

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 943

[SPATS No. TX-027-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 permanent regulatory program (hereinafter the "Texas program") under the Office of Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Texas Coal Mining Regulations pertaining to identification of interests and compliance information and Commission of Texas (Commission) review of outstanding permits and revisions to the Texas Surface Coal Mining and Reclamation Act pertaining to rulemaking and permitting and suspension or rescission of improvidently issued permits. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations and SMCRA.

**DATES:** Written comments must be received by 4 p.m., c.d.t., October 20, 1995. If requested, a public hearing on the proposed amendment will be held on October 16, 1995. Requests to speak at the hearing must be received by 4 p.m., c.d.t., on October 5, 1995.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Tim L. Dieringer, Acting Director, Tulsa Field Office, at the address listed below.

Copies of the 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 addresses 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.

Tim L. Dieringer, Acting 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:** Mr. Tim L. Dieringer, Acting 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 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 the 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.

##### II. Description of the Proposed Amendment

By letter dated August 30, 1995 (Administrative Record No. TX-595), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to the required program amendments codified at 30 CFR 943.16(r), (t), and (u) [59 FR 13200, March 21, 1994, and 60 FR 15675, March 27, 1995]. The provisions of the Texas Coal Mining Regulations (TCMR) at 16 Texas Administrative Code (TAC) 11.221 and of the Texas Surface Coal Mining and Reclamation Act (TSCMRA) that Texas proposes to amend are:

##### 1. TCMR 778.116(m), Identification of Interests and Compliance Information

Texas proposes to revise and delete existing language and add new language which requires a permit application to

include information on all outstanding violation notices, not just those for unabated cessation orders and unabated air and water quality violation notices, received prior to the date of the application by any surface coal mining operation that is deemed or presumed to be owned or controlled by either the applicant or by any person who is deemed or presumed to own or control the applicant under Texas' definition of "owned or controlled" and "owns or controls" at § 701.008. Texas is also incorporating an ownership and control provision which requires the applicant to certify that each unabated violation notice issued under the Texas program or a Federal or state program is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation.

##### 2. TCMR 788.225(g)(1), Commission Review of Outstanding Permits

Texas proposes to require that the Commission's findings pertaining to a permittee's challenge to the Commission's decision to suspend or rescind an improvidently issued permit be consistent with the provisions of the Federal regulations at 30 CFR 773.25.

##### 3. Article 5920-11, TSCMRA, Section 6(b), Rulemaking and Permitting Pursuant to the Administrative Procedure Act

Texas proposes to amend section 6(b) of TSCMRA by deleting the language "and Texas Register Act, as amended" and adding the following new language.

(b) \* \* \* Act (Chapter 2001, Government Code).

The Administrative Procedure Act does not apply to actions by the Commission to suspend or rescind an improvidently issued permit as authorized by Section 21a of this Act, except that a permittee who is the subject of a suspension or rescission notice issued by the Commission under Section 21a of this Act may file an appeal for administrative review of the notice as provided by Commission rules, and such review shall be governed by the Administrative Procedure Act.

##### 4. Article 5920-11, TSCMRA, Section 21(c), Reporting Notices of Violations in Permit Applications

Texas proposes to revise the existing language of the first sentence of section 21(c) by adding the requirement that applicants report notices of violations of SMCRA; by adding the word "other" after the word "any" in the phrase "and

any law, rule, or regulation of the United States"; by deleting the words "within the state" from the phrase "in connection with any surface coal mining operation within the state during the three-year period"; by deleting the words "shall include in" from the phrase "shall include in the schedule"; and by adding the words shown in italics to the revised phrase "the schedule shall indicate the final resolution of *any such* notice of violation." Texas proposes to add new language requiring that the schedule include notices of violations of Federal regulations or Federal or state programs adopted under SMCRA. Texas is, also, revising the existing second sentence by deleting the phrase "or that the notice of violation is being contested by the applicant" and adding the phrase "or other laws referred to in this subsection" after the phrases "with a demonstrated pattern of willful violations of this Act" and "with such resulting irreparable damage to the environment as to indicate an intent not to comply with this Act."

*5. Article 5920-11, TSMCRA, Section 21a, Suspension or Rescission of Improvidently Issued Permits*

Texas proposes to add a new section which authorizes the Commission to adopt and enforce rules relating to suspension or rescission of improvidently issued permits that are consistent with and no less effective than Federal regulations adopted under SMCRA.

### 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 p.m., c.d.t., on October 5,

1995. The location and time of the hearing will be arranged with those persons requesting the hearing. 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.

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**.

#### *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 12778*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (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.

#### List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 13, 1995.

Brent Wahlquist,

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

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