

Dated: December 18, 1997.

Charles E. Sandberg,

*Acting Regional Director, Mid-Continent
Regional Coordinating Center.*

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX-036-FOR]

Texas Regulatory Program and Abandoned Mine Land Reclamation Plan

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

ACTION: Proposed rule; public comment
period and opportunity for public
hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Texas regulatory program and abandoned mine land reclamation plan (hereinafter the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to Texas' statutes pertaining to small operator assistance, definitions, exemptions, applicability to governmental units, coal exploration operations, prohibition on surface and coal mining, notices of violation, improvidently issued permits, performance standards, eligibility of land and water, and cessation orders. The amendment is intended to revise the Texas program to be consistent with SMCRA.

This document sets forth the times and locations that the Texas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.s.t., January 28, 1998. If requested, a public hearing on the proposed amendment will be held on January 28, 1998. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t. on January 13, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

Copies of Texas program the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed 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.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P.O. Box 12967, Austin, Texas 78711-2967, Telephone: (512) 463-6900.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas regulatory program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning the Texas program can be found at 30 CFR 943.10, 943.15, and 943.16.

On June 23, 1980, the Secretary of the Interior approved the Texas abandoned mine land reclamation plan. Background information on the Texas plan, including the Secretary's findings, the disposition of comments, and the approval of the plan can be found in the June 23, 1980, **Federal Register** (45 FR 41937). Subsequent actions concerning the Texas plan and amendments to the plan can be found at 30 CFR 943.25.

II. Description of the Proposed Amendment

By letter dated December 1, 1997 (Administrative Record No. TX-643), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. Texas proposes to amend the Texas Surface Coal Mining and Reclamation Act (TSCMRA) to reflect changes resulting from the passage of Senate Bills (SB) 636 and 898 by the 75th Texas Legislature. The full text of the proposed program amendment

submitted by Texas is available for public inspection at the locations listed above under **ADDRESSES**. A discussion of the proposed amendment is presented below.

1. TSCMR § 134.004 Definitions (SB 898)

Texas added the following definition for the term "applicant" at section 134.004(3) and renumbered the existing definitions to reflect this addition:

Applicant means a person or other legal entity seeking a permit from the commission to conduct surface coal mining activities or underground mining activities under this chapter.

2. TSCMRA § 134.005 Exemptions (SB 898)

Section 134.005(a) was amended by removing the exemption for extraction of coal for commercial purposes if the surface mining operation affects two acres or less at paragraph (2). Paragraph (3) was renumbered (2) to reflect this deletion.

3. TSCMRA § 134.008 Applicability to Governmental Units (SB 898)

The following provision was added at section 134.008 to authorize regulation of governmental units who engage in surface coal mining operations:

An agency, unit, or instrumentality of federal, state, or local government, including a publicly owned utility or publicly owned corporation of federal, state, or local government, that proposes to engage in surface coal mining operations that are subject to this chapter shall comply with this chapter.

4. TSCMRA § 134.014 Coal Exploration Operations (SB 898)

Section 134.014 was amended by adding the following new provision at subsection (b) and changing existing subsection (b) to (c).

A person who conducts coal exploration operations that substantially disturb the natural land surface in violation of this section or rule adopted under this section is subject to Sections 134.174 through 134.181.

5. TSCMRA § 134.022 Prohibitions on Surface Coal Mining in Certain Areas (SB 898)

Section 134.022(c) was amended by changing the date relating to valid existing rights from May 9, 1979, to August 3, 1977.

6. TSCMRA § 134.056 Small Mine Exemption (SB 636)

At section 134.056(2), Texas increased the amount of probable total annual production allowed for surface coal mining operators under its small

operator assistance program from 100,000 to 300,000 tons.

7. TSCMRA § 134.068 Schedule of Notices of Violations (SB 898)

Texas revised section 134.068(a) by requiring the applicant to file with the application a schedule listing any notices of violations of this chapter, the Federal Act, a Federal regulation or Federal or State program adopted under the Federal Act, or another law, rule, or regulation of the United States, this State, or a department or agency in the United States pertaining to air or water environmental protection. Texas also deleted the language "in this state" from the phrase "in connection with a surface coal mining operation in this state." At section 134.068(b), the language "applicant shall include in the schedule" was removed and the language "schedule must indicate" was added.

8. TSCMRA § 134.069 Effect or Past or Present Violation (SB 898)

Texas amended section 134.069(a) by removing paragraph (2), which allowed the commission to issue a permit to an applicant who had an unabated violation if the applicant was contesting the notice of violation. Texas amended section 134.069(b) by adding language that referenced this chapter and other laws in Section 134.068 in relation to a demonstrated pattern of willful violations.

9. TSCMRA § 134.084 Suspension or Rescission of Improvidently Issued Permit (SB 898)

Texas added the following new provision at section 134.084:

(a) The commission may suspend or rescind an improvidently issued permit under rules adopted by the commission.

(b) A rule adopted by the commission under this section must be consistent with and not less effective than a regulation adopted under the federal Act.

(c) Except as provided by Subsection (d), Chapter 2001, Government Code, does not apply to an action by the commission under this section to suspend or rescind an improvidently issued permit.

A permit holder who is given notice of suspension or rescission of an improvidently issued permit under this section may file an appeal for administrative review of the notice as provided by commission rules. The review is governed by Chapter 2001, Government Code.

10. TSCMRA § 134.092 Performance Standards (SB 898)

Texas amended section 134.092(a)(3) by adding the language "all highwalls, spoil piles, and" after the word "with" in the phrase "to restore the

approximate original contour of the land with depressions eliminated."

11. TSCMRA § 134.142 Eligibility of Land and Water (SB 636)

Texas amended section 134.142 by removing its existing criteria at paragraphs (1) through (3) for determining if land and water are eligible for reclamation or abatement under its abandoned mine land reclamation program and adding the following new criteria:

Land and water are eligible for reclamation or abatement expenditures under this subchapter if the land and water are eligible for reclamation or abatement expenditures under the federal Act.

12. TSCMRA § 134.163 Terms of Cessation Order (SB 898)

At section 134.163(1), Texas added the language "condition, practice, or" after the word "the" in the phrase "determines the violation has been abated."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on January 13, 1998. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in

advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) 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 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.

National Environmental Policy Act

No environmental impact statement is required for this rule since 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 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 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. Accordingly, this rule will ensure that existing requirements previously promulgated 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 counterpart Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to 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 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 17, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX-035-FOR]

Texas Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Texas regulatory program (hereinafter the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to Texas' regulations pertaining to definitions, prime farmland, small operator assistance, release of performance bond, and backfilling and grading. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Texas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m. c.s.t., January 28, 1998. If requested, a public hearing on the proposed amendment will be held on January 23, 1998. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t. on January 13, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

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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.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P.O. Box 12967, Austin, Texas 78711-2967, Telephone: (512) 463-6900.

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SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

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II. Description of the Proposed Amendment

By letter dated December 1, 1997 (Administrative Record No. TX-644), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to a June 17, 1997, letter (Administrative Record No. 640) that OSM sent to Texas in accordance with 30 CFR 732.17(c). Texas proposes to amend Chapter 12 of the Texas Administrative Code (TAC).

1. TAC § 12.3 Definitions.

Texas added or revised the following definitions at § 12.3:

Previously mined area—Land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of this Chapter (relating to Coal Mining Regulations).

Qualified laboratory—A designated public agency, private firm, institution, or analytical laboratory that can provide the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified at §§ 12.236 and 12.240 of this title (relating to Program Services, and to Data Requirements), and that meet the standards of § 12.241 of this title (relating to Qualified Laboratories).

Thick overburden—more than sufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that