through .5, .11; 705.1 through .6, .11, .13, .15, .17, .18, .19, .21, .22; 707.1, .4, .5, .10, .11, .12; 761.1, .3, .5, .11, .12; 762.1, .4, .5, .11 through .14; 764.1, .11, .13, .15, .17, .19, .21, .23, .25; 772.1, .2, .3, .11 through .16; 773.1, .5, .11, .12, .13, .15, .17, .19, .20, .21; 774.1, .11, .13, .15, .17; 775.1, .11, .13; 777.1, .11, .13, .14, .15, .17; 788.1, .13 through .18, .20, .21; 779.1, .2, .4, .11, .12, .18, .19, .21, .22, .24, .25; 780.1, .2, .4, .11 through .16, .18, .21, .22, .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 through .26, .29, .30, .200; 785.1, .2, .13, .14, .15, .17, .18, .20, .21, .22; 795.3, .5 through .9, .12; 800.1, .4, .5, .11 through .17, .20, .21, .23, .30, .40, .50, .60; 810.1, .2, .4, .11; 815.1, .13, .15; 816.1, .2, .11, .13, .14, .15, .22, .41, .42, .43, .45, .46, .47, .49, .56, .57, .59, .61, .62, .64, .66, .67, .68, .71 through .74, .79, .81, .83, .84, .87, .89, .95, .97, .99, .100, .102, .104 through .107, .111, .113, .114, .116, .121, .122, .131, .132, .133, .150, .151, .180, .181, .200; 817.1, .2, .11, .13, .14, .15, .22, .41, .42, .43, .45, .46, .47, .49, .56, .57, .59, .61, .62, .64, .66, .67, .68, .71 through .74, .81, .83, .84, .87, .89, .95, .97, .99, .100, .102, .106, .107, .111, .113, .114, .116, .121, .122, .131, .132, .133, .150, .151, .180, .181, .200; 819.1, .11, .13, .15, .17, .19, .21; 823.1, .2, .11 through .15; 824.1, .2, .11; 827.1, .11, .12; 828.1, .2, .11, .21; 842.1, .11 through .16; 843.1, .5, .11 through .18, .20, .22; 845.1, .2, .11 through .21; 846.1, .5, .12, .14, .17, .18; 850.1, .5, .12 through .15.
March 30, 1990	December 18, 1990, February 15, 1991.	DOR/RR 700.5, 700.11(b)(4), and part 702, concerning an exemption for operations when the extraction of coal is incidental to the extraction of other minerals.
June 21, 1990	January 9, 1991	DOM/RR 772.12(b)(12); 773.5(a)(2): the definition of "owned or controlled and owns or controls".
February 6, 1992	December 7, 1993	Bond Release Guidelines, including revegetation success standards, statistically valid sampling techniques, guidelines for phase I, II, and III bond release.
February 17, 1994	January 10, 1995	Bond Release Guidelines, including revegetation success standards, statistically valid sampling techniques, guidelines for phase I, II, and III bond release; Subsections I.E.3.b; I.F.3.d, .5.b; II.B.2.d; III.B.2.d; IV.A.1.a, b; V.B.2.c through f; VI.B.2.e; VII.A, B; Appendices A, F, J, O, R, V.
September 14, 1994	March 10 and 29, 1995.	OAC 460:20-35-1, -3(a)(2), (A), (B), (D), (b), -6(a), (b)(1) through (6), (d), -7(a), (2), (3); 460:20-43-12(b)(3), -45-12(b)(3); OAC, certification of construction of siltation structures by qualified, registered professional engineers and land surveyors; OAC 460:20-43-12(f)(8), -47, -48, -53(1); 460:20-45-28, -53(1); 460:20-49-5(a)(1), -6, -7(5).
July 5, 1995	November 9, 1995	OAC 460:20-61-10(b)(1).
April 26, 1996	July 24, 1996	OAC 460:20-6-1 through -5.
July 3, 1997	August 10, 1998	OAC 460:20-43-46(c)(4) (A) through (G); 460:20-45-46(c)(4) (A) through (G); Oklahoma Bond Release Guidelines—Appendices A and R.
December 18, 1997	January 22, 1999	460:20-3-5; 20-27-14(a), (a)(2), (a)(3), (b), (c)(3), (f); 20-31-9(a), (a)(2), (a)(3), (b), (c)(2), (f); 20-33-6(a); 20-35-6(a), (b)(1), and (b)(3) through (b)(6); 20-35-7(a); 20-35-8; 20-37-15(a)(3); 20-43-12(a) through (a)(3); 20-43-14(a)(1) through (a)(3), (a)(4)(A) and (B), (a)(5), (a)(6), and (a)(9) through (a)(12), (c)(2)(A) and (B); 20-43-27(c); 20-43-29(a); 20-45-12(a) through (a)(3); 20-45-14(a)(1) through (a)(3), (a)(4)(A) and (B), (a)(5), (a)(6), and (a)(9) through (a)(12), (c)(2)(A) and (B); 20-45-27(c); 20-45-29(a); 20-57-2(g)(4)(A) and (h); and 20-61-11(a).
September 28, 1998	September 28, 1999	OAC 460:2-7-6; 2-8; 20-15-11 through 14.
September 30, 1999	December 17, 1999	Oklahoma Bond Release Guidelines—Subsections II.A.1.f and g, II.B.1.a, II.B.2.a; III.A.1.f and g, III.B.1.a, III.B.2.a; V.B.2.d and V.B.2.e; Appendix A; Policy Statements dated May 21, 1996, and September 30, 1999.
January 13, 2000	May 26, 2000	OAC 460:20-5-3(4); 20-5-9(a)-(c); 20-5-10(c)(3); 20-5-12(b)(1).
January 25, 2001	May 9, 2001	OCA 460:20-17-3.
November 20, 2001	May 24, 2002	OAC 460:20-7-2; 20-7-3; 20-7-4 Introductory paragraph, (2), (3), and (4)(B); 20-7-4.1; 20-7-5(a), (b)(1) and (2), (c), (d), (e), (f)(1) and (3), (g), (h); 20-13-5(b)(14), (d)(2)(D).

Surface Mining Reclamation and Enforcement, Interior

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[62 FR 9951, Mar. 5, 1997, as amended at 63 FR 42579, Aug. 10, 1998; 64 FR 3423, Jan. 22, 1999; 64 FR 52232, Sept. 28, 1999; 64 FR 70586, Dec. 17, 1999; 65 FR 34096, May 26, 2000; 66 FR 23608, May 9, 2001; 67 FR 36516, May 24, 2002]

§ 936.16 Required regulatory program amendments.

Pursuant to 30 CFR 732.17(f)(1), Oklahoma is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Oklahoma's established administrative or legislative procedures.

(a)-(g) [Reserved]

[60 FR 2520, Jan. 10, 1995; 64 FR 70587, Dec. 17, 1999]

§ 936.20 Approval of Oklahoma abandoned mine land reclamation plan.

The Secretary approved the Oklahoma abandoned mine land reclamation plan, as submitted on July 30, 1981, effective January 21, 1982. Copies of the approved plan are available at:

Original amendment submission date	Date of final publication	Citation/description
August 24, 1989, November 13, 1995.	May 28, 1996	OAC 155:15, 884.13.(c)(1), (2), (3), (5), (7), (d)(1).
November 3, 1997	February 18, 1998 ..	Emergency response reclamation program.

[62 FR 9952, Mar. 5, 1997, as amended at 63 FR 8126, Feb. 18, 1998]

§ 936.30 State-Federal Cooperative Agreement.

The Governor of the State of Oklahoma and the Secretary of the Department of the Interior (Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

ARTICLE I: INTRODUCTION, PURPOSE, AND RESPONSIBLE AGENCIES

A. This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under 30 U.S.C. 1253, to elect to enter into an Agreement for the regulation and control of surface coal mining, operations on Federal lands. This Agreement provides for State regulation consistent with the Act, the Federal lands program (30 CFR, chapter VII, sub-

(a) Oklahoma Conservation Commission, 2800 N. Lincoln Blvd., Suite 160, Oklahoma City, OK 73105.

(b) Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 East Skelly Drive, Suite 470, Tulsa, OK 74135-6548.

[64 FR 20168, Apr. 26, 1999]

§ 936.25 Approval of Oklahoma abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

chapter D) and the Oklahoma State program (Program) for surface coal mining and reclamation operations on Federal lands.

B. The purposes of this Agreement are to (a) foster Federal-State cooperation on the regulation of surface coal mining (b) minimize intergovernmental overlap and duplication and (c) provide uniform and effective application of the Program on all non-Indian lands in Oklahoma in accordance with the Act and the Program.

C. The Oklahoma Department of Mines (ODM), under the direction of the Oklahoma Mining Commission, shall be responsible for administering this Agreement on behalf of the Governor. The Office of Surface Mining Reclamation and Enforcement (OSMRE) shall administer this Agreement on behalf of the Secretary.

ARTICLE II: EFFECTIVE DATE

After being signed by the Secretary and the Governor, this Agreement shall be effective 30 days after publication in the FEDERAL REGISTER as a final rule. This Agreement shall remain in effect until terminated as provided in Article XI.

ARTICLE III: DEFINITIONS

The terms and phrases used in this Agreement which are defined in the Act, 30 CFR parts 700, 701, and 740, the Program, the Oklahoma Coal Reclamation Act of 1979, and in the rules and regulations promulgated pursuant to those Acts, shall be given the meanings set forth in said definitions. Where there is conflict between the above-referenced State and Federal definitions, the definitions used in the approved State program will apply except in the case of a term which defines the Secretary's continuing responsibilities under the Act and other laws.

ARTICLE IV: APPLICABILITY

A. In accordance with the Federal lands program, the laws, regulations, terms and conditions of the Oklahoma Program are applicable to Federal lands in Oklahoma except as otherwise stated in this Agreement, the Act, 30 CFR 740.4 and 745.13, or other applicable Federal laws, Executive Orders, or regulations.

B. The following permits will not be transferred to the State by this Agreement and will remain under the jurisdiction of OSMRE: 1. CFI-Bokoshe (Federal Permit OK-0002), 2. Stigler No. 9 (Federal Permit OK-0009), 3. Bokoshe No. 10 (Federal Permit OK-0001), and 4. McCurtain No. 2 (Federal Permit OK-0002).

C. Orders and decisions issued by ODM in accordance with the Program that are appealable shall be appealed to the reviewing authority in accordance with the Program. Orders and decisions issued by the Department that are appealable shall be appealed to the Department of the Interior's Office of Hearings and Appeals.

ARTICLE V: GENERAL REQUIREMENTS

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement.

A. Authority of State Agency

ODM has and shall continue to have the authority under State law to carry out this Agreement.

B. Funds

Upon Application by ODM and subject to appropriations, OSMRE will provide the State with the funds to defray the cost associated with carrying out its responsibilities under this Agreement as provided in section

705(c) of the Federal Act, the grant agreement, and 30 CFR 735.16. Such funds will cover the full cost incurred by ODM in carrying out those responsibilities, provided that such cost does not exceed the estimated cost the Federal government would have expended to carry out such responsibilities in the absence of this Agreement; and provided that such State incurred cost per permitted acre of Federal land does not exceed the per permitted acre cost for similar administration and enforcement activities of the Program on non-Federal and non-Indian lands during the same time period.

The ratio or cost split of Federal to non-Federal dollars allocated under this Agreement will be determined by OSMRE and ODM based on the projected cost for regulation of mines within Federal lands that are under the jurisdiction of the State, in consideration of the relative amounts of Federal and non-Federal lands involved. The designation of mines based on Federal land will be prepared by ODM and submitted to OSMRE's Tulsa Field Office. OSMRE will work with ODM to estimate the amount the Federal government would have expended for regulation of surface coal mining operations on Federal lands in Oklahoma in the absence of this Agreement.

OSMRE and the State will discuss the OSMRE Federal land cost estimate, the ODM prepared list of acres by mine, and the State's overall cost estimate. After resolution of any issues, ODM will submit its grant application to OSMRE's Tulsa Field Office. The Federal lands/non-Federal lands ratio will be applied to the final eligible total State expenditures to arrive at the total Federal reimbursement due the State. This ratio or cost split will be agreed upon by July of the year preceding the applicable fiscal year in order to enable the State to budget funds for the Program.

The State may use the existing year's budget totals, adjusted for inflation and workload considerations, in estimating the regulatory cost for the following grant year. OSMRE will notify ODM as soon as possible if such projections are unrealistic.

If ODM applies for a grant but sufficient funds have not been appropriated to OSMRE, OSMRE and ODM will promptly meet to decide on appropriate measures that will insure that mining operations on Federal lands in Oklahoma are regulated in accordance with the Program.

Funds provided to ODM under this Agreement will be adjusted in accordance with Office of Management and Budget Circular A-102 Attachment E.

C. Reports and Records

ODM will make annual reports to OSMRE containing information with respect to compliance with terms of this Agreement pursuant to 30 CFR 745.12(d). ODM and OSMRE

will exchange, upon request, except where prohibited by Federal or State law, information developed under this Agreement.

OSMRE will provide ODM with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement. ODM comments on the report will be appended before transmission to the Congress or other interested parties.

D. Personnel

ODM shall have the necessary personnel to fully implement this Agreement in accordance with the provisions of the Act, Federal lands program and the Program.

E. Equipment and Laboratories

ODM will assure itself access to equipment, laboratories, and facilities to perform all inspections, investigations, studies, tests, and analyses that are necessary to carry out the requirements of the Agreement.

F. Permit Application Fees and Civil Penalties

The amount of the fee accompanying an application for a permit for operations on Federal lands in Oklahoma shall be determined in accordance with section 745.1 of the Oklahoma Coal Reclamation Act of 1979, section 771.25 of the State regulations and the applicable provisions of the Program and Federal law. All permit fees and civil penalties collected from operations on Federal lands will be retained by the State and shall be deposited with the State Treasurer in the Oklahoma Department of Mines Revolving Fund. Permit fees will be considered Program income. The financial status report submitted pursuant to 30 CFR 735.26 shall include the amount of fees collected and attributable to Federal lands during the prior State fiscal year.

ARTICLE VI: REVIEW OF PERMIT APPLICATION PACKAGE

A. Submission of Permit Application Package

ODM and the Secretary will require an applicant proposing to conduct surface coal mining and reclamation operations and activities on Federal lands to submit a permit application package (PAP) with an appropriate number of copies to ODM. ODM will furnish OSMRE and other Federal agencies with an appropriate number of copies of the PAP. The PAP will be in the form required by ODM and will include any supplemental information required by OSMRE and the Federal land management agency. Where section 522(e)(3) of the Act applies, ODM will work with the agency with jurisdiction over the publicly owned park, including units of the National Park System, or place included in the National Register of Historic Places

(NRHP) to determine what supplemental information will be required.

At a minimum, the PAP will satisfy the requirements of 30 CFR part 740 and include the information necessary for ODM to make a determination of compliance with the Program and for OSMRE and the appropriate Federal agencies to make determinations of compliance with applicable requirements of the Act, the Federal lands program, and other Federal laws, Executive Orders, and the regulations for which they are responsible.

B. Review Procedures Where Leased Federal Coal is Involved

1. ODM will assume the responsibilities listed in 30 CFR 740.4(c) (1), (2), (3), (4), (6), and (7) to the extent authorized.

In accordance with 30 CFR 740.4(c)(1), ODM will assume primary responsibility for the analysis, review, and approval or disapproval of the permit application component of the PAP for surface coal mining and reclamation operations and activities in Oklahoma where a mining plan is required. OSMRE will, at the request of the State, assist to the extent possible in this analysis and review.

The Secretary will concurrently carry out his responsibilities that cannot be delegated to ODM under the Federal lands program, the Mineral Leasing Act (MLA), the National Environmental Policy Act (NEPA), this Agreement, and other applicable Federal laws. The Secretary will carry out these responsibilities in a timely manner and will avoid, to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the Program. The Secretary will consider the information in the PAP and where appropriate, make decisions required by the Act, MLA, NEPA, and other Federal laws.

Responsibilities and decisions which can be delegated to the State under other applicable Federal laws may be specified in working Agreements between OSMRE and ODM with concurrence of any Federal agency involved, and without amendment to this Agreement.

2. ODM will be the primary point of contact for applicants regarding the review of the PAP for compliance with the Program and State laws and regulations. On matters concerned exclusively with regulations under 43 CFR part 3480, subparts 3480 through 3487, the Bureau of Land Management (BLM) will be the primary point of contact with the applicant. ODM will send to OSMRE copies of any correspondence with the applicant and any information received from the applicant regarding the PAP. OSMRE will send to ODM copies of all OSMRE correspondence which may have a bearing on the PAP. OSMRE will request additional information from the applicant through ODM. Copies of OSMRE's request will be sent directly to the

operator by OSMRE to help expedite the permit review process. The requested information will be submitted to OSMRE through ODM.

BLM will inform ODM of its actions and provide ODM with a copy of documentation on all decisions. ODM will be responsible for informing the applicant of all joint State-Federal determinations. Where necessary to make the determination to recommend that the Secretary approve the mining plan, OSMRE will consult with and obtain the concurrences of BLM, the Federal land management agency, and other Federal agencies as required.

The Secretary reserves the right to act independently of ODM to carry out his responsibilities under laws other than the Act or provisions of the Act not covered by the Program, and in instances of disagreement over the Act and the Federal lands program.

3. ODM will, to the extent authorized, consult with the Federal land management agency and BLM pursuant to 30 CFR 740.4(c)(2) and (3), respectively. ODM will also be responsible for obtaining the comments and determinations of other Federal agencies with jurisdiction or responsibility over the Federal lands affected by the operations proposed in the PAP. ODM will request all Federal agencies to furnish their findings on any request for additional information to ODM within 45 days of the date of receipt of the PAP. OSMRE will assist ODM in obtaining this information upon request of ODM.

ODM will be responsible for approval and release of performance bonds and liability insurance under 30 CFR 740.4(c)(4).

ODM will prepare documentation to comply with the requirements of NEPA under 30 CFR 740.4(c)(7); however, OSMRE will retain the responsibility for the exceptions in 30 CFR 740.4(c)(7)(i)–(vii).

4. OSMRE will assist ODM in carrying out ODM's responsibilities by:

(a) Coordinating resolution of conflicts and difficulties between ODM and other Federal agencies in a timely manner;

(b) Assisting in scheduling joint meetings, upon request, between State and Federal agencies;

(c) Where OSMRE is assisting ODM in reviewing the PAP, furnishing to ODM the work product within 50 calendar days of receipt of the State's request for such assistance, unless a different time is agreed upon by OSMRE and ODM;

(d) Exercising its responsibilities in a timely manner, governed to the extent possible by the deadlines established in the Program; and

(e) Assuming all responsibility for ensuring compliance with any Federal lessee protection bond requirement.

5. Review of the PAP:

(a) OSMRE and ODM will coordinate with each other during the review process as need-

ed. ODM will keep OSMRE informed of findings made during the review process which bear on the responsibilities of OSMRE or other Federal agencies. OSMRE will ensure that any information OSMRE receives which has a bearing on decisions regarding the PAP is promptly sent to ODM.

(b) ODM will review the PAP for compliance with the Program and State law and regulations.

(c) OSMRE will review the applicable portions of the PAP for compliance with the non-delegated responsibilities of the Act and for compliance with the requirements of other Federal laws, Executive orders, and regulations.

(d) OSMRE and ODM will develop a work plan and schedule for PAP review and each will identify a person as the project leader. The project leaders will serve as the primary points of contact between OSMRE and ODM throughout the review process. Not later than 50 days after receipt of the PAP, unless a different time is agreed upon, OSMRE will furnish ODM with its review comments on the PAP and specify any requirements for additional data. To the extent practicable, ODM will provide OSMRE all available information that may aid OSMRE in preparing any findings.

(e) ODM will prepare a State decision package, including written findings and supporting documentation, indicating whether the PAP is in compliance with the Program. The review and finalization of the State decision package will be conducted in accordance with procedures for processing PAP's agreed upon by ODM and OSMRE.

(f) ODM may make a decision on approval or disapproval of the permit on Federal lands in accordance with the Program prior to the necessary Secretarial decision on the mining plan, provided that ODM advises the operator in the permit that Secretarial approval of the mining plan must be obtained before the operator may conduct coal development or mining operations on the Federal lease. ODM will reserve the right to amend or rescind any requirements of the permit to conform with any terms or conditions imposed by the Secretary in the approval of the mining plan.

(g) The permit will include, as applicable, terms and conditions required by the lease issued pursuant to the MLA and by any other applicable Federal laws and regulations, including conditions imposed by the Federal land management agency relating to post-mining land use, and those of other affected agencies, and will be conditioned on compliance with the requirements of the Federal land management agency with jurisdiction.

(h) In the case that valid existing rights (VER) are determined to exist on Federal lands under section 522(e)(3) of the Act where the proposed operation will adversely affect

a unit of the National Park Service (NPS), ODM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit to mitigate environmental impacts as set forth under Article X of this Agreement.

(i) After making its decision on the PAP, ODM will send a notice to the applicant, OSMRE, the Federal land management agency, and any agency with jurisdiction over the publicly owned park or historic place included in the NRHP affected by a decision under section 522(e)(3) of the Act. A copy of the written findings and the permit will also be submitted to OSMRE.

(j) OSMRE will provide technical assistance to ODM when requested, if available resources allow. OSMRE will have access to ODM files concerning operations on Federal lands.

C. Review Procedures for Permit Revisions or Renewals

1. Any permit revision or renewal for an operation on Federal lands will be reviewed and approved or disapproved by ODM after consultation with OSMRE on whether such revision or renewal constitutes a mining plan modification. OSMRE will inform ODM within 30 days of receiving a copy of a proposed revision or renewal, whether the permit revision or renewal constitutes a mining plan modification. Where approval of a mining plan modification is required, OSMRE and ODM will follow the review procedures where leased Federal coal is involved as outlined in this Agreement.

2. OSMRE may establish criteria to determine which permit revisions and renewals clearly do not constitute mining plan modifications.

3. Permit revisions or renewals on Federal lands which are determined by OSMRE not to constitute mining plan modifications or that meet the criteria for not being mining plan modifications will be reviewed and approved by ODM.

4. Transfer, sale, or assignment of permit rights on Federal lands shall be processed in accordance with the Oklahoma Program and 30 CFR 740.13(e).

ARTICLE VII: INSPECTIONS

A. ODM will conduct inspections of all surface coal mining and reclamation operations on Federal lands, except for those operations listed in Article IV, in accordance with 30 CFR 740.4(c)(5) and the Program and prepare and file inspection reports in accordance with the Program.

B. ODM will, subsequent to conducting any inspection pursuant to 30 CFR 740.4(c)(5), and on a timely basis, file with OSMRE's Tulsa Field Office a legible copy of the completed State inspection report.

C. ODM will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by the Agreement, except as described hereinafter. Nothing in this Agreement will prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR parts 842 and 843 and its obligations under laws other than the Act.

D. OSMRE will ordinarily give ODM reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide State inspectors with an opportunity to join in the inspection. When OSMRE is responding to a citizen complaint of an imminent danger to the public health and safety, or of significant, imminent environmental harm to land, air or water resources pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact ODM no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger or significant, imminent environmental harm will be referred to ODM for action. The Secretary reserves the right to conduct inspections without prior notice to ODM to carry out his responsibilities under the Act.

ARTICLE VIII: ENFORCEMENT

A. ODM will have primary enforcement authority under the Act concerning compliance with the requirements of this Agreement and the Program in accordance with 30 CFR 740.4(c)(5). Enforcement authority given to the Secretary under other Federal laws and Executive orders including, but not limited to, those listed in Appendix A (attached) is reserved to the Secretary.

B. During any joint inspection by OSMRE and ODM, ODM will have primary responsibility for enforcement procedures including issuance of orders of cessation, notices of violation, and assessment of penalties. ODM will inform OSMRE prior to issuance of any decision to suspend or revoke a permit on Federal lands.

C. During any inspection made solely by OSMRE or any joint inspection where ODM and OSMRE fail to agree regarding the propriety of any particular enforcement action, OSMRE may take any enforcement action necessary to comply with 30 CFR parts 843, 845, and 846. Such enforcement action will be based on the standards in the Program, the Act, or both, and will be taken using the procedures and penalty system contained in 30 CFR parts 843, 845, and 846.

D. ODM and OSMRE will promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining permits subject to this Agreement, and of all

actions taken with respect to such violations.

E. Personnel of ODM and OSMRE will be mutually available to serve as witness in enforcement actions taken by either party.

F. This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than the Act.

ARTICLE IX: BONDS

A. ODM and the Secretary will require each operator who conducts operations on Federal lands to submit a single performance bond payable to Oklahoma and the United States to cover the operator's responsibilities under the Act and the Program. Such performance bond will be conditioned upon compliance with all requirements of the Act, the Program, State rules and regulations, and any other requirements imposed by the Department. Such bond will provide that if this Agreement is terminated, the portion of the bond covering the Federal lands will be payable only to the United States. ODM will advise OSMRE of any adjustments to the performance bond made pursuant to the Program.

B. Prior to releasing the operator from any obligation under such bond, ODM will obtain the concurrence of OSMRE. OSMRE concurrence will include coordination with other Federal agencies having authority over the lands involved.

C. Performance bonds will be subject to forfeiture with the concurrence of OSMRE, in accordance with the procedures and requirements of the Program.

D. Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of the Act.

ARTICLE X: DESIGNATING LAND AREAS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING AND RECLAMATION OPERATIONS AND ACTIVITIES AND VALID EXISTING RIGHTS AND COMPATIBILITY DETERMINATIONS

A. Unsuitability Petitions.

1. Authority to designate Federal lands as unsuitable for mining pursuant to a petition is reserved to the Secretary.

2. When either ODM or OSMRE receives a petition that could impact adjacent Federal or non-Federal lands pursuant to section 522(c) of the Act, the agency receiving the petition will notify the other of receipt and the anticipated schedule for reaching a decision, and request and fully consider data, information and recommendations of the other. OSMRE will coordinate with the Federal land management agency with jurisdiction over the petition area, and will solicit comments from the agency.

B. Valid Existing Rights and Compatibility Determinations

The following actions will be taken when requests for determination of valid existing rights (VER) pursuant to section 522(e) of the Act or for determinations of compatibility pursuant to section 522(e)(2) of the Act are received prior to or at the time of submission of a PAP that involves surface coal mining and reclamation operations and activities:

1. For Federal lands within the boundaries of any areas specified under section 522(e)(1) of the Act, OSMRE will determine whether VER exist for such areas.

For non-Federal lands within section 522(e)(1) areas ODM, with the consultation and concurrence of OSMRE, will determine whether operations on such lands will or will not affect Federal lands. For such non-Federal lands affecting Federal lands, OSMRE will make the VER determination.

Under section 522(e)(1), for non-Federal lands within the boundaries of the National Park System, ODM, with the consultation and concurrence of OSMRE, will determine whether operations on such lands will or will not affect the Federal interest. For such non-Federal lands within the boundaries of the National Park System which affect the Federal interest, OSMRE will make the VER determinations.

2. For Federal lands within the boundaries of any national forest where proposed operations are prohibited or limited by section 522(e)(2) of the Act and 30 CFR 761.11(b), OSMRE will make the VER determination.

OSMRE will process requests for determinations of compatibility under section 522(e)(2) of the Act and 30 CFR 761.12(c).

3. For Federal lands, ODM, with the consultation and concurrence of OSMRE, will determine whether any proposed operations will adversely affect units of the National Park System with respect to the prohibitions or limitations of section 522(e)(3) of the Act. For such operations adversely affecting units of the National Park System, ODM, with the consultation and concurrence of OSMRE, will make the VER determination.

For Federal lands, ODM will determine whether any proposed operation will adversely affect any publicly owned parks other than those covered in the preceding paragraph and, in consultation with the State Historic Preservation Officer, places listed in the National Register of Historic Places (NRHP), with respect to the prohibitions or limitations of section 522(e)(3) of the Act.

For Federal lands other than those on which the proposed operation will adversely affect units of the National Park System, ODM will make the VER determination for operations which are prohibited or limited by section 522(e)(3) of the Act. In the case

that VER is determined to exist on Federal lands under section 522(e)(3) of the Act where a proposed operation will adversely affect a unit of the National Park System, ODM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit in order to mitigate environmental impacts.

In the case that VER is determined not to exist under section 522(e)(3) of the Act or 30 CFR 761.11(c), no surface coal mining operations and activities will be permitted unless jointly approved by ODM and the Federal, State or local agency with jurisdiction over the publicly owned park or place included in the NRHP.

4. ODM will process determinations of VER on Federal lands for all areas limited or prohibited by section 522(e)(4) and (5) of the Act as unsuitable for mining. For operations on Federal lands, ODM will coordinate with any affected agency or agency with jurisdiction over the proposed surface coal mining and reclamation operation.

ARTICLE XI: TERMINATION OF COOPERATIVE AGREEMENT

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

ARTICLE XII: REINSTATEMENT OF COOPERATIVE AGREEMENT

If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

ARTICLE XIII: AMENDMENT OF COOPERATIVE AGREEMENT

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

ARTICLE XIV: CHANGES IN STATE OR FEDERAL STANDARDS

A. The Department or the State may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party will, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations or request necessary legislative action. Such changes will be made under the procedures of 30 CFR part 732 for changes to the Program and under the procedures of section 501 of the Act for changes to the Federal lands program.

B. ODM and the Department will provide each other with copies of any changes to their respective laws, rules, regulations or standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XV: CHANGES IN PERSONNEL AND ORGANIZATION

Each party to this Agreement will notify the other, when necessary, of any changes in personnel, organization, and funding, or other changes that may affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

ARTICLE XVI: RESERVATION OF RIGHTS

This Agreement will not be construed as waiving or preventing the assertion of any rights in this Agreement that the State or the Secretary may have under laws other than the Act or their regulations, including but not limited to those listed in Appendix A.

Approved:

Henry Bellmon,
Governor of Oklahoma.

Date: August 2, 1989.

Manuel Lujan, Jr.,
Secretary of the Interior.

Date: August 30, 1989.

[54 FR 37459, Sept. 11, 1989]

PART 937—OREGON

Sec.

937.700 Oregon Federal program.

937.701 General.

937.702 Exemption for coal extraction incidental to the extraction of other minerals.

937.707 Exemption for coal extraction incidental to government-financed highway or other construction.

937.761 Areas designated unsuitable for surface coal mining by Act of Congress.

937.762 Criteria for designating areas as unsuitable for surface coal mining operations.

937.764 Process for designating areas unsuitable for surface coal mining operations.

937.772 Requirements for coal exploration.

937.773 Requirements for permits and permit processing.

937.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

937.775 Administrative and judicial review of decisions.

937.777 General content requirements for permit applications.

937.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

937.779 Surface mining permit applications—minimum requirements for information on environmental resources.

937.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.