

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 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 8, 2005.

**Charles E. Sandberg,**

*Regional Director, Mid-Continent Region.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 936

[Docket No. OK-030-FOR]

#### Oklahoma Regulatory Program

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Oklahoma proposes revisions to rules concerning cross sections, maps, and plans; subsidence control; impoundments; revegetation success standards; roads; and review of decision not to inspect or enforce. Oklahoma intends to revise its program to provide additional safeguards, clarify ambiguities, and improve operational efficiency. This document gives the times and locations that the Oklahoma program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., c.d.t. November 17, 2005. If requested, we will hold a public hearing on the amendment on November 14, 2005. We will accept requests to speak at a hearing until 4 p.m., c.d.t. on November 2, 2005.

**ADDRESSES:** You may submit comments, identified by Docket No. OK-030-FOR, by any of the following methods:

- E-mail: [mwolfrom@osmre.gov](mailto:mwolfrom@osmre.gov). Include "Docket No. OK-030-FOR" in the subject line of the message.
- Mail/Hand Delivery: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547.
- Fax: (918) 581-6419.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**Instructions:** All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to review copies of the Oklahoma program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office. Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547, Telephone: (918) 581-6430, E-mail: [mwolfrom@osmre.gov](mailto:mwolfrom@osmre.gov).

In addition, you may review a copy of the amendment during regular business hours at the following location: Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 427-3859.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581-6430. E-mail: [mwolfrom@osmre.gov](mailto:mwolfrom@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Oklahoma Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. 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, "\* \* \* 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. Description of the Proposed Amendment

By letter dated July 15, 2005 (Administrative Record No. OK-946.02), Oklahoma sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Oklahoma sent the amendment to include the changes made at its own initiative. Below is a summary of the changes proposed by Oklahoma. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes or corrections of cross-references. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

*A. 460:20-25-11, and 460:20-29-11. Cross Sections, Maps, and Plans*

Oklahoma proposed to delete subsections (a)(11) that require permit applicants to include on cross sections, maps, and plans, sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area.

*B. 460:20-31-13. Subsidence Control Plan*

Oklahoma proposed to revise subsection (a)(3) so that, for areas where unplanned subsidence is projected to be used, an underground mining permit application does not have to include a pre-subsidence survey of: (1) the condition of all non-commercial buildings or occupied residential dwellings and related structures thereto, or (2) the quantity and quality of all drinking, domestic, and residential water supplies within the permit and adjacent areas.

*C. 460:20-43-14. Impoundments*

Oklahoma proposed to add new subsection (a)(14) to read as follows:

(14) The embankment slopes of each impoundment shall not be closer than 100 feet to any public road right-of-way unless otherwise approved under procedures established in 460:20-7-4(4) and 460:20-7-5(d). The area between the road right-of-way and the impoundment slopes, clear zone slopes, shall not be steeper than a 1V:6H grade.

*D. 460:20-43-46. and 460:20-45-46. Revegetation: Standards for Success*

Oklahoma proposed to revise subsection (b)(3) pertaining to the minimum revegetation success standards for areas developed for fish and wildlife habitat, recreation, shelter belts, or forest products.

1. Oklahoma proposed to revise paragraph (b)(3)(A), regarding fish and wildlife habitat, by requiring the Oklahoma Department of Mines to specify the minimum stocking and planting arrangements for fish and wildlife habitat after consulting with the State agencies responsible for the administration of forestry and wildlife programs.

2. Oklahoma proposed to add new sub-paragraphs (b)(3)(A)(i) and (ii), regarding fish and wildlife habitat plans, that set forth the minimum: (1) stocking rate and types of trees or shrubs if trees or shrubs are to be planted, and (2) seeding rate and types of grasses or forbs if grasses or forbs are to be planted.

3. Oklahoma proposed to add new sub-paragraph (b)(3)(A)(iii) requiring the applicant to submit an alternative wildlife habitat plan to the Department for review if he or she chooses not to follow the requirements of proposed new sub-paragraphs (b)(3)(A)(i) and (ii) regarding fish and wildlife habitat plans. In addition, the applicant must submit, along with the alternative plan, written approval of the alternative planting rates and species from the State agency responsible for the management of fish and wildlife.

4. Oklahoma proposed to add new paragraph (b)(3)(D) that requires comments regarding minimum revegetation success standards for areas developed for fish and wildlife habitat, recreation, shelter belts, or forest products from State agencies responsible for the management of fish and wildlife.

*E. 460:20-43-52. Roads: General*

Oklahoma proposed to add new subsection (d)(3) that requires compliance with 460:20-43-14(a)(1) when a public road is relocated.

*F. 460:20-45-47. Subsidence Control*

Oklahoma proposed to delete, in its entirety, subsection (b)(4) pertaining to a rebuttable presumption of causation by subsidence.

*G. 460:20-57-6. Review of Decision Not to Inspect or Enforce*

1. Oklahoma proposed to revise subsection (a) to read as follows:

(a) Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may request the Department to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in request for a State inspection under Section 460:20-57-3. The request for review shall follow the procedures set forth in this Section.

2. Oklahoma proposed to revise subsection (b) by deleting the current language and replacing it with language that specifies the procedures for requesting and conducting an informal conference.

3. Oklahoma proposed to add new subsection (c) that specifies a reasonable time frame for holding the informal conference, where the conference is to be held, and notifications that must be made regarding the conference.

4. Oklahoma proposed to add new subsection (d) that specifies when an informal conference may be canceled.

5. Oklahoma proposed to redesignate existing subsections (c) and (d) as new subsections (e) and (f).

6. Oklahoma proposed to revise redesignated subsection (f) to read as follows:

(f) Any determination made under (b) of this Section shall constitute a decision of the Department within the meaning of the Department's Rules of Practice and Procedure and shall contain a right of an appeal to formal administrative review in accordance with the Rules of Practice and Procedure.

**III. Public Comment Procedures**

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

*Written Comments*

Send your written or electronic comments to us at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are

received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Tulsa Field Office may not be logged in.

*Electronic Comments*

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: Docket No. OK-030-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581-6430.

*Availability of Comments*

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

*Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on November 2, 2005. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others

present in the audience who wish to speak, have been heard.

#### *Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

#### **IV. 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.

Dated: September 2, 2005.

**Charles E. Sandberg,**

*Regional Director, Mid-Continent Region.*

[FR Doc. 05–20786 Filed 10–17–05; 8:45 am]

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