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Dated: April 22, 1999.

Margaret Ann Miller,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.
[FR Doc. 99-10983 Filed 4-30-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX-045-FOR]

Texas 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 Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposed deletions, revisions, and addition of regulations concerning air pollution control plans; reclamation plans: general requirements; air resources protection; stabilization of surface areas; and coal processing plants: performance standards. Texas intends to bring its regulations into alignment with Federal regulations that were revised in 1983.

EFFECTIVE DATE: May 3, 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@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Texas 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 Texas Program

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

II. Submission of the Proposed Amendment

By letter dated January 28, 1999 (Administrative Record No. TX-647), Texas sent us an amendment to its program under SMCRA. The amendment included changes to the Texas Administrative Code (TAC) made at Texas' own initiative.

We announced receipt of the amendment in the February 12, 1999 **Federal Register** (64 FR 7145). 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 proposed amendment. The public comment period closed on March 15, 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. Regulations Deleted From Texas' Program

- 1. Sections 12.379 and 12.546, Air Resources Protection (Surface and Underground Mining, Respectively)

Texas proposed to delete the above regulations. The Federal counterparts to these State regulations were previously found at 30 CFR 816.95 and 817.95 for surface and underground mining, respectively. We deleted these Federal counterpart regulations from our own regulations. See the **Federal Register** dated January 10, 1983 (48 FR 1163). Therefore, we are approving the deletion of the above Texas regulations.

- 2. Sections 12.389 and 12.554, Regrading or Stabilizing Rills and Gullies (Surface and Underground Mining, Respectively)

Texas proposed to delete the above regulations. The Federal counterparts to these State regulations were previously found at 30 CFR 816.106 and 817.106 for surface and underground mining, respectively. We deleted these Federal counterpart regulations from our own regulations. See the **Federal Register** dated January 10, 1983 (48 FR 1163). Therefore, we are approving the deletion of the above Texas regulations.

B. Revisions to Texas' 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 (TAC)	Federal counterpart regulation (30 CFR)
Air pollution control plan	Sections 12.143(a)(2), (b)(1) and (b)(2); 12.199(2).	780.15(a)(2), (b)(1) and (b)(2); 784.26(b).
Stabilization of surface areas	Sections 12.389 and 12.554	816.95 and 817.95.
Coal processing plants: performance standards.	Section 12.651(9)	827.12(j).

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.

C. Revisions to Texas' Regulations That Are Not the Same as the Corresponding Provisions of the Federal Regulations

- 1. Sections 12.145 and 12.187, Reclamation Plan: General Requirements (Surface and Underground Mining, Respectively) [30 CFR 780.18(a)(3) and 784.13(b)(3)]

Texas proposed to update and change one of the reference citation titles in

paragraph (b)(3) from "Regrading or Stabilizing Rills and Gullies" to "Stabilization of Surface Areas." We are approving this change because it is not inconsistent with our Federal regulations at 30 CFR 780.18(a)(3) and 784.13(b)(3).

2. Section 12.651, Coal Processing Plants: Performance Standards

Texas proposed to update and change one of the reference citation titles in paragraph (13) from "Regrading or Stabilizing Rills and Gullies" to "Stabilization of Surface Areas." We are approving this change because it is not inconsistent with our Federal regulations at 30 CFR 827.12(1).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment. In a letter dated March 12, 1999 (Administrative Record No. TX-647.07), Texas Utilities Services, Inc. states that it strongly supports the proposed amendments.

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 Texas program (Administrative Record No. TX-647.03). In a letter dated February 12, 1999 (Administrative Record No. TX-647.05), the U.S. Army Corps of Engineers responded that it found the amendment satisfactory. In a letter dated February 22, 1999 (Administrative Record No. TX-647.06), the U.S. Department of Agricultural Natural Resources Conservation Service responded that it had no comments pertaining to the revised regulations.

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 Texas 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. TX-647.01). 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 request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On February 2, 1999, we

requested comments on Texas' amendment (Administrative Record No. TX-647.02), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by Texas on January 28, 1999. We approve the regulations that Texas proposed with the provisions 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 943, which codify decisions concerning the Texas program. We are making this final rule effective immediately to speed the State program amendment process and to encourage Texas 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 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 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 16, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 943 is amended as set forth below:

PART 943—TEXAS

1. The authority citation for Part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 943.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

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Original amendment submission date	Date of final publication	Citation/description
* January 28, 1999	* May 3, 1999	* Sections 12.143(a)(2), (b)(1) and (b)(2); .145(b)(3); .187(b)(3); .199(2); .379; .389; .546; .554; and .651(9) and (13).

[FR Doc. 99-11034 Filed 4-30-99; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA-110-FOR]

Virginia Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment changes the Virginia Coal Surface Mining Control and Reclamation Act to add "letter of credit" as an acceptable form of collateral bond to satisfy the performance bonding requirements of the Virginia Act. The amendment is intended to revise the State program to be consistent with the Federal regulations.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (540) 523-4303.

SUPPLEMENTARY INFORMATION:

- I. Background on the Virginia Program.
- II. Submission of the Amendment.
- III. Director's Findings.
- IV. Summary and Disposition of Comments.
- V. Director's Decision.
- VI. Procedural Determinations.

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the December 15, 1981, **Federal Register** (46

FR 61085-61115). You can find later actions on conditions of approval and program amendments at 30 CFR 946.11, 946.12, 946.13, 946.15, and 946.16.

II. Submission of the Amendment

By letter dated July 31, 1997, (Administrative Record Number VA-921), the Virginia Department of Mines, Minerals and Energy (DMME) stated that the Virginia legislature has amended, effective July 1, 1997, the Virginia Coal Surface Mining Control and Reclamation Act at Section 45.1-241(C). The amendment adds "letter of credit" as an acceptable form of collateral bond that the DMME may accept to satisfy the performance bonding requirements of the Virginia Act.

We announced receipt of the proposed amendment in the August 25, 1997, **Federal Register** (62 FR 44924), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on September 24, 1997. No one requested to speak at a public hearing, so no hearing was held.

During our review of the amendment, we identified concerns with the language of the amendment. We notified Virginia of our concerns on October 20, 1997 (Administrative Record Number VA-932). Virginia responded to our questions by letter dated October 23, 1997 (Administrative Record Number VA-933).

We reviewed the State's comments and responded to them by letter dated November 26, 1997 (Administrative Record Number VA-942). In our response, we asked the State to provide an attorney general's opinion that cites the statutory and/or regulatory basis for the interpretation submitted by the DMME in its October 23, 1997, letter. The DMME obtained an opinion from the Virginia Office of the Attorney General by Memorandum dated October 27, 1998 (Administrative Record Number VA-958). By letter dated June 4, 1998 (Administrative Record Number VA-956) Virginia deleted two sentences that were proposed in the July 31, 1997 submission. In a separate request we asked the DMME whether its use of the term "financial institution authorized to do business in the United States," at

45.1-241(C), is consistent with the Federal regulation at 30 CFR 800.21(b)(1) which states that letters of credit may be issued only by a bank organized or authorized to do business in the United States. The DMME responded by letter dated February 23, 1999 (Administrative Record Number VA-972).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Virginia program.

As amended, Section 45.1-241(C) of the Virginia Coal Surface Mining Control and Reclamation Act provides for letters of credit as follows.

The Director may also accept a letter of credit on certain designated funds issued by a financial institution authorized to do business in the United States. The letters of credit shall be irrevocable, unconditional, shall be payable to the Department upon demand, and shall afford to the Department protection equivalent to a corporate surety's bond. The issuer of the letter of credit shall give prompt notice to the permittee and the Department of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violations of regulatory requirements which could result in suspension or revocation of the issuer's charter or license to do business. In the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, the issuer shall immediately notify the permittee and the Department. Upon the incapacity of an issuer by a reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the Department, and the Department shall then issue a notice to the permittee specifying a reasonable period, which shall not exceed ninety days, to replace the bond coverage. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the Department has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the Department may suspend the permit until acceptable bond is posted. The letter of credit shall be provided on the form and format established