



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

**[SATS No. OK-037-FOR; Docket ID: OSM-2015-0006;
S1D1S SS08011000 SX064A000 189S180110;
S2D2S SS08011000 SX064A000 18XS501520]**

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 (OSMRE), are approving an amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Oklahoma proposed revisions to its regulations regarding: permit eligibility for permits with violations on lands eligible for re-mining; permit suspension or rescission posting locations and appeal procedures; requiring GPS coordinates for aspects of permit maps; topsoil removal distances; blasting records requirements; annual reporting

requirements; temporary cessation of operations requirements; casing and sealing temporary underground openings; right of entry requirements; surface drainage associated with auger mining; correcting reference errors; updating addresses; and correcting spelling and grammatical errors. Oklahoma intended to revise its program to be no less effective than the Federal regulations and to improve operational efficiency.

DATES: The effective date is [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Bill Joseph, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128-4629. Telephone: 918-581-6431 ext. 230. E-mail: bjoseph@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Oklahoma Program
- II. Submission of the Amendment
- III. OSMRE's Findings
- IV. Summary and Disposition of Comments
- V. OSMRE's Decision
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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, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. 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 September 25, 2015 (Administrative Record No. OK-1003), Oklahoma sent us an amendment to its program under SMCRA (30 U.S.C. 1201 et seq.). Oklahoma submitted the proposed amendment on its own initiative.

We announced receipt of the proposed amendment in the February 8, 2016, Federal

Register (81 FR 6477). 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 March 9, 2016. We did not receive any comments.

III. OSMRE's Findings

We are approving the amendment as described below. The following are the findings we made concerning Oklahoma's amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. Any revisions that we do not specifically discuss below concerning non-substantive wording or editorial changes can be found in the full text of the program amendment available at www.regulations.gov.

1. Subchapter 15. Requirements for Permits and Permit Processing

Oklahoma removed paragraphs 460:20-15-6.7(a)(2)(A) and (B) regarding permit eligibility and unabated violations at remaining sites issued before September 30, 2004, and added language to paragraph (a)(2) to substantively match the Federal requirements of 30 CFR 773.13(a)(2).

Oklahoma modified section 460:20-15-10.1(c) regarding the suspension and rescission appeal process so that it substantively matches the counterpart Federal regulations at 30 CFR 773.23 (c). Additionally, Oklahoma modified 460:20-15-

10.1(d) and added paragraph (e) to substantively match the requirements of 30 CFR 773.23 (d).

We find that Oklahoma's changes to this subchapter substantively match the counterpart Federal requirements and do not make its rules or regulations less effective than the Federal requirements. Therefore, we are approving Oklahoma's revisions.

2. Subchapter 29. Underground Mining Permit Applications: Minimum Requirements for Information on Environmental Resources

Oklahoma added the requirement for GPS coordinates for each building on permit application maps in section 460:20-29-10(4). Although there is no direct counterpart Federal regulation requiring this, the addition does not make Oklahoma's regulations less effective than the Federal requirements for general map requirements at 30 CFR 783.24.

Oklahoma added the permitting requirement to list the depth to mined coal in section 460:20-29-11(a)(5). Although there is no direct counterpart Federal regulation requiring this, the addition does not make Oklahoma's regulations less effective than the Federal requirements for map cross sections, maps, and plans at 30 CFR 783.25.

We find that Oklahoma's changes to this subchapter, although not specifically required by the counterpart Federal regulations, do not make its regulations less effective than the Federal requirements. Therefore, we are approving Oklahoma's revisions.

3. Subchapter 43. Permanent Program Performance Standards: Surface Mining Standards

Oklahoma added paragraph 460:20-43-7(a)(1) requiring that topsoil be removed a minimum of 60 feet or one pit width, whichever is less, in advance of the active pit. Although there is no specific requirement in the counterpart Federal regulations at 30 CFR 816.22, this addition does not make Oklahoma's regulations less effective than the Federal requirements.

Oklahoma added new language to section 460:20-43-23 regarding blasting records. Oklahoma added the requirement that operators maintain the names of blasting crew members, expiration date of blaster's certification, a digital video of each blast, and drill logs. Although there is no specific requirement regarding this in the counterpart Federal regulations at 30 CFR 816.68, these additions do not make Oklahoma's regulations less effective than the Federal requirements.

Oklahoma added new language regarding annual reporting requirements for contemporaneous reclamation in section 460:20-43-37(2). Although there is no specific requirement regarding this in the counterpart Federal regulations, these additions do not make Oklahoma's regulations less effective than the Federal requirements.

Oklahoma added new language regarding qualification standards for temporary cessation of operations in section 460:20-43-49(a) and (c). For a site to qualify for temporary cessation, Oklahoma will now require that minable coal be available under a valid lease and it must be located within or adjacent to the current permit area. Additionally, other requirements have been added if temporary cessation exceeds twelve months. Although there are no specific requirements regarding this in the counterpart Federal regulations at 30 CFR 816.131, these additions do not make Oklahoma's regulations less effective than the Federal requirements.

We find that Oklahoma's changes to this subchapter, although not specifically required, do not make its rules or regulations less effective than the Federal requirements. Therefore, we are approving Oklahoma's revisions.

4. Subchapter 45. Permanent Program Performance Standards: Underground Mining Activities

Oklahoma added paragraph 460:20-45-5(c) regarding casing and sealing underground openings during temporary cessation of operations. The language added is similar to that contained in the counterpart Federal regulation at 817.15. This addition does not make Oklahoma's regulations less effective than the Federal requirements.

Oklahoma added language regarding right of entry information in section 460:20-45-17(b). The new language requires proof that the applicant has legal rights to enter and begin underground coal mining and reclamation operations. Although there is no specific counterpart Federal requirement for underground mining permit applications, the language added is similar to the requirements for surface mining permit applications found in 30 CFR 778.15. This addition does not make Oklahoma's regulations less effective than the Federal requirements.

We find that Oklahoma's changes do not make its rules or regulations less effective than the Federal requirements. Therefore, we are approving Oklahoma's revision.

5. Subchapter 47. Special Permanent Program Performance Standards: Auger Mining

Oklahoma added new paragraph 460:20-47-4(d) requiring surface drainage to be directed away from highwalls during augering operations. There is no direct Federal counterpart to this requirement within 30 CFR 819. This addition does not make Oklahoma's regulations less effective than the Federal requirements.

We find that Oklahoma's changes do not make its rules or regulations less effective than the Federal requirements. Therefore, 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 October 15, 2015, 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-1003.01).

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 October 15, 2015, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. OK-1003.01). 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 15, 2015, we requested comments on the amendment (Administrative Record No. OK-1003.01). We did not receive any comments.

V. OSMRE's Decision

Based on the above findings, we approve the amendment Oklahoma sent us on

September 25, 2015 (Administrative Record No. OK-1003).

To implement this decision, we are amending the Federal regulations, at 30 CFR Part 936, that codify decisions concerning the Oklahoma program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. 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. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630 - Takings

This rulemaking 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

Pursuant to Office of Management and Budget (OMB) Guidance dated October 12, 1993, the approval of state program amendments is exempted from OMB review under Executive Order 12866.

Executive Order 12988 - Civil Justice Reform

The Department of the Interior has reviewed this rule as required by section 3(a) of Executive Order 12988. The Department determined that this Federal Register notice meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this Federal Register notice and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program or to the program amendment that the State of Oklahoma drafted.

Executive Order 13132 - Federalism

This rule is not a “[p]olicy that [has] Federalism implications” as defined by section 1(a) of Executive Order 13132 because it does not have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Instead, this rule approves an amendment to the Oklahoma program submitted and

drafted by that State. OSMRE reviewed the submission with fundamental federalism principles in mind as set forth in sections 2 and 3 of the Executive Order and with the principles of cooperative federalism set forth in SMCRA. See, e.g., 30 U.S.C. 1201(f). As such, pursuant to section 503(a)(1) and (7) (30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed the program amendment to ensure that it is “in accordance with” the requirements of SMCRA and “consistent with” the 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 rulemaking on Federally-recognized Indian tribes and have determined that the rulemaking 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. The basis for this determination is that our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

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

Executive Order 13211 of May 18, 2001, 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 rulemaking 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 rulemaking 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 rulemaking 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 rulemaking 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 rulemaking, 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 rulemaking 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 rulemaking is not a major rulemaking under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rulemaking: (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 rulemaking, 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 rulemaking 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 rulemaking, 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.

Alfred L. Clayborne, Regional Director

Mid-Continent Region

Dated: September 12, 2017.

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 25, 2015	* * <u>[Insert date of publication in the Federal Register]</u>	OAC 460:20-15-6.7(a)(2)(A) and (B), 10.1(c), (d), and (e); 20-29-10(4) and 11(a)(5); 20-43-7(a)(1), 23, 37(2), 49(a), and (c); 20-45-5(c) and 17(b); and 20-47-4(d).

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