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## **DEPARTMENT OF THE INTERIOR**

### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 936**

**[SATS No. OK-033-FOR; Docket No. OSM-2011-0001]**

#### **Oklahoma Regulatory Program**

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

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

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Oklahoma regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Oklahoma revised its regulations regarding subsidence allegation reporting requirements and requirements for bond calculation at permit renewal. Oklahoma revised its regulatory program at its own initiative for operational efficiency.

**EFFECTIVE DATE:** [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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**SUPPLEMENTARY INFORMATION:**

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

**I. Background on the Oklahoma Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . . ; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1)

and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Oklahoma program on January 19, 1981. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program in the January 19, 1981, Federal Register (46 FR 4902). You can also find later actions concerning the Oklahoma program and program amendments at 30 CFR 936.10, 936.15, and 936.16.

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

By letter dated February 25, 2011 (Administrative Record No. OK-1000), Oklahoma sent us an amendment to its program under SMCRA (30 U.S.C. 1201 et seq.). Oklahoma submitted its proposed amendment at its own initiative. Oklahoma proposed revisions to the Oklahoma Administrative Code at sections 460:20-43-14(b)(7) and 460:20-45-14(b)(7) concerning size limitations on permanent impoundments, 460:20-43-38(1) concerning approximate original contour, 460:20-43-47(c)(3) and 460:20-45-47(c)(6) concerning subsidence reporting, and 460:20-17-4(b)(2)(C) concerning requirements for bond calculation at renewal.

We announced receipt of the proposed amendment in the April 27, 2011, Federal Register (76 FR 23522). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on May 27, 2011. We did not receive any public

comments.

During our review of the amendment, we identified concerns regarding the proposed revisions to Oklahoma Administrative Code 460:20-43-14(b)(7) and 460:20-45-14(b)(7) concerning size limitations on permanent impoundments, as well as 460:20-43-38(1) concerning approximate original contour. We notified Oklahoma of these concerns by letter dated October 21, 2011 (Administrative Record No. OK-1000.04). By letter, dated November 18, 2011 (Administrative Record No. OK-1000.06), Oklahoma responded and withdrew these sections regarding impoundments and approximate original contour from the proposed amendment and requested that we process the sections regarding subsidence reporting and bond calculation.

### **III. OSM's Findings**

We are approving the amendment as described below. The following are the findings we made concerning the amendments under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17.

#### **A. Oklahoma Administrative Code 460:20-43-47(c)(3) & 460:20-45-47(c)(6)**

##### **Subsidence Reporting.**

Oklahoma's regulations require the operator to comply with all provisions of the approved subsidence control plan. The proposed addition would require the operator to

report to the Department of Mines all instances of alleged subsidence within 30 calendar days. The report must be in writing. The report must identify the location of the alleged subsidence in relation to the underground mine workings.

The Federal regulations, at 30 CFR 784.20(b)(4), provide for subsidence monitoring to determine what measures may be taken to prevent, reduce, or correct material damage. This new reporting requirement will enhance Oklahoma's ability to ensure that an operation remains in compliance with permit requirements and that mining will be conducted in accordance with 30 CFR 817.121. We find Oklahoma's proposed revision will make its regulations no less effective than the Federal regulations. As such, we are approving Oklahoma's revision.

B. Oklahoma Administrative Code 460:20-17-4(b)(2)(C) Requirement for Bond Calculation at Renewal.

Oklahoma's existing regulations contain minimum requirements for permit renewal that are no less effective than the Federal regulations. The proposed addition would require, for any permit renewal requested, the operator to submit a current bond calculation (less than 60 days old) detailing the costs to reclaim the permit by a third party under the approved worst case bond scenario, and evidence that the performance bond in effect will continue in full force, as well as any additional bond required by the Department of Mines.

The Federal regulations, at 30 CFR 774.15(b)(2)(iii), require evidence that a performance bond is in effect and will remain so for the renewal period, including any bond amount adjustments required by the state at renewal. The proposed new requirement for an operator to submit a current bond calculation at permit renewal will further clarify what an operator must submit with a renewal application. By requiring a current (less than 60 days old) bond calculation from the operator, Oklahoma will have the information it needs in making its required findings under the state counterpart to 30 CFR 774.15(c)(1)(v) and to determine if bond adjustments are necessary as required under the state counterparts to 30 CFR 800.4(c), 800.15(a), and 817.121(c)(5). Because the operator's estimate will be no more than 60 days old, the information can reasonably be expected to reflect both the extent of mining and reclamation, and the economic conditions at the time of renewal, both of which directly influence bonding adequacy. We find Oklahoma's proposed revision will make its regulations no less effective than the Federal regulations. As such, we are approving Oklahoma's revision.

#### **IV. Summary and Disposition of Comments**

##### Public Comments

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

##### Federal Agency Comments

On March 8, 2011, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Oklahoma program (Administrative Record No. OK-1000.03). We did not receive any comments.

#### Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.). None of the revisions that Oklahoma proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on March 8, 2011, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. OK-1000.03). 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 March 8, 2011, we requested comments on Oklahoma's amendment (Administrative Record No. OK-1000.03), but neither responded to our request.

## **V. OSM's Decision**

Based on the above findings, we approve the above specified portions of the amendment Oklahoma sent us on February 25, 2011.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 936, which codify decisions concerning the Oklahoma program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

## **VI. Procedural Determinations**

### Executive Order 12630 - Takings

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

### Executive Order 12866 - Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

#### Executive Order 12988 - Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10) decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

#### Executive Order 13132 - Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal

mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

#### Executive Order 13175 - Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Oklahoma program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Oklahoma program has no effect on Federally-recognized Indian tribes.

#### Executive Order 13211 - Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive

Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

#### National Environmental Policy Act

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

#### Paperwork Reduction Act

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

#### Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether

this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

#### Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

#### Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

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

Intergovernmental relations, Surface mining, Underground mining.

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Ervin J. Barchenger, Regional Director

Mid-Continent Region

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March 8, 2012

Date

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
* * * * * February 25, 2011	* * <b><u>[Insert date of publication in the Federal Register]</u></b>	OAC 460:20-17-4(b)(2)(C), 460:20-43-47(c)(3), and 460:20-45-47(c)(6).