

in the Houston, TX, terminal area. Specifically, the FAA is eliminating the route segment of T-254 between the Centex, TX, VORTAC and College Station, TX, VORTAC. This action eliminates unnecessary duplication with an existing route segment of Federal Airway V-565 to enhance safety and facilitate the efficient use of the navigable airspace for en route instrument flight rules operations transitioning around the Houston Class B terminal airspace area.

Low altitude RNAV routes are published in paragraph 6011 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The low altitude RNAV route listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends a low altitude Area Navigation route (T-254) in the Houston, TX, terminal area.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental

Policy Act in accordance with FAA Order 1050.1E, “Environmental Impacts: Policies and Procedures,” paragraphs 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

- In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

- 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6011 Area Navigation Routes

* * * * *

T-254 College Station, TX to Lake Charles, LA [Amended]

College Station, TX (CLL) VORTAC
(Lat. 30°36'18" N., long. 96°25'14" W.)

EAKES, TX WP

(Lat. 30°33'18" N., long. 95°18'29" W.)

CREPO, TX WP

(Lat. 30°16'54" N., long. 94°14'43" W.)

Lake Charles, LA (LCH) VORTAC

(Lat. 30°08'29" N., long. 93°06'20" W.)

Issued in Washington, DC, on April 1, 2010.

Ellen Crum,

Acting Manager, Airspace and Rules Group

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SATS No. OK-032-FOR; Docket No. OSM-2008-0023]

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 (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Oklahoma Department of Mines (ODM, Oklahoma, or department) made revisions to its rules regarding circumstances under which a notice of violation may have an abatement period greater than 90 days. Oklahoma revised its program at its own initiative to improve operational efficiency.

DATES: *Effective Date:* April 9, 2010.

FOR FURTHER INFORMATION CONTACT: Alfred L. Clayborne, Director, Tulsa Field Office, and Telephone: (918) 581-6430, E-mail: aclayborne@osmre.gov.

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 November 26, 2008, (Administrative Record No. OK-998), Oklahoma sent us amendments to its approved regulatory program under SMCRA (30 U.S.C. 1201 *et seq.*). Oklahoma submitted these amendments at its own initiative. Oklahoma proposed a revision to the notices of violation rules as well as the deletion of rules concerning the appeals procedures and appeals board.

We announced receipt of Oklahoma's amendments in the January 9, 2009, **Federal Register** (74 FR 868). In the same document, we opened the public comment period and the public was provided an opportunity to submit comments or request a public hearing on the adequacy of the amendments. We did not hold a public meeting because no one requested one. The public comment period ended February 9, 2009. We did not receive any comments.

During our review of the amendment, we identified concerns regarding Oklahoma's proposed deletion of its Appeals procedures section 460:20-5-13. We notified Oklahoma of these concerns by letter dated December 11, 2008, and by e-mail dated February 11, 2009, (Administrative Record Nos. OK-998.02, and OK-998.08).

Oklahoma responded by letters dated January 8, 2009; July 7, 2009; and November 10, 2009 (Administrative Record Nos. OK-998.03, OK-998.09, and OK-998.11). Oklahoma submitted another letter, December 22, 2009, (Administrative Record No. OK-998.12) withdrawing the appeals procedures and appeals board sections from its proposed amendment and committing to resubmitting a separate formal amendment regarding these two sections at a later date.

Withdrawal of the proposed amendments related to appeals procedures at the appeals board leaves Oklahoma's approved regulatory program no less effective than the Federal regulations at 30 CFR 843.12(f)(1). For this reason, we did not reopen the public comment period.

III. OSM's Finding

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

Section 460:20-59-4—Notices of Violation

Oklahoma proposed to revise its regulations at OAC 460:20-59-4—Notices of violation, by removing portions of language in subsection 460:20-59-4(f)(1) and adding new language at subsection 460:20-59-4(f)(2) that is consistent with the Federal regulations at 30 CFR 843.12(f)(1). The circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are: (1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee; (2) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit revision which abates an outstanding violation and which includes no other changes to permit design or plans, but such revision approval has not or will not be issued within 90 days for reasons not within the control of the permittee.

The Federal regulations at 30 CFR 843.12(f) identify circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days. They are: (1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee; (2) Where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy; (3) Where the permittee cannot abate within 90 days due to a labor strike; (4) Where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or (5) Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

Oklahoma feels, and we agree, that this revision will better clarify the circumstance under which an abatement period may exceed 90 days while preventing excessive delays due to permit revisions containing unrelated issues that would require lengthy

review periods. Their amendment will continue to allow an abatement period greater than 90 days related to a permit renewal but will only allow an abatement period greater than 90 days for an outstanding permit revision if the revision is related only to the violation issues and does not contain unrelated items that could excessively delay the review process.

We find that the changes by Oklahoma are no less effective than the Federal regulations; therefore, we are approving them.

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 December 3, 2008, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments from various agencies with an actual or potential interest in Oklahoma's Appeals procedures, Appeals board, and Notices of violation (Administrative Record No. OK-998.04), we received comments from one agency, the Oklahoma Historical Society. The agency had no objections to Oklahoma's proposed regulatory program changes.

Environmental Protection Agency (EPA) Concurrence and Comments

We are required to get a written concurrence from the Environmental Protection Agency (EPA) under 30 CFR 732.17(h)(11)(ii), for those provisions of Oklahoma's program amendments 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.*).

On December 3, 2008, and February 21, 2009, we requested comments on the proposed amendments from the EPA (Administrative Record Nos. OK-998.04). The EPA did not respond to our request.

V. OSM's Decision

Based on the above findings, we are approving Oklahoma's revision to its Notices of violation submitted on November 26, 2008.

To implement this decision, we are amending the Federal regulations at 30 CFR part 936 which codifies 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 the Office of Management and Budget 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: February 16, 2010.

Ervin J. Barchenger,
Regional Director, Mid-Continent Region.

Editorial Note: This document was received in the Office of the Federal Register on April 6, 2010.

■ 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

Original amendment submission date	Date of final publication	Citation/description
* November 26, 2008	* April 9, 2010	* Notice of violations: Section 460:20–59–4.

[FR Doc. 2010–8175 Filed 4–8–10; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DoD–2007–HA–0078; RIN 0720–AB17]

TRICARE; Relationship Between the TRICARE Program and Employer-Sponsored Group Health Coverage

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements section 1097c of Title 10, United States Code, as added by section 707 of the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109–364. This law prohibits employers from offering incentives to TRICARE-eligible employees to not enroll or to terminate enrollment in an employer-offered Group Health Plan (GHP) that is or would be primary to TRICARE. Benefits offered through cafeteria plans that comport with section 125 of the Internal Revenue Code will be permissible as long as the plan treats all similarly situated employees eligible for benefits the same and does not illegally take TRICARE eligibility into account. TRICARE supplemental insurance plans, because they are limited to TRICARE beneficiaries exclusively, are generally impermissible. Properly documented non-employer contributed TRICARE supplemental plans, however, are allowed.

DATES: Effective June 18, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Larkin, TRICARE Policy and Operations, TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041, telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION:

I. Background

Section 707 of the John Warner National Defense Authorization Act for

chronological order by “date of final publication” to read as follows:

§ 936.15 Approval of Oklahoma regulatory program amendments.

* * * * *

Fiscal Year 2007 (Pub. L. 109–364) added section 1097c to Title 10, United States Code. Section 1097c prohibits employers from offering financial or other incentives to certain TRICARE-eligible employees (essentially retirees and their family members) to not enroll in an employer-offered GHP in the same manner as employers are currently prohibited from offering incentives to Medicare-eligible employees under section 1862(b)(3)(C) of the Social Security Act (42 U.S.C. 1395y(b)(3)(C)). Many employers, including state and local governments, have begun to offer their employees who are TRICARE-eligible a TRICARE supplement as an incentive not to enroll in the employer's primary GHP. These actions shift thousands of dollars of annual health costs per employee to the Defense Department, draining resources from higher national security priorities. TRICARE is, as is Medicare, a secondary payer to employer-provided health insurance. In all instances where a TRICARE beneficiary is employed by a public or private entity and elects to participate in a GHP, reimbursements for TRICARE claims will be paid as a secondary payer to the TRICARE beneficiary's employer-sponsored GHP. TRICARE is not responsible for paying first as it relates to reimbursements for a TRICARE beneficiary's health care and the coordination of benefits with employer-sponsored GHPs.

An identified employer-sponsored health plan will be the primary payer and TRICARE will be the secondary payer. TRICARE will generally pay no more than the amount it would have paid if there were no employer GHP. As applicable to both the Medicare and TRICARE secondary payer programs, the term “group health plan” means a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families. It should be noted that by including any plan of an employer to provide health

care to employees, this definition is very broad.

The purpose of the prohibition on incentives not to enroll in employer-sponsored GHPs is to prevent employers from shifting their responsibility for their employees onto the Federal taxpayers. Certain common employer benefit programs do not constitute improper incentives under the law. For example, the general rule is that an employer-funded benefit offered through an employer's cafeteria plan that comports with section 125 of the Internal Revenue Code would not be considered improper incentive, as long as it is not a TRICARE exclusive benefit. A cafeteria plan, as defined by the Internal Revenue Code, 26 U.S.C. 125(d), is a written plan under which all participants are employees and the participants may choose among two or more benefits consisting of cash and qualified benefits. Employers who adhere to the requirements of section 125 and offer all similarly situated employees without regard to TRICARE eligibility a choice between health insurance and cash payment equivalents are not considered in violation of 42 U.S.C. 1395y(b)(3)(C). Therefore, if a TRICARE beneficiary elects the cash-payment option as a benefit offered via the employer's cafeteria plan, one which meets section 125 requirements, then the employer would not be in violation of these provisions. In general, 10 U.S.C. 1097c prohibits employer-endorsed TRICARE supplemental plans as an option for health coverage under an employer-sponsored GHP to TRICARE-eligible beneficiaries. This type of benefit cannot be offered as part of a cafeteria plan because the employer, by endorsing this type of plan, effectively offers an improper incentive targeted only at TRICARE beneficiaries for not enrolling in the employer's main health plan option or options.

Section 1097c does not impact TRICARE supplemental plans that are not offered by an employer but are sold by an insurer and/or beneficiary association working in conjunction with an insurer. Such non-employer-sponsored TRICARE supplemental plans will continue to be expressly