

Dated: October 26, 1999.  
 Frank O'Bannon,  
*Governor of Indiana.*  
 Bruce Babbitt,  
*Secretary of the Interior.*

#### Appendix A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.
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, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. *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 Constitution of the United States.
17. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*
18. 30 CFR Chapter VII.
19. The Constitution of the State of Indiana.
20. Indiana Surface Coal Mining and Reclamation Act (P.L. 1-1995, SEC. 27) at Ind. Code 14-34 *et seq.*
21. Indiana Department of Natural Resources, Coal Mining and Reclamation Operations, Rules and Regulations, 310 Ind. Admin. Code 12.

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 936

[SPATS No. OK-026-FOR]

#### Oklahoma Regulatory Program

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

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

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Oklahoma submitted its bond release guidelines with a policy statement relating to revegetation success standards for diversity on lands reclaimed for use as pastureland and grazingland. Oklahoma also submitted evidence of consultation with the U.S. Soil Conservation Service (SCS) regarding the use of test plots as a statistically valid sampling technique for demonstrating success of productivity on prime farmland. Oklahoma intends to revise its program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** December 17, 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@tokgw.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

On February 17, 1994, Oklahoma proposed to amend its program by revising its bond release guidelines (Administrative Record No. OK-959.01). On January 10, 1995 (60 FR 2512), we approved this amendment, with additional requirements codified at 30 CFR 936.16(c) and (g). By letter dated September 30, 1999, Oklahoma sent us additional information and documentation to support the provisions in its bond release guidelines that we had approved with additional requirements (Administrative Record No. OK-984). In response to 30 CFR 936.16(c), Oklahoma provided policy statements relating to its bond release guidelines for pastureland and grazingland. In response to 30 CFR 936.16(g), Oklahoma submitted evidence of consultation with the SCS regarding the use of test plots as a statistically valid sampling technique for demonstrating success of productivity on prime farmland.

We announced receipt of the additional information and documentation in the October 22, 1999, **Federal Register** (64 FR 56983). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of Oklahoma's additional information and supporting documentation for its bond release guidelines. The public comment period closed on November 22, 1999. Because no one requested a public hearing or meeting, we did not hold one.

#### 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.

*A. Bond Release Guidelines: Section II. Pastureland and Section III. Grazingland; 30 CFR 936.16(c).*

In the January 10, 1995, **Federal Register**, we approved sections II and III of Oklahoma's bond release guidelines with the following required amendment codified at 30 CFR 936.16(c):

(c) By March 13, 1995, Oklahoma shall revise sections II.B and III.B in the Bond Release Guidelines to identify the method it will use in developing a phase III revegetation success standard for diversity on lands reclaimed for use as pastureland and grazingland.

In its letters dated May 21, 1996, and September 30, 1999 (Administrative Record No. OK-960.04 and OK-984, respectively), Oklahoma included policy statements that identify the

methods it will use in developing a revegetation success standard for diversity on lands reclaimed for use as pastureland and grazingland. In its letter dated May 21, 1996, Oklahoma indicated that its diversity standards are based primarily on the seed mix and the comparison of this seed mix to the stand established after reclamation. In its letter dated September 30, 1999, Oklahoma stated that the currently approved provisions in its bond release guidelines contain the required diversity standards. Oklahoma's bond release guidelines for phase II at subsections II.A.1.g and III.A.1.g allow perennial species that are not listed in the approved reclamation plan, but which the Department approves as being desirable and compatible with the postmining land use, to make up 20 percent of the total ground cover. Any one of these species cannot exceed 5 percent of the ground cover. We also note that subsections II.A.1.f and III.A.1.f require, for phase II bond release on pastureland and grazingland, that no more than 10 percent litter and 10 percent desirable annual or biennial forbs can be counted as acceptable ground cover in any single sampling unit. For phase III bond release on pastureland and grazingland, subsections II.B.1.a and III.B.1.a refer the reader to the phase II standards. Oklahoma's bond release guidelines for phase III at subsections II.B.2.a and III.B.2.a require the applicant to demonstrate that the reclaimed area has had acceptable production of desirable living plants for at least two years of the liability period, except the first year. Oklahoma defines "desirable plant species" in Appendix A of its bond release guidelines to mean:

Those permanent perennial species listed in the approved reclamation plan plus a limited percentage of approved annual species planted in conjunction with the permanent vegetation and invading species that are compatible with the approved postmining land use.

Oklahoma stated that its provisions ensure that 80 percent of the ground cover is composed of the species listed in the approved reclamation plan and that it is comprised of vegetation that meets the requirement for seasonality, permanence, and regeneration on both pastureland and grazingland. We also note that Oklahoma's revegetation success provisions ensure that ground cover is made up of a variety of approved plant species.

In the March 23, 1982, preamble of the proposed rule to modify the revegetation sections of the permanent regulatory program (47 FR 12597), we defined and explained the term

"diversity" as used in section 515(b)(1) of SMCRA and the Federal regulations at 30 CFR 816.111(a)(1) and 817.111(a)(1).

Diverse means sufficiently varied amounts and types of vegetation to achieve ground cover and support the postmining land uses. The precise numbers required to achieve this diversity should be determined by regional climatic and soil conditions. However, the ultimate test will be the sufficiency of the plant communities to assure survival of adequate number and varieties to achieve the postmining land use and the required extent of ground cover.

In the September 2, 1983, preamble of the final rule for the Federal regulations at 30 CFR 816.111(a)(1) and 817.111(a)(1), we stated that diversity could be achieved by planting a mixture of grasses and legumes (48 FR 40143). Oklahoma's provisions at subsections II.A.1.g and III.A.1.g of its bond release guidelines, along with its definition of "desirable plant species" in Appendix A, ensure that a variety of approved plant species will be used to achieve ground cover that support the postmining land uses of pastureland and grazingland. Oklahoma's bond release guidelines at subsections II.B.2.a and III.B.2.a, along with its policy statements, ensure that the applicant must demonstrate species diversity on reclaimed pastureland and grazingland before release of phase III bond. Specifically, the approved species will be verified by revegetation data that is collected to prove productivity on pastureland and grazingland. We find that Oklahoma has identified the methods it will use in developing a phase III revegetation success standard for diversity on lands reclaimed for use as pastureland and grazingland. Therefore, we are removing the required amendment at 30 CFR 936.16(c).

*B. Bond Release Guidelines: Section V. Prime Farmland Cropland; 30 CFR 936.16(g).*

In the January 10, 1995, **Federal Register**, we approved subsections V.B.2.d and V.B.2.e of Oklahoma's bond release guidelines with the following required amendment codified at 30 CFR 936.16(g):

(g) By March 13, 1995, Oklahoma must submit, before Oklahoma allows the use of test plots as proposed at subsections V.B.2.d and V.B.2.e in the Bond Release Guidelines, evidence of consultation with the U.S. Soil Conservation Service regarding the use of test plots as a statistically valid sampling technique for demonstrating success of productivity on prime farmlands.

Oklahoma submitted a letter from the SCS dated March 2, 1993, as evidence of consultation with the SCS regarding the use of test plots as a statistically

valid sampling technique for demonstrating success of productivity on prime farmland. In this letter, the SCS stated that it had reviewed Oklahoma's proposal on sampling techniques for row crops on prime farmland. The SCS referred Oklahoma to Dr. James Stiegler at the Oklahoma State University for technical evaluation of its statistical methods of sampling. In a letter dated March 15, 1996, Oklahoma asked Dr. Stiegler to review the section of its guidelines concerning the use of test plots on prime farmland cropland to prove the productivity of reclaimed soils. Oklahoma asked Dr. Stiegler to determine if Oklahoma's methods of selecting and sampling the test plots will result in valid results that will accurately demonstrate reclamation of prime farmland. Oklahoma submitted a letter from Dr. Stiegler dated April 24, 1996. In this letter, Dr. Stiegler stated:

I have looked over the material that you have provided to me regarding the statistical adequacy of using test plots to prove the productivity of reclaimed soils. The method of selecting and sampling of the test plots as described will result in valid data to support soil productivity.

The letter from the SCS provides adequate evidence that Oklahoma consulted with the SCS regarding the use of test plots for demonstrating success of productivity on prime farmland. The letter from Dr. James Stiegler provides adequate evidence that Oklahoma's guidelines at subsections V.B.2.d and V.B.2.e contain statistically valid sampling techniques for demonstrating success of productivity on prime farmlands. Therefore, we are removing 30 CFR 936.16(g). Oklahoma may allow the use of test plots, as proposed at subsections V.B.2.d and V.B.2.e, for demonstrating success of productivity on prime farmland cropland.

#### **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-984.01). We did not receive any comments.

##### *Environmental Protection Agency (EPA)*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a 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-984.01). The EPA responded on November 5, 1999, that it had no objection to the proposed amendments (Administrative Record No. OK-984.05).

*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, 1999, we requested comments on Oklahoma's amendment (Administrative Record No. OK-984.01), 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 30, 1999.

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 such 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 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: December 8, 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 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.

**§ 936.16 [Amended]**

3. Section 936.16 is amended by removing and reserving paragraphs (c) and (g).

[FR Doc. 99-32737 Filed 12-16-99; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 165**

[CGD01-99-180]

RIN 2115-AA97

**Safety Zone: Ambassador Construction Fireworks, Hudson River, Anchorage Channel**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Hudson River for the Ambassador Construction Fireworks display. 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 on a portion of the Hudson River.

**DATES:** This rule is effective from 7:45 p.m. e.s.t. to 9:15 p.m. e.s.t. on December 17, 1999. There is no rain date for this event.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01-99-180) and are available for inspection or copying at Waterways Oversight Branch, Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, room 205, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

On October 29, 1999, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone: Ambassador Construction Fireworks, Hudson River, Anchorage Channel in the **Federal Register** (64 FR 58366). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30

days after publication in the **Federal Register**. Due to the date the Application for Approval of Marine Event was received, there was insufficient time to promulgate a NPRM and a final rule that would be effective at least 30 days after it was published. The Coast Guard published an NPRM with a 30-day comment period, but this did not leave sufficient time to publish the final rule 30 days before its effective date. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to prevent traffic from transiting a portion of the Hudson River and Anchorage Channel, Manhattan, New York, and provide for the safety of life on navigable waters. Additionally, this temporary safety zone is only for a one and a half hour long local event and it should have negligible impact on vessel transits due to the fact that vessels can safely transit around the zone and they are not precluded from using any portion of the waterway except the safety zone area itself. The public was notified of this event when the NPRM was published in the Local Notice to Mariners on November 4, 1999.

**Background and Purpose**

Bay Fireworks submitted an Application for Approval of a Marine Event for a fireworks display on the Hudson River. This regulation establishes a temporary safety zone in all waters of the Hudson River and Anchorage Channel within a 360-yard radius of the fireworks barge in approximate position 40°42'00" N 074°01'17" W (NAD 1983), about 340 yards south of The Battery, Manhattan, New York. The temporary safety zone is in effect from 7:45 p.m. e.s.t. to 9:15 p.m. e.s.t. on December 17, 1999. There is no rain date for this event. After publication of the NPRM the sponsor requested the start time of the event be changed from 8:15 p.m. e.s.t. to 7:45 p.m. e.s.t. The Coast Guard Captain of the Port, New York does not anticipate any negative impact from this and has authorized the time change. The temporary safety zone prevents vessels from transiting a portion of the Hudson River and Anchorage Channel, and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 780 yards of the 1400-yard wide Hudson River, the eastern 300 yards of the 730-yard wide Anchorage Channel, and the East River during the event. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this

event. Public notifications will be made prior to the event via local notice to mariners, and marine information broadcasts. The Coast Guard limited the comment period for this NPRM to 30 days because the temporary safety zone is only for a one and a half hour long local event and it should have negligible impact on vessel transits.

**Discussion of Comments and Changes**

The Coast Guard received no letters commenting on the proposed rulemaking. One change was made to the proposed rule. After publication of the NPRM the sponsor requested the starting time of the event be changed from 8:15 p.m. e.s.t. to 7:45 p.m. e.s.t. The Coast Guard Captain of the Port, New York does not anticipate any negative impact from this and has authorized the time change. The Coast Guard does not consider this half-hour earlier starting time to be a material change, therefore a supplemental notice of proposed rulemaking was not published.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of the lower Hudson River and Anchorage Channel during the event, the effect of this regulation will not be significant for several reasons: the minimal time that vessels will be restricted from the area, that vessels are not precluded from getting underway, or mooring at, piers at The Battery, Manhattan, that vessels may safely transit through the Hudson River and Anchorage Channel during the event, and advance notifications which will be made to the local maritime community by the Local Notice to Mariners, and marine information broadcasts.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this rule would have a significant economic impact on a