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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 936**

[SPATS No. OK-024-FOR]

**Oklahoma Regulatory Program**

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

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

**SUMMARY:** OSM is approving an amendment to the Oklahoma regulatory program (from now on referred to as the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to and additions of regulations pertaining to definitions; reclamation plan: siltation structures, impoundments, banks, dams, and embankments; permit variances from approximate original contour restoration requirements; small operator assistance; bond release applications; hydrologic balance: siltation structures; impoundments; disposal of excess spoil: preexisting benches; coal mine waste: general requirements; state inspections and monitoring; and request for hearing. Oklahoma intended that the amendment revise its program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** January 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Wolf from, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6548, Telephone: (918) 581-6430, E-mail mwolf from@mcr gw.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 conditions of approval and program amendments at 30 CFR 936.15 and 936.16.

**II. Submission of the Proposed Amendment**

By letter dated December 18, 1997 (Administrative Record No. OK-981), Oklahoma sent us an amendment to its program under SMCRA. Oklahoma sent the amendment in response to a June 17, 1997, letter (Administrative Record No. OK-979) that we sent to Oklahoma under 30 CFR 732.17(c). We announced receipt of the amendment in the January 6, 1998, **Federal Register** (63 FR 454). 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. The public comment period closed on February 5, 1998. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment, we identified concerns relating to definitions (OAC 460:20-3-5); permitting requirements (OAC 460:20-27-14 and 460:-20-31-9); small operator assistance (OAC 460:20-35-1, -6, -7, and -8); hydrologic balance: siltation structures—definitions (OAC

460:20-43-12); impoundments (OAC 460:20-43-14 and 460:20-45-14); coal mine waste: general requirements (OAC 460:20-43-29 and 460:20-45-29); backfilling and grading: thin overburden (OAC 460:20-43-39); disposal of excess spoil: preexisting benches (OAC 460:20-45-27); and state inspections and monitoring (OAC 460:20-57-2). We notified Oklahoma of these concerns by faxes dated June 5 and 30, and October 21, 1998 (Administrative Record Nos. OK-981.13, OK-981.08, and OK-981.11, respectively). By letters dated June 22, August 10, September 24, and November 5, 1998 (Administrative Record Nos. OK-981.06, OK-981.09, OK-981.10, and OK-981.12, respectively), Oklahoma sent us additional explanatory information and revisions to its program amendment.

Based upon Oklahoma's additional explanatory information and revisions to its amendment, we reopened the public comment period in the November 25, 1998, **Federal Register** (63 FR 65149). The public comment period closed on December 10, 1998.

**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. Any revisions that we do not discuss are about minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

*A. Revisions to Oklahoma's Regulations That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations*

The State regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State regulations and the Federal regulations are minor.

Topic	State regulation—Oklahoma administrative code (OAC)	Federal counterpart regulation—30 Code of Federal Regulation (CFR)
Definitions: "Other treatment facilities," "Previously mined area," and "Siltation structure."	460:20-3-5 .....	701.5.
Reclamation plan: siltation structures, impoundments, banks, dams, and embankments. (Surface mining activities).	460:20-27-14(a), (a)(2), (a)(3), and (f).	780.25(a), (a)(2), (a)(3), and (f).
Reclamation plan: siltation structures, impoundments, banks, dams, and embankments. (Underground mining activities).	460:20-31-9(a), (a)(2), (a)(3), and (f).	784.16(a), (a)(2), (a)(3), and (f).
Permits incorporating variances from approximate original contour restoration requirements.	460:20-33-6(a) .....	785.16(a).
Program services and data requirements .....	460:20-35-6(a), (b)(1), and (b)(3)—(b)(5).	795.9(a), (b)(1), and (b)(4)—(b)(6).
Applicant liability .....	460:20-35-7(a) .....	795.12(a).
Assistance funding .....	460:20-35-8 .....	795.11.
Requirement to release performance bonds .....	460:20-37-15(a)(3) .....	800.40(a)(3).
Hydrologic balance: siltation structures. (Surface mining activities) .....	460:20-43-12(a)—(a)(2) .....	816.46(a)—(a)(2).

Topic	State regulation—Oklahoma administrative code (OAC)	Federal counterpart regulation—30 Code of Federal Regulation (CFR)
Impoundments: general requirements. (Surface mining activities) .....	460:20-43-14(a)(1)—(a)(3), (a)(5), (a)(6), and (a)(9)—(a)(12).	816.49(a)(1)—(a)(3), (a)(5), (a)(6), and (a)(9)—(a)(12).
Impoundments: temporary impoundments. (Surface mining activities)	460:20-43-14(c)(2)(A) and (B) .....	816.49(c)(2)(i) and (ii).
Disposal of excess spoil: preexisting benches. (Surface mining activities).	460:20-43-27(c) .....	816.74(c).
Coal mine waste: general requirements. (Surface mining activities) .....	460:20-43-29(a) .....	816.81(a).
Hydrologic balance: siltation structures. (Underground mining activities).	460:20-45-12(a)—(a)(2) .....	817.46(a)—(a)(2).
Impoundments: general requirements. (Underground mining activities)	460:20-45-14(a)(1)—(a)(3), (a)(5)—(a)(6), (a)(9)—(a)(12).	817.49(a)(1)—(a)(3), (a)(5)—(a)(6), (a)(9)—(a)(12).
Impoundments: temporary impoundments. (Underground mining activities).	460:20-45-14(c)(2)(A)—(B) .....	817.49(c)(2)(i)—(ii).
Disposal of excess spoil: preexisting benches. (Underground mining activities).	460:20-45-27(c) .....	817.74(c).
Coal mine waste: general requirements. (Underground mining activities).	460:20-45-29(a) .....	817.81(a).
State inspections and monitoring .....	460:20-57-2(g)(4)(A) and (h) .....	840.11(g)(4)(i) and (h).
Request for hearing .....	460:20-61-11(a) .....	845.19(a) .

Because the above State regulations have the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

*B. Revisions to Oklahoma's Regulations That Are Not the Same as the Corresponding Provisions of the Federal Regulations*

1. OAC 460:20-27-14. Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments. (Surface Mining Activities)

a. Oklahoma revised paragraph (b) to require siltation structures to be designed in compliance with the requirements of Section 460:20-43-12. Also, impoundments or earthen structures which permanently remain on the permit area have to be designed to comply with the requirements of Section 460:20-43-14. We are approving this revision because it is not inconsistent with or less effective than the corresponding Federal regulations at 30 CFR 780.25(b).

b. Oklahoma revised paragraph (c)(3) to allow its Department of Mines to establish, through the State program approval process, engineering design standards for impoundments:

1. That do not meet the size or other criteria of 30 CFR 77.216(a), or
2. That do not meet the Class B or C criteria for dams in TR-60, (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs," or
3. That are located where failure would not be expected to cause loss of life or serious property damage.

The design standards would ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3

specified in Section 460:20-43-14(a)(3)(B). We are approving this revision because it is not inconsistent with or less effective than the corresponding Federal regulations at 30 CFR 780.25(c)(3).

2. OAC 460:20-31-9. Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments. (Underground Mining Activities)

a. Oklahoma revised paragraph (b) to require siltation structures to be designed in compliance with the requirements of Section 460:20-45-12. Also, impoundments or earthen structures which permanently remain on the permit area have to be designed to comply with the requirements of Section 460:20-45-24. We are approving this revision because it is not inconsistent with or less effective than the corresponding Federal regulations at 30 CFR 784.16(b).

b. Oklahoma revised paragraph (c)(2) to allow its Department of Mines to establish, through the State program approval process, engineering design standards for impoundments:

1. That do not meet the size or other criteria of 30 CFR 77.216(a), or
2. That do not meet the Class B or C criteria for dams in TR-60, (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs," or
3. That are located where failure would not be expected to cause loss of life or serious property damage.

The design standards would ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in Section 460:20-45-14(a)(3)(B). We are approving this revision because it is not inconsistent with or less effective than the

corresponding Federal regulations at 30 CFR 784.16(c)(3).

3. OAC 460:20-35-6. Program Services and Data Requirements

Oklahoma revised paragraph (b)(6) to read as follows:

The development of cross-section maps and plans required under Section 460:20-25-11, 460:20-29-11, and any other applicable regulation.

We are approving this revision because it is not inconsistent with or less effective than the corresponding Federal regulation at 30 CFR 795.9(b)(3).

4. OAC 460:20-43-12. Hydrologic Balance: Siltation Structures. (Surface Mining Activities) and OAC 460:20-45-12. Hydrologic Balance: Siltation Structures. (Underground Mining Activities)

Oklahoma proposed to delete paragraphs (a)(3) which provide the definition for "other treatment facilities." We are approving these deletions because Oklahoma revised and moved this definition to Section 460:20-3-5. Definitions.

5. OAC 460:20-43-14. Impoundments. (Surface Mining Activities)

Oklahoma revised paragraphs (a)(4)(A) and (B) to read as follows:

(A) An impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(B) Impoundments not included in Section (a)(4)(A) of this Section, except for a coal mine waste impounding structure, or located where failure would not be expected to cause loss of life or serious property damage shall

have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of Section 460:20-27-14(c)(3).

We are approving this revision because it is not inconsistent with or less effective than the corresponding Federal regulations at 30 CFR 816.49(a)(4) (i) and (ii).

6. OAC 460:20-45-14. Impoundments. (Underground Mining Activities)

Oklahoma revised paragraphs (a)(4) (A) and (B) to read as follows:

(A) An impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(B) Impoundments not included in Section (a)(4)(A) of this Section, except for a coal mine waste impounding structure, or located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of Section 460:20-31-9(c)(2).

We are approving this revision because it is not inconsistent with or less effective than the corresponding Federal regulations at 30 CFR 817.49(a)(4) (i) and (ii).

#### 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 Nos. OK-981.03 and OK-981.16). In letters dated January 27, and December 14, 1998, the U.S. Army Corps of Engineers responded that they found the changes to the Oklahoma program satisfactory (Administrative Record Nos. OK-981.05 and OK-981.19).

##### 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 to the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record Nos. OK-981.01 and OK-981.14). 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 get comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On December 30, 1997, and November 16, 1998, we requested comments on Oklahoma's amendment (Administrative Record Nos. OK-981.02 and OK-981.15, respectively), but neither responded to our request.

#### V. Director's Decision

Based on the above findings, we approve the amendment as submitted by Oklahoma on December 18, 1997, and as revised on June 22, August 10, September 24, and November 5, 1998. We approve the regulations that Oklahoma proposed with the provision that they be published in identical form to the regulations sent to and reviewed by OSM and the public. 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 the State to bring its programs 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 published 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: January 8, 1999.

**Brent Wahlquist,**

*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
December 18, 1997	January 22, 1999	460:20-3-5; 20-27-14(a), (a)(2), (a)(3), (b), (c)(3), (f); 20-31-9(a), (a)(2), (a)(3), (b), (c)(2), (f); 20-33-6(a); 20-35-6(a), (b)(1), and (b)(3) through (b)(6); 20-35-7(a); 20-35-8; 20-37-15(a)(3); 20-43-12(a) through (a)(3); 20-43-14(a)(1) through (a)(3), (a)(4)(A) and (B), (a)(5), (a)(6), and (a)(9) through (a)(12), (c)(2)(A) and (B); 20-43-27(c); 20-43-29(a); 20-45-12(a) through (a)(3); 20-45-14(a)(1) through (a)(3), (a)(4)(A) and (B), (a)(5), (a)(6), and (a)(9) through (a)(12), (c)(2)(A) and (B); 20-45-27(c); 20-45-29(a); 20-57-2(g)(4)(A) and (h); and 20-61-11(a).

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**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy, DOD.  
**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS PORTER (DDG 78) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** October 26, 1998.

**FOR FURTHER INFORMATION CONTACT:** Captain R.R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge

Advocate General, Navy Department, Washington Navy Yard, Washington, DC 20374-5066, Telephone number: (202) 685-5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS PORTER (DDG 78) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(f)(ii) pertaining to the vertical placement of task lights; Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; and, Annex I, paragraph 3(c) pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty) has also

certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

**PART 706—[AMENDED]**

1. The authority citation for 32 CFR Part 706 continues to read as follows:

**Authority:** 33 U.S.C. 1605.

2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS PORTER:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

\* \* \* \* \*

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction