

## OSM Finalizes Oversight Rules to Closely Resemble 2020 Version



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Following up on a proposal published on June 16, 2025 (see Client Alert: [“Federal Office of Surface Mining Proposes to Restore Coal Mine Regulatory Oversight Rules”](#)), on February 19, 2026, the federal Office of Surface Mining Reclamation and Enforcement (OSM) finalized revisions to its oversight rules under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), eliminating several aspects of the Biden-era version of the regulations (identified as “Ten-Day Notice and Corrective Action for State Regulatory Program Issues” rule, published in April 2024 (the 2024 Rule)). The new regulations largely return them to the 2020 version of the rule, “Clarification of Provisions Related to the Issuance of Ten-Day Notices to State Regulatory Authorities and Enhancement of Corrective Action for State Regulatory Program Issues,” (the 2020 Rule), adopted during the first Trump administration. Effective March 23, 2026, the new rule (the 2026 Rule) restores the 2020 Rule’s framework promoting states as the primary environmental regulatory authorities for coal mining operations. It does away with programmatic challenges in the guise of state-specific oversight and reinstates provisions requiring that the relevant State agency be given notice and an opportunity to correct any alleged violation brought to OSM’s attention. The new rule also makes some minor revisions to the 2020 Rule’s text to streamline coordination between agencies and to reduce duplicative actions.

States that have obtained OSM approval to administer their own coal mining regulatory program consistent with SMCRA (known as Primacy States) possess primary regulatory power within their borders. OSM retains oversight authority where (1) there is reason to believe SMCRA has been violated and (2) there is reason to believe that a Primacy State has failed to enforce its regulatory programs. Where there is reason to believe SMCRA has been violated, OSM is required to issue a Ten-Day Notice (TDN), giving a Primacy State ten days to respond with either remedial action or providing good cause for not taking remedial action. The 2020 Rule represented OSM’s attempt to (1) enhance the early identification of State regulatory program issues so that they could be corrected programmatically and (2) clarify and reduce duplication in the federal regulations related to OSM’s processing of citizen complaints and the issuance of TDNs to State regulatory authorities. The 2020 Rule largely maintained SMCRA’s deference to Primacy States and limited the scope of TDN issuance by OSM.

OSM re-examined the 2020 Rule under the Biden administration, leading to the 2024 Rule, published on April 9, 2024. Though purportedly meant to “increase efficiency and [] make it easier for citizens to report possible [SMCRA] violations” the 2024 Rule effectively “usurp[ed] SMCRA’s deference to States[.]” According to OSM, the 2020 Rule did so in at least two ways. First, the rule allowed citizens to report potential SMCRA violations directly to OSM without consulting Primacy States. Second the rule authorized OSM to issue TDNs based on programmatic (rather than site-specific) concerns. The introduction of the 2024 Rule led to large increases in both citizen complaints and the number of TDNs issued to Primacy States, representing additional paperwork for OSM and Primacy States “without any clear indication that [the 2024 Rule] improved enforcement or oversight of SMCRA.”

Returning to the 2020 Rule better aligns the federal regulatory scheme with SMCRA and facilitates more efficient coordination between OSM and Primacy States. According to OSM, this maintains cooperative federalism and deference to the States while achieving the goals of SMCRA. For example, OSM may once again rely on information from any source in determining whether a SMCRA violation exists. The 2026 Rule also restores a site-specific format for citizen reporting, by specifying that a citizen’s request for federal inspection “must allege a violation at a specific mine” instead of alleging violations generally. Despite largely returning to the 2020 Rule’s language, the 2026 Rule retains some administrative features of the 2024 Rule, such as granting OSM the ability to group “substantively similar possible violations” into a single TDN, allowing for increased efficiency.

Overall, the 2026 Rule represents a return to a state-focused regulatory scheme, ensuring that Primacy States retain their primary authority to regulate environmental aspects of coal mining operations within their borders. Challenges to the new rule must be filed within 60 days of its publication, in the U.S. District Court for the District of Columbia.

Consistent with the role of Primacy States under SMCRA, OSM also recently granted authority to the West Virginia Department of Environmental Protection (WVDEP) to regulate coal mining operations on federal lands within the state. On February 19, 2026, OSM and West Virginia signed an Amended Cooperative Agreement, giving the WVDEP primary authority to regulate mining of privately owned coal located under federal lands and federally owned coal leased by the U.S. government. See OSM's announcement [here](#).

For questions about the revised TDN rules or other issues arising under SMCRA and/or counterpart State regulatory programs, please contact Christopher B. (Kip) Power at (681) 265-1362 or [cpower@babstcalland.com](mailto:cpower@babstcalland.com); Robert M. Stonestreet at (681) 265-1364 or [rstonestreet@babstcalland.com](mailto:rstonestreet@babstcalland.com); Joseph E. (Jed) Meadows at (681) 265-2111 or [jmeadows@babstcalland.com](mailto:jmeadows@babstcalland.com); or your Babst Calland relationship attorney.

