

copy of the proposed amendment by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H-3, Columbus, Ohio 43224, Telephone: (614) 265-6675.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel L. Schrum, Acting Director, Columbus Field Office, (614) 866-0578.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background on the Ohio Program**

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, Federal Register (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendment are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

##### **II. Discussion of the Proposed Amendment**

The Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment Number 66 (PA 66) by letter dated July 3, 1995 (Administrative Record No. OH-2143). In this amendment, Ohio proposed to revise one rule at Ohio Administrative Code (OAC) section 1501:13-4-15 to make the Ohio program as effective as the corresponding Federal regulations concerning the number and frequency of premining water quality samples required for previously mined permit areas. Also as part of PA 66, Ohio proposed to revise two of its Policy/Procedure Directives (PPD's) to reflect the rule changes described above. Ohio proposed to revise PPD Regulatory 93-4 to clarify that pollution abatement areas can include contiguous undisturbed areas which must be affected to improve the baseline pollutional load, to clarify the definition of "no longer exceeding," and to change the name of Ohio's Remining Program contact person.

OSM announced receipt of PA 66 in the July 25, 1995, Federal Register (60 FR 37972), and, in the same document, opened the public comment period and provided an opportunity for a public

hearing on the adequacy of the proposed amendment. The public comment period closed on August 24, 1995.

On September 8, 1995, OSM notified Ohio of its comments about PA 66 (Administrative Record No. OH-2156). OSM and Ohio staff met on September 19, 1995, to discuss those comments. In response to OSM's comments, Ohio submitted Revised Program Amendment Number 66 (PA 66R) by letter dated September 27, 1995 (Administrative Record No. OH-2157). In PA 66R, Ohio is proposing two changes to PPD Regulatory 93-4. Ohio is deleting the earlier proposed provision in the PPD which would have allowed the inclusion of "contiguous undisturbed areas" within pollution abatement areas. Ohio is also revising the PPD to provide that, as part of the demonstration that the untreated pre-existing discharges from the pollution abatement area have not exceeded the modified effluent limitations for the required 12 months, the operator must notify the Division's district office in writing at the beginning of the 12-month period prior to the Phase II bond release.

##### **III. Public Comment Procedures**

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Ohio satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Ohio 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 Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

##### *Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.D.T. on November 1, 1995. If no one requests an opportunity to comment at a 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 comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment 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 comment 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 at the Columbus Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made a part of the Administrative Record.

##### List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 12, 1995.

Joseph F. Rogozinski,

*Acting Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 95-26400 Filed 10-24-95; 8:45 am]

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### **30 CFR Part 943**

[SPATS No. TX-017-FOR]

#### **Texas Regulatory Program**

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

**ACTION:** Proposed Rule; Reopening and Extension of Public Comment Period on Proposed Amendment.

**SUMMARY:** OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Texas regulatory program (hereinafter, the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions of Texas' proposed rules pertain to authority, responsibility and applicability, definitions, restrictions of financial interests of state employees, exemption for coal extraction incidental the

extraction of other minerals; areas designated by act of congress; general requirements for permit and exploration procedure systems under regulatory programs; general requirements for coal exploration; hydrology and geology requirements; operation plans; reclamation plans; alluvial valley floors; public availability of information; approval or denial of permits; bonding requirements; performance standards for coal exploration, use of explosives; coal processing mine waste; protection of fish and wildlife and related environmental values; backfilling and grading; revegetation success; road design, construction, maintenance, and restoration; individual civil penalties; blaster training and certification; and revegetation guidelines. Texas also proposed minor changes in wording, numbering, and punctuation of its rules. The amendment is intended to revise the State program to be consistent with the corresponding Federal regulations.

This notice sets forth the times and locations that the Texas program and revisions to the proposed amendment to that program are available for public inspection, and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

**DATES:** Written comments must be received by 4:00 p.m., c.s.t. November 9, 1995.

**ADDRESSES:** Written comments should be mailed or hand delivered to Mr. Jack R. Carson, Acting Director, Tulsa Field Office, at the address listed below.

Copies of the Texas program, the proposed amendment, and all written comments received in response to this notice 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.

Jack R. Carson, 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.

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

**FOR FURTHER INFORMATION CONTACT:**

Mr. Jack R. Carson, 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 and program amendments can be found at 30 CFR 943.10, 943.15, and 943.16.

**II. Proposed Amendment**

By letter dated May 13, 1993 (Administrative Record No. TX-551), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to letters dated May 20, 1985; June 9, 1987; October 20, 1988; February 7, 1990; and February 21, 1990 (Administrative Record Nos. TX-358, TX-388, TX-417, TX-472, and TX-476) that OSM sent to Texas in accordance with 30 CFR 732.17(c) and in response to the required program amendments at 30 CFR 943.16(k) through (q). The provisions of the Texas Administrative Code (TAC) at 16 TAC 11.221, Texas Coal Mining Regulations (TCMR), that Texas proposed to amend were: (1) TCMR 700.002(b)(4), TCMR Part 702, and TCMR 787.222(a) pertaining to mining of coal incidental to the extraction of other minerals; (2) TCMR 700.002(f) pertaining to termination of jurisdiction; (3) TCMR 701.008(4), 701.008(16), 701.008(19), and 701.008(71), TCMR 705.011(2) and 705.011(3) pertaining to definitions for "affected area," "coal mine waste," "coal processing waste," "road," "coal mining operation," and "employee"; (4) TCMR 705.010(a)(3) and 705.010(c), TCMR 705.013(a), TCMR 705.014(a), TCMR 705.015(a), TCMR 705.016(a), and TCMR 705.014(b) pertaining to employee financial interests; (5) TCMR 761.072(b)(2) pertaining to lands unsuitable for mining procedures; (6) TCMR 770.101 pertaining to permitting procedures; (7) TCMR 776.111(a)(3)(E), TCMR 815.327(a), and TCMR 815.328 pertaining to coal exploration; (8) TCMR 779.127(b) and (c), TCMR 779.128(a)(4), and 783.174(a)(4), TCMR 779.129(b)(2) and 783.175(b)(2), TCMR 780.146(b) and (c) and 784.118(b) and (c), TCMR 780.148(c) and 748.190(c), TCMR 783.173, TCMR 816.342(a)(4), TCMR 816.344(g), (h), (i), and (k) and 817.514(g), (h), (i), and (k), TCMR 816.344(r) and 817.514(r), TCMR 816.347(a)(1) and 817.517(a)(1), TCMR 816.347(a)(4) and 817.517(a)(3), TCMR

816.347(a)(5) and 817.517(a)(5), TCMR 816.347(a)(6) and 817.517(a)(6), TCMR 816.347(a)(7) and 817.517(a)(7), TCMR 816.347(b)(8) and 817.517(b)(8), TCMR 816.347(c) and 817.517(c), TCMR 816.347(d) and 817.517(d), TCMR 816.347(e) and 817.517(e), TCMR 816.347(i) and 817.517(i), TCMR 816.347(k) and 817.517(k), TCMR 816.350(b) and 817.519(b), TCMR 816.355(a), TCMR 817.509(a), and TCMR 817.522(f) pertaining to geologic and hydrologic information, reclamation plans, and hydrologic balance standards; (9) TCMR 780.142(c) and 784.197(c) and TCMR 780.142(d) and 784.197(d) pertaining to maps and plans; (10) TCMR 780.154 and 784.198, TCMR 816.401(b) and 817.570(b), TCMR 816.402(d)(9) and 817.571(d)(9), TCMR 816.405 and 817.574, TCMR 816.406(a)(4) and 817.575(a)(4), TCMR 816.408(b) and 817.577(b), TCMR 816.409(d)(9) and 817.578(d)(9), TCMR 816.412 and 817.581, TCMR 816.413(a)(4) and 817.582(a)(4), TCMR 816.415(b) and 817.584(b), TCMR 816.419 and 817.588, and TCMR 816.420(d) and 817.589(d) pertaining to transportation facilities and roads; (11) TCMR 785.202(b)(1)(i) and (b)(3) pertaining to alluvial valley floors; (12) TCMR 786.210(a)(3) pertaining to archaeological resources; (13) TCMR 786.216(e), TCMR 786.216(p), and TCMR 786.220(d) pertaining to approval of permits; (14) TCMR 800.301(b)(2) pertaining to bonding requirements; (15) TCMR 816.330(f) and 817.500(f), TCMR 816.357(c) and 817.526(c), TCMR 816.357(d) and 817.526(d), TCMR 816.358(a) and 817.527(a), TCMR 816.360(a) and 817.528(a), TCMR 816.362(d) and 817.530(d), TCMR 817.526(b), TCMR 850.703(b)(1)(A), TCMR 850.704(b), and TCMR 850.706(a) pertaining to use of explosives and blaster training and certification; (16) TCMR 816.385(b)(3) and 817.552(b)(3) pertaining to backfilling and grading; (17) TCMR 816.376(d), TCMR 816.378(a) and (c) and 817.545(a) and (c), TCMR 817.538(c)(3), and TCMR 817.543 pertaining to coal processing waste disposal; (18) TCMR 816.380(e)(10) and 817.547(e)(10) pertaining to protection of fish and wildlife and related environmental values; (19) TCMR 816.395(a) and 817.560(a), TCMR 816.395(b) and 817.560(b), TCMR 816.395(c) and 817.560(c), and TCMR 816.396 and 817.561 pertaining to revegetation success; and (20) TCMR 846.001(2) and TCMR 846.004(c) pertaining to individual civil penalties.

OSM announced receipt of the proposed amendment in the June 21,

1993, Federal Register (58 FR 33785), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on the adequacy of the amendment (Administrative Record No. TX-556). The public comment period would have closed July 21, 1993. However, by letter dated July 16, 1993, the Texas Mining and Reclamation Association requested a 30-day extension of time in which to review and provide comments on the proposed amendment (Administrative Record No. TX-563). OSM announced receipt of the extension request and reopened the comment period in the August 16, 1993, Federal Register (58 FR 43308). The extended public comment period ended August 20, 1993.

During its review of the amendment, OSM identified concerns relating to (1) TCMR 700.002(b)(4), concerning authority, responsibility and applicability for the extraction of coal incidental to the extraction of other minerals and TCMR 700.002(f) concerning authority, responsibility and applicability for termination of jurisdiction; (2) TCMR 702.5(a) relating to the definition of "cumulative measurement period"; (3) TCMR 702.11 relating to permit application requirements and procedures for an exemption for coal extraction incidental to the extraction of other minerals; (4) TCMR 702.13(a) relating to public availability of information; (5) TCMR 702.15(a), (d), and (e) concerning conditions of exemption and right of inspection and entry; (6) TCMR 702.17(d)(3) relating to direct enforcement; (7) TCMR 705.010(c) concerning responsibility relating to restrictions of financial interest of State employees; (8) TCMR 705.016(a) relating to State employee reporting of financial information; (9) TCMR 770.101 relating to definitions applicable to subchapter G; (10) TCMR 779.127 and 783.173 concerning geology descriptions; (11) TCMR 780.142(c) and 784.197(c) relating to maps and plans; (12) TCMR 780.146 and 784.188 relating to protection of the hydrologic balance; (13) TCMR 780.148 and 784.190 concerning pond, impoundment, bank, dam, and embankment plans; (14) TCMR 780.154(a) and 784.198(a) concerning transportation facilities; (15) TCMR 785.202(b) relating to alluvial valley floors; (16) TCMR 786.210(a) relating to public availability of information in permit applications on file with the Commission; (17) TCMR 786.216(e) relating to criteria for permit approval or denial; (18) TCMR 816.341 and 816.342 and TCMR 817.511 and 817.512 relating to diversions; (19)

TCMR 816.344 and 817.514 relating to sedimentation ponds; (20) TCMR 816.347 and 817.517 concerning permanent and temporary impoundments; (21) TCMR 816.350(b) and 817.519(b) relating to surface-water monitoring; (22) TCMR 816.355(a)(1) and (2) concerning stream buffer zones; (23) TCMR 816.357(a) and 817.526(b) pertaining to use of explosives; (24) TCMR 816.358(b) and 817.527(b) concerning preblast surveys; (25) TCMR 816.360 and 817.528 relating to control of adverse effects of explosives; (26) TCMR 816.376(a) and (b) and 817.543(a) and (b) pertaining to general requirements for coal processing waste dams and embankments; (27) TCMR 816.378 and 817.545 relating to design and construction of coal processing waste and dams and embankments; (28) TCMR 816.390 and 817.555 concerning general requirements for revegetation; (29) TCMR 816.395 and 817.560 pertaining to standards for revegetation success; (30) TCMR 816.401(b), (d) and 817.570(b), (d), TCMR 816.408(b), (d) and 817.577(b), (d), TCMR 816.415(b), (d) and 817.584(b), (d) relating to location of roads; (31) TCMR 816.405 and 817.574, TCMR 816.412 and 817.581, TCMR 816.419 and 817.588 pertaining to maintenance of roads; (32) TCMR 816.406 and 817.575, TCMR 816.413 and 817.582, TCMR 816.420 and 817.589 concerning restoration of roads; (33) TCMR 846 relating to individual civil penalties; (34) TCMR 850.702(e) concerning general requirements for blaster certification; and (35) relating to typographical errors and omissions. OSM notified Texas of its concerns by letter dated July 25, 1994 (Administrative Record No. TX-578). Further clarification of OSM's concerns were provided to Texas by letters dated November 4, 1994, November 21, 1994, and January 18, 1995 (Administrative Record Nos. TX-581, TX-589, and TX-585).

Texas responded in a letter dated September 18, 1995, by submitting a revised amendment package (Administrative Record No. TX-598). Specifically, Texas proposes the following revisions to its proposed amendment.

#### *1. TCMR 700.002, Authority, Responsibility, and Applicability*

a. At TCMR 700.002(b)(4), Texas proposes to remove the phrase "or coal explorations subject to the Act" and to require that the incidental extraction of coal be conducted in accordance with the rules proposed under Part 709.

b. Texas proposes to add a new provision at TCMR 700.002(b)(5) that requires coal exploration on lands be

subject to the requirement of 43 CFR Parts 3480-3487.

c. At proposed TCMR 700.002(f), which sets forth the conditions under which Texas may terminate its jurisdiction over the reclaimed site of a completed surface coal mining and reclamation operation, Texas proposes to remove the phrase "in accordance with the Administrative Procedure and Texas Register Act."

#### *2. TCMR 701.008 Definitions*

At TCMR 701.008, Texas proposes additional revisions to its definition section by adding new definitions and revising one additional existing definition. Texas also proposes to renumber the definitions in TCMR 701.008 because of these revisions.

a. At TCMR 701.008(4), Texas proposes to define "administratively complete application" to mean an application for permit approval or approval for coal exploration where required, which the Commission determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

b. Texas proposes to remove the definition for "applicant" at existing TCMR 701.008(8) and redefine "applicant" at TCMR 701.008(9) to mean any person seeking a permit, permit revision, renewal, and transfer, assignment, or sale of permit rights from the Commission to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

c. Texas proposes to define "application" at TCMR 701.008(10) to mean the documents and other information filed with the Commission under this Chapter for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

d. At TCMR 701.008(18), Texas proposes to define "coal mine waste" to mean coal processing waste and underground development waste.

e. At TCMR 701.008(19), Texas proposes to define "coal preparation" to mean chemical or physical processing and cleaning, concentrating, or other processing or preparation of coal.

f. At TCMR 701.008(24), Texas proposes to define a "complete and accurate application" to mean an application for permit approval or approval for coal exploration where required, which the Commission determines to contain all information required under the Act, this Chapter,

and the regulatory program that is necessary to make a decision on permit issuance.

g. At TCMR 701.008(26), Texas proposes the following new definition for "cumulative impact area."

(26) "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with impacts of all anticipated mining on surface and ground-water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of: (a) the proposed operation, (b) all existing operations, (c) any operation for which a permit application has been submitted to the Commission, and (d) all operations required to meet diligent development requirements for leased Federal coal for which there is actual mine development information available.

h. Texas proposes to define "experimental practice" at TCMR 701.008(34) to mean the use of alternative surface coal mining and reclamation operation practices for experimental or research purposes.

i. At TCMR 701.008(55), Texas proposes to define "other treatment facility" to mean any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and are utilized: (a) To prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area, or (b) To comply with all applicable State and Federal water-quality laws and regulations.

j. Texas proposes to define "principal shareholder" at TCMR 701.008(68) to mean any person who is the record or beneficial owner of 10 percent or more of any class of voting stock.

k. At TCMR 701.008(69), Texas proposes to define "professional specialist" to mean a person whose training, experience, and professional certification or licensing are acceptable to the Commission for the limited purpose of performing certain specified duties under this Chapter.

l. Texas proposes to define "property to be mined" at TCMR 701.008(70) to mean both the surface estates and mineral estates within the permit area and the area covered by underground workings.

m. At TCMR 701.008(82), Texas proposes to define "siltation structure" to mean a sedimentation pond, a series of sedimentation ponds, or other treatment facility.

n. At TCMR 701.008(104), Texas proposes to define "violation notice" to mean any written notification from a governmental entity of a violation of

law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

### 3. TCMR 705.016 Restrictions of Financial Interests of State Employees, What To Report

At TCMR 705.016(a), Texas proposes to change the Section .013 citation to 705.013 and to change the OSM Form number from 705-1 to 23 for reporting information required on the statement of employment and financial interests.

### 4. TCMR 709 Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

a. Texas proposes to change its proposed regulations for exemption for coal extraction incidental to the extraction of other minerals from TCMR Part 702 to Part 709.

b. At TCMR 709.026(a)(2) (i) and (ii) [originally TCMR 702.5(a)(2) (i) and (ii)], Texas is proposing to revise its proposed definition of "cumulative measurement period" by removing the April 1, 1990, date specified for the end of the cumulative measurement period.

c. At TCMR 709.027(a) [originally proposed as TCMR 702.11(a)], Texas proposes to remove the language "under a Federal program or on Indian lands or after the effective date of Commission adoption of Part 702" from the first sentence. The revised sentence now reads.

Any person who plans to commence or continue coal extraction after xxxxx x, 1995, in reliance on the incidental mining exemption shall file a complete application for exemption with the Commission for each mining area.

d. At TCMR 709.027(b) [originally proposed as TCMR 702.11(b)], Texas proposes to revise the provisions pertaining to persons who have commenced coal extraction at a mining area in reliance upon obtaining an incidental mining exemption by removing the language "prior to the effective date of Commission adoption of Part 702" and replacing it with the language "prior to xxxxx x, 1995"; by providing that coal extraction may not continue after 60 days unless a person files an administratively complete application for exemption with the Commission; and by clarifying that an application will be determined to be administratively complete when it contains the information responsive to the requirements of Section 709.018.

e. At TCMR 709.029(a) [originally proposed as TCMR 702.13(a)], Texas is clarifying that information submitted to the Commission shall be made immediately available for public inspection and copying at the Division's

central and local offices closest to the mining operations claiming exemption.

f. At TCMR 709.031 (a), (d), and (e) [originally proposed as 702.15 (a), (d), and (e)], Texas proposes to clarify that only *authorized* representatives of the Secretary have access to the information necessary to verify an exemption and have the authority to enter and inspect operations claiming an exemption.

### 5. TCMR 709.033 Revocation and Enforcement

At TCMR 709.033(d)(3) [originally proposed as TCMR 702.17(d)(3)], Texas proposes to move the word "applicable" to modify the reference to "reclamation standards" rather than the reference to TSCMRA.

### 6. TCMR 770.101 Definitions Concerning General Requirements for Permit and Exploration Procedure Systems Under Regulatory Programs

The proposed definitions at TCMR 770.101 (1) through (7) were removed. The proposed definitions for "applicant," "application," "complete application," and "cumulative impact area" were redefined at TCMR 701.008 (9), (10), (4), and (26), respectively. The definitions for "principal shareholder," "property to be mined," and "violation notice" were moved to TCMR 701.008 (68), (70), and (104), respectively, without revision.

### 7. TCMR 779.126 (Surface) and TCMR 783.172 (Underground) Description of Hydrology and Geology: General Requirements

At TCMR 779.126 and 783.172, Texas proposes to add new subsection (d) which provides that all water quality analyses performed to meet the requirements of Chapter IV of the Texas Surface Coal Mining Regulations be conducted according to the methodology in the 15th edition of "Standard Method for the Examination of Water and Wastewater" or the methodology in 40 CFR Parts 136 and 434.

### 8. TCMR 779.127 Geology Description for Surface Mining Applications

Texas proposes to revise TCMR 779.127(b) by adding the phrase "The geologic description shall include" at the beginning of the first sentence and deleting the word "geologic" in the proposed phrase "[t]he geologic analyses shall result in the following."

### 9. TCMR 779.127 (Surface) and TCMR 783.174 (Underground) Ground Water Information

a. At TCMR 779.127(a) and 783.174(a), Texas proposes to remove

the term "mine plan" and replace with the term "permit."

b. At TCMR 779.127(a)(3) and 783.174(a)(3), Texas proposes to remove the existing requirement and add the requirement for a description of the location and ownership of existing wells, springs, and other ground-water resources.

c. At TCMR 779.127(a)(4) and 783.174(a)(4), Texas proposes to remove the existing provision and add the following new provision.

Seasonal quality and quantity of ground water and usage. Water quality descriptions shall include, at a minimum, total dissolved solids or specific conductance corrected to 25° C, Ph, total iron, and total manganese. Ground water quantity descriptions shall include, at a minimum, approximate rates of discharge or usage and depth to the water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.

(d) At TCMR 779.128(b) and 783.174(b), Texas proposes to revise the existing provision by removing the requirements that the application contain additional information which describes the discharge characteristic of aquifers and the quality and quantity of ground water, according to the parameters and in the detail required by the Commission.

#### 10. TCMR 779.129 (Surface) and TCMR 783.174 (Underground) Surface Water Information

At TCMR 779.129(a) and 783.174(a), Texas proposes to replace the term "mine plan" with the term "permit" in the requirement for "descriptions of surface drainage systems sufficient to identify, in detail, the seasonal variations in water quantity and quality within the proposed mine plan and adjacent areas."

#### 11. TCMR 780.142 Operation Plan: Maps and Plans for Surface Mining Applications

At TCMR 780.142(b)(11), Texas proposes to replace the reference to Section .145 with a reference to Section .148.

#### 12. TCMR 780.146 (Surface) and TCMR 784.188 (Underground) Reclamation Plan: Protection of Hydrologic Balance

a. At TCMR 780.146(a), Texas proposes to revise the first sentence to read as follows.

The application shall include a hydrologic reclamation plan, with appropriate maps and descriptions, indicating how the relevant requirements of Part 816, including Sections 816.339, 816.346, 816.348--349, and 816.350--354 will be met.

b. At TCMR 780.188(a), Texas proposes to revise the first sentence by removing the language "[e]ach plan shall contain a detailed description" and replacing it with the language "[t]he application shall include a hydrologic reclamation plan."

c. Texas proposes to remove existing TCMR 780.146 (a)(9) and (b) and 784.188 (a)(9) and (b), and to add new TCMR 780.146(b) (1) and (2) 784.188 (b) (1) and (2) to read as follows.

(b) Ground water monitoring plan. (1) The application shall include a ground-water monitoring plan based upon the PHC determination required under Paragraph (d) of this Section and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved postmine land uses and to the objectives for protection of the hydrologic balance as set forth in Paragraph (a) of this Section. It shall identify the quantity and quality parameters to be monitored, sampling frequency, and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25 °C, Ph, total iron, total manganese, and water levels shall be monitored and data submitted to the Commission at least every 3 months for each monitoring location.

The Commission may require additional monitoring. (2) If the applicant can demonstrate by the use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the Commission.

d. Texas proposes to remove the existing and proposed language in TCMR 780.146(c) and 784.188(c) and to replace it with the following language.

(c) Surface water monitoring plan. (1) The application shall include a surface-water monitoring plan based upon the PHC determination required under Paragraph (d) of Section and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmine land uses and to the objectives for protection of the hydrologic balance as set forth in Paragraph (a) of Section, as well as the effluent limitations found at 40 CFR Part 434. (2) The

plan shall identify the surface-water quantity and quality parameters to be monitored, sampling frequency, and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance. (i) At all monitoring locations in the surface-water bodies such as streams, lakes, and impoundments that are potentially impacts or into which water will be discharged and at upstream monitoring locations, the total dissolved solids or specific conductance corrected to 25 °C, total suspended solids, pH, total iron, total manganese, and flow shall be monitored. (ii) For point-source discharges, monitoring shall be conducted in accordance with 40 CFR Parts 122, 123 and 434 and as required by the National Pollutant Discharge Elimination System permitting authority. (3) The monitoring reports shall be submitted to the Commission every 3 months. The Commission may require additional monitoring.

e. At TCMR 780.146(d)(1) and 784.188(d)(1), Texas proposes to replace the word "description" with the word "application" in the first sentence.

f. Texas proposes to add a new provision at TCMR 780.146(d)(5) and 784.188(d)(5) that reads as follows.

(5) If the determination of the probable hydrologic consequences (PHC) required by Paragraph (d) of this Section indicates adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water supplies, then information supplemental to that required under Paragraphs (b) and (c) of this Section shall be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality and quantity characteristics.

#### 13. TCMR 780.148 (Surface) and TCMR 784.190 (Underground) Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments

a. At TCMR 780.148(a)(3)(i) and 784.190(a)(3)(i), Texas proposes to remove the language "or registered land surveyor except that all coal processing waste dams and embankments covered by Section .376-.378 shall be certified by a qualified registered professional engineer."

b. At TCMR 780.148(c)(2) and 784.190(c)(2), Texas proposes to add the following new language in a second sentence.

The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 shall be submitted to the Commission as part of the permit application in accordance with Paragraph (a) of this section.

**14. TCMR 780.154 (Surface) and TCMR 784.198 (Underground) Transportation Facilities**

a. Texas proposes to remove the existing language in TCMR 780.154(a) (1) through (6) and 784.198(a) (1) through (6) and replace it with the following language. Any differences between the surface and underground mining regulations are shown with the underground language bracketed.

(a) Each applicant for a surface [underground] coal mining and reclamation permit shall submit plans and drawings for each road, as defined in Section 701.008 of this Chapter, to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall—(1) Include a map, appropriate cross sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings, and drainage structures; (2) Contain the drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream, as necessary for approval of the road by the Commission in accordance with Sections 816.401(b), 816.408(b), or 816.415(b) [817.570(b), 817.577(b), or 817.584(b)]; (3) Contain the drawings and specifications for each proposed ford of perennial or intermittent streams that is used as a temporary route, as necessary for approval of the ford by the Commission in accordance with Sections 816.401(b), 816.408(b), or 816.415(b) [817.570(c), 817.577(c), or 817.584(c)]; (4) Contain a description of measures to be taken to obtain approval of the Commission for alteration or relocation of a natural stream channel under Sections 816.403(d), 816.410(d), or 816.417(c) [817.572(d), 817.579(d), or 817.586(c)]; (5) Contain the drawings and specifications for each low-water crossing of perennial or intermittent stream channels so that the Commission can maximize the protection of the stream in accordance with Sections 816.401(c), 816.408(c), or 816.415(c) [817.570(c), 817.577(c), or 817.584(c)]; and

b. Texas proposes to revise the proposed language at TCMR 780.154(b) and 784.198(b) to read as follows.

The plans and drawings for each Class I and Class II road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer with experience in the design and construction of roads, as meeting the requirements of this Chapter; current, prudent engineering practices; and any design criteria established by the Commission.

**15. TCMR 783.173 Geology Description for Underground Mining Applications**

At TCMR 783.173, Texas proposes to remove the existing and proposed language and add the following language.

(a) A description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. This description shall include the areal and structural geology of the permit and adjacent areas, and other parameters which influence the required reclamation and it shall also show how the areal and structural geology may affect the occurrence, availability, movement, quantity and quality of potentially impacted surface and ground water. It shall be based on—(1) The cross sections, maps, and plans required by Section 783.183 of this Chapter; (2) The information obtained under Paragraphs (b), (c) and (d) of this Section; and (3) Geologic literature and practices.

(b) For any portion of a permit area in which the strata down to the coal seam to be mined will be removed or are already exposed, samples shall be collected and analyzed from test borings; drill cores; or fresh, unweathered, uncontaminated samples from rock outcrops down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the coal seam to be mined which may be adversely impacted by mining. The analyses shall result in the following: (1) Logs showing the lithologic characteristics including physical properties and thickness of each stratum and location of ground water where occurring; (2) Chemical analyses identifying those strata that may contain acid- or toxic-forming, or alkalinity-producing materials and to determine their content except that the Commission may find that the analysis for alkalinity-producing material is unnecessary; and (3) Chemical analysis of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the Commission may find that the analysis of pyritic sulfur content is unnecessary.

(c) For lands within the permit and adjacent areas where the strata above the coal seam to be mined will not be removed, samples shall be collected and analyzed from test borings or drill cores to provide the following data: (1) Logs of drill holes showing the lithologic

characteristics, including physical properties and thickness of each stratum that may be impacted, and location of ground water where occurring; (2) Chemical analyses for acid- or toxic-forming materials and their content in the strata immediately above and below the coal seam to be mined; (3) Chemical analyses of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the Commission may find the analysis of pyritic sulfur content is unnecessary; and (4) For standard room and pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, in the stratum immediately above and below each coal seam to be mined.

(d) If determined to be necessary to protect the hydrologic balance, to minimize or prevent subsidence, or to meet the performance standards of this Chapter, Commission may require the collection, analysis and description of geologic information in addition to that required by Paragraphs (a), (b), and (c) of this Section.

(e) An applicant may request the Commission to waive in whole or in part the requirements of Paragraph (b) and (c) of this Section. The waiver may be granted only if the Commission finds in writing that the collection and analysis of such data is unnecessary because other information having equal value or effect is available to the Commission in a satisfactory form.

**16. TCMR 784.197 Operation Plan: Maps and Plans for Underground Mining Applications**

At TCMR 784.197(c), proposes to add a reference to paragraph (b)(4) and to require that the maps, plans, and cross-sections be certified by a qualified registered professional engineer.

**17. TCMR 786.210 Public Availability of Information in Permit Applications on File With the Commission**

a. At TCMR 786.210(a), Texas proposes to remove the existing language and to add the following language.

Except as provided by Paragraph (c) of this section, all applications for permits; revisions; renewals; and transfers; assignments or sales of permit rights on file with the Commission shall be available, at reasonable times, for public inspection and copying.

b. Texas proposes to renumber existing TCMR 786.210 (a)(1) to (b) and add the phrase “[e]xcept as provided by Paragraph (c)(1) of this section” to the beginning of the sentence. The semicolon and the word “and” were, also, removed at the end of the sentence.



c. Texas proposes to remove existing TCMR 786.210(a)(2) and proposed TCMR 786.210(a)(3).

d. Texas proposes to add confidential information limitations at new TCMR 786.210(c) as follows.

(c) Confidential information is limited to—  
(1) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment; (2) Information required under Section 15 of the Act that is not on public file and that applicant has requested in writing to be held confidential; (3) Information on the nature and location of archeological resources on public land and Indian and shall be kept confidential as required under the Archeological Resources Protection Act of 1979 (Pub. L. 96-95, 93 Stat. 721, 16 U.S.C. 470).

e. Texas proposes to reletter existing Paragraph (b) to (d) and change the paragraph reference to (c). Texas, also, proposes to reletter existing Paragraph (c) to (e).

#### 18. TCMR 786.216 *Criteria for Permit Approval or Denial*

a. At TCMR 786.216(c). Texas proposes to replace the word "general" with the words "cumulative impact" in the phrase "in the general area."

b. At TCMR 786.216(e). Texas proposes to replace the phrase "publicly-owned parks or spaces included or" with the phrase "properties listed on and."

#### 19. TCMR 816.340 (Surface) and TCMR 817.510 (Underground) *Hydrologic Balance: Water Quality Standards and Effluent Limitations*

Texas proposes to remove the existing provisions in TCMR 816.340(a) (1) through (7) and 817.510(a) (1) through (7) and replace them with the following language. Any differences between the surface and underground mining regulations are shown with the underground language bracketed.

Discharge of water from areas disturbed by surface [underground] mining activities shall be made in compliance with all applicable State and Federal water quality laws and regulations and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR 434.

#### 20. TCMR 816.341 (Surface) and TCMR 817.511 (Underground) *Hydrologic Balance: Diversions*

Texas proposes to change the Section title from "Hydrologic Balance: Diversions and Conveyance of Overland Flow and Shallow Ground Water Flow, and Ephemeral Streams" to "Hydrologic Balance: Diversions." Texas, also,

proposes to remove the existing provisions in TCMR 816.341 (a) through (g) and 817.511 (a) through (g) and replace them with the following new provisions in Paragraphs (a) through (c). Any differences between the surface and underground mining regulations are shown with the underground language bracketed.

(a) General Requirements. (1) With the approval of the Commission, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of Section 816.344 [817.344] for siltation structures removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions shall be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions shall not be used to divert water into underground mines without approval of the Commission under Section 816.353 [817.522]. (2) The diversion and its appurtenant structures shall be designed, located, constructed, maintained and used to—  
(i) Be stable; (ii) Provide protection against flooding and resultant damage to life and property; (iii) Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and (iv) Comply with all applicable local, State, and Federal laws and regulations. (3) Temporary diversions shall be removed when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process shall be restored in accordance with this Part. Before diversions are removed, downstream water-treatment facilities previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement shall not relieve the operator from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed so as to restore or approximate the remaining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of aquatic habitat. (4) Diversion designs shall incorporate the following: (i) Be constructed with gentle sloping banks that are stabilized by vegetation. Asphalt, concrete or other

similar linings shall be used only when approved by the Commission to prevent seepage or to provide stability. Channel linings shall be designed using standard engineering practices to pass safely the design velocities and shall be approved for permanent diversions only where they are stable and will require infrequent maintenance. (ii) Erosion protection shall be provided for transition of flows and for critical areas such as swales and curves. (iii) Energy dissipators shall be installed when necessary at discharge points, where diversions intersect with natural streams and exit velocities of the diversion ditch flow is greater than that of the receiving stream. (iv) Excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with Sections 816.363–816.366 [817.531–817.534]. (v) Topsoil shall be handled in compliance with Sections 816.334–816.338 [817.504–817.508].

(b) Diversions of Perennial and Intermittent Streams. (1) Diversions of perennial and intermittent streams within the permit area may be approved by the Commission after making the finding relating to stream buffer zones [called for in Section 817.524] that the diversion will not adversely affect the water quantity and quality and related environmental resources of the stream. (2) The design capacity of channels for temporary and permanent stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion. (3) The requirements of Paragraph (a)(2)(ii) of this Section shall be met when the temporary and permanent diversions for perennial and intermittent streams are designed so that the combination of channel, bank and floodplain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion. (4) The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the performance standards of this part and any design criteria set by the Commission.

(c) Diversion of Miscellaneous Flows. (1) Miscellaneous flows, which consists of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required or approved by the Commission. Miscellaneous flows shall include ground-water discharges and ephemeral

streams. (2) The design, location, construction, maintenance, and removal of diversions of miscellaneous flows shall meet all of the performance standards set forth in Paragraph (a) of this Section. (3) The requirements of Paragraph (a)(2)(ii) of this Section shall be met when the temporary and permanent diversions for miscellaneous flows are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion.

**21. TCMR 816.342 (Surface) and TCMR 817.512 (Underground) Hydrologic Balance: Stream Channel Diversion**

Texas proposes to remove TCMR 816.342 (a) through (e) and 817.512 (a) through (e) pertaining to hydrologic balance with relation to stream channel diversions.

**22. TCMR 816.344 (Surface) and TCMR 817.514 (Underground) Hydrologic Balance: Sedimentation Ponds**

Texas proposes to remove TCMR 816.344 (a) through (u) and 817.514 (a) through (u) pertaining to the hydrologic balance with relation of sedimentation ponds.

**23. TCMR 816.344 (Surface) and TCMR 817.514 (Underground) Hydrologic Balance: Siltation Structures**

Texas proposes to add TCMR 816.344 (a) through (e) and 817.514 (a) through (e) pertaining to the hydrologic balance with relation to siltation structures as shown below. Any differences between the surface and underground mining regulations are shown with the underground language bracketed.

(a) For the purposes of this Section only, disturbed areas shall not include those areas—(1) In which the only surface mining activities include diversion ditches, siltation structures, or roads that are designed, constructed and maintained in accordance with this part; and (2) For which the upstream area is not otherwise disturbed by the operator.

(b) General requirements. (1) Additional contributions of suspended solids sediment to streamflow or runoff outside the permit area shall be prevented to the extent possible using the best technology currently available. (2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area, except as provided in Paragraph (b)(5) or (e) of this Section. (3) Siltation structures for an area shall be constructed before beginning any

surface mining activities in that area, and upon construction shall be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan. (4) Any siltation structure which impounds water shall be designed, constructed and maintained in accordance with Section 816.347 [817.517]. (5) Siltation structures shall be maintained until the disturbed area has been stabilized and revegetated and removal is authorized by the Commission. In no case shall the structure be removed sooner than 2 years after the last augmented seeding. (6) When a siltation structure is removed, the land on which the siltation structure was located shall be regraded and revegetated in accordance with the reclamation plan and Sections 816.390–816.395 [817.555–817.560]. Sedimentation ponds approved by the Commission for retention as permanent impoundments may be exempted from this requirement.

(c) Sedimentation ponds. (1) When used, sedimentation ponds shall—(i) Be used individually or in series; (ii) Be located as near as possible to the disturbed area and out of perennial streams unless approved by the Commission, and (iii) Be designed, constructed, and maintained to—(A) Provide adequate sediment storage volume. The minimum sediment storage volume shall be equal to the three year accumulated sediment volume from the drainage area to the pond. The sediment volume shall be determined using the Universal Soil Loss Equation, gully erosion rates, and the sediment delivery ratio converted to sediment volume, using either the sediment density or other empirical methods approved by the Commission; (B) Provide adequate detention time to allow the effluent from the ponds to meet State and Federal effluent limitations. The minimum detention time without a chemical treatment process shall be 10 hours; (C) Contain or treat the 10-year, 24-hour precipitation event (“design event”) unless a lesser design event is approved by the Commission based on terrain, climate, other site-specific conditions and on a demonstration by the operator that the effluent limitations of Section 816.340 [817.510] will be met; (D) Provide a nonclogging dewatering device adequate to maintain the detention time required under Paragraph (c)(1)(iii)(B) of this Section; (E) Minimize, to the extent possible, short circuiting; (F) Provide periodic sediment removal sufficient to maintain adequate volume for the design event; (G) Ensure against excessive settlement;

(H) Be free of sod, large roots, frozen soil, and acid- or toxic-forming coal-processing waste; and (I) Be compacted properly. (2) A sedimentation pond shall include either a combination of principal and emergency spillways or single spillway configured as specified in Section 816.347(a)(9) [precipitation event specified in Paragraph (c)(2)(ii) of this section, except as set forth in Section 817.517(a)(9)].

(d) Other treatment facilities. (1) Other treatment facilities shall be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the Commission based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of Section 816.340 [817.510] will be met. (2) Other treatment facilities shall be designed in accordance with the applicable requirements of Paragraph (c) of this Section.

(e) Exemptions. Exemptions to the requirements of this Section may be granted if—(1) The disturbed drainage area within the total disturbed area is small; and (2) The operator demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed area to meet the effluent limitations under Section 816.340 [817.510] and the applicable State and Federal water quality standards for the receiving waters.

**24. TCMR 816.347 (Surface) and TCMR 817.517 (Underground) Hydrologic Balance: Permanent and Temporary Impoundments**

Texas proposes to remove the existing provisions in TCMR 816.347 (a) through (k) and 817.517 (a) through (k) and add the following new provisions in Paragraphs (a) through (c). Any differences between the surface and underground mining regulations are shown with the underground language bracketed.

(a) General Requirements. The requirements of this Paragraph apply to both temporary and permanent impoundments. (1) Impoundments meeting the Class B or C criteria of dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), “Earth Dams and Reservoirs,” 1985 shall comply with “Minimum Emergency Spillway Hydrologic Criteria” table in TR-60 and the requirements of this section. Technical Release No. 60 is hereby incorporated by reference. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road,



Springfield, Virginia 22161, order No. PB 87-157509/AS. Copies can be inspected at the Commission's Surface Mining and Reclamation Division Office at 1701 N. Congress Avenue, Austin, Texas. (2) An impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and of this section. (3) The design of impoundments shall be certified in accordance with Section 780.148(a) [784.190(a)] as designed to meet the requirements of this part using current, prudent engineering practices and any design criteria established by the Commission. The qualified, registered professional engineer shall be experienced in the design and construction of impoundments. (4) Stability. (i) 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) shall have a minimum static factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2. (ii) An impoundment not included in Paragraph (a)(4)(i) of this Section, except for a coal mine waste impounding structure, 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 780.148(c) [784.190(c)]. (5) Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60. (6) Foundations. (i) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For 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), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability. (ii) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability. (7) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown. (8) Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design

practices. (9) An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in Paragraph (a)(9)(i) of this Section, designed and constructed to safely pass the applicable design precipitation event specified in Paragraph (a)(9)(ii) of this Section. (i) The Commission may approve a single open-channel spillway that is of nonerodible construction and designed to carry sustained flows or earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected. (ii) Except as specified in Paragraph (c)(2) of this Section, the required design precipitation event for an impoundment meeting the spillway requirements of Paragraph (a)(9) of this Section is: (A) For an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the Commission. (B) For an impoundment meeting or exceeding the size or other criteria of 30 CFR 216(a), a 100-year 6-hour event, or greater event as specified by the Commission. (C) For an impoundment not included in Paragraph (a)(9)(ii)(A) and (B) of this Section, a 25-year 6-hour or greater event as specified by the Commission. (10) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users. (11) A qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, shall inspect each impoundment as provided in Paragraph (a)(11)(i) of this Section. The professional engineer or specialist shall be experienced in the construction of impoundments. (i) Inspections shall be made regularly during construction, upon completion of the construction, and at least yearly until removal of the structure or release of the performance bond. (ii) The qualified registered professional engineer shall promptly after each inspection required in Paragraph (a)(11)(i) of this section provide the Commission a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan of this chapter. The report shall include discussion of any appearance of instability, structural weakness or other hazard condition, depth and elevation of any impoundment waters, existing

storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability. (iii) A copy of the report shall be retained at or near the minesite. (12) Impoundments meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.217 must be examined in accordance with 30 CFR 77.216-3. Impoundments not meeting the SCS Class B or C criteria for dams in TR-60, or subject to 30 CFR 216, shall be examined at least quarterly. A qualified person designated by the operator shall examine impoundments for the appearance of structural weakness and other hazardous conditions. (13) If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the Commission of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Commission shall be notified immediately. The Commission shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) Permanent Impoundments. A permanent impoundment of water may be created, if authorized by the Commission in the approved permit based upon the following demonstration: (1) The size and configuration of such impoundment will be adequate for its intended purposes. (2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable State and Federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable State and Federal water quality standards. (3) The water level will be sufficiently stable and be capable of supporting the intended use. (4) Final grading will provide for adequate safety and access for proposed users. (5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners or agricultural, industrial, recreational, or domestic users. (6) The impoundment will be suitable for the approved postmining land use.

(c) Temporary Impoundments. (1) The Commission may authorize the construction of temporary impoundments as part of a surface coal mining operation. (2) In lieu of meeting

the requirements of paragraph (a)(9)(i) of this Section, the Commission may approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely control the design precipitation event, the water shall be safely removed in accordance with current, prudent engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where: (i) Impoundments meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), shall be designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the Commission. (ii) Impoundments not included in Paragraph (c)(2)(i) of this section shall be designed to control the precipitation of the 100-year 6-hour event, or greater event as specified by the Commission.

**25. TCMR 816.348 Hydrologic Balance: Groundwater Protection**

Texas proposes to remove the exiting provisions at TCMR 816.348 (a) and (b) and to add the following provisions.

In order to protect the hydrologic balance, surface mining activities shall be conducted according to the plan approved under Section 780.146 of this Chapter and the following:

(a) Ground-water quality shall be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic, or other harmful infiltration to ground-water systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the ground water.

(b) Ground-water quantity shall be protected by handling earth materials and runoff in a manner that will restore the approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and fills, so as to allow the movement of water to the ground-water system.

**26. TCMR 816.349 Hydrologic Balance: Surface Water Protection**

Texas proposes to change the title of TCMR 816.349 from "Hydrologic Balance: Protection of Ground Water Recharge Capacity" to "Hydrologic Balance: Surface Water Protection." Texas, also, proposes to remove the existing provisions at TCMR 816.349 and to add the following provisions.

In order to protect the hydrologic balance, surface mining activities shall be conducted according to the plan approved under Section 781.146 of this Chapter, and the following:

(a) Surface-water quality shall be protected by handling earth materials, ground-water discharges, and runoff in a manner that minimizes the formation of acidic or toxic drainage; prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to streamflow outside the permit area; and otherwise prevents water pollution. If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and Section 816.340, the operator shall use and maintain the necessary water-treatment facilities or water controls.

(b) Surface-water quality and flow rates shall be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under Section 780.146 of this Chapter.

**27. TCMR 816.350 (Surface) and TCMR 817.519 (Underground) Hydrologic Balance: Surface and Ground Water Monitoring**

Texas proposes to remove the existing provisions at TCMR 816.350 (a) and (b) and 817.519 (a) and (b) and to add the following new provisions. Any differences between the surface and underground mining regulations are shown with the underground language bracketed.

(a) Ground water. (1) Ground-water monitoring shall be conducted according to the ground water monitoring plan approved under Section 780.146(b) [784.188(b)] of this Chapter. The Commission may require additional monitoring when necessary. (2) Ground-water monitoring data shall be submitted every 3 months to the Commission or more frequently as prescribed by the Commission. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the operator shall promptly notify the Commission and immediately take the action provided for in Section 786.221(a) and 780.146(a) [786.221(a) and 784.188(a)] of this Chapter. (3) Ground-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of Part 786 of this Chapter,

the Commission may modify the monitoring requirements, including the parameters covered and the sampling frequency, if the operator demonstrates, using the monitoring data obtained under this Paragraph, that—(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or (ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under Section 780.146(b) [784.188(b)] of this Chapter. (4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of ground water onsite and offsite shall be properly installed, maintained, and operated and shall be removed when no longer needed.

(b) Surface water. (1) Surface water monitoring shall be conducted according to the surface water monitoring plan approved under Section 780.146(c) [784.188(c)] of this Chapter. The Commission may require additional monitoring when necessary. (2) Surface water monitoring data shall be submitted every 3 months to the Commission or more frequently as prescribed by the Commission. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any surface water sample indicates noncompliance with the permit conditions, then the operator shall promptly notify the Commission and immediately take the action provided for in Section 786.221(a) and 780.146(a) [784.188(a)] of this Chapter. The reporting requirements of this paragraph do not exempt the operator from meeting any National Pollutant Discharge Elimination System (NPDES) requirements. (3) Surface water monitoring shall proceed during reclamation until bond release. Consistent with the procedures of Part 786 of this Chapter, the Commission may modify the monitoring requirements, except those required by the NPDES permitting authority, including the parameters covered and the sampling frequency, if the operator demonstrates, using the monitoring data obtained under this paragraph, that—(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance

outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or (ii) monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under Section 780.146(c) [784.188(c)] of this Chapter. (4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of surface water onsite and offsite shall be properly installed, maintained, and operated and shall be removed when no longer needed.

**28. TCMR 816.355 (Surface) and TCMR 817.524 (Underground) Hydrologic Balance: Stream Buffer Zones**

Texas proposes to remove the existing provisions at TCMR 816.355 (a) through (c) and 817.524 (a) through (c) and to replace them with the following provisions. Any differences between the surface and underground mining regulations are shown with the underground language bracketed.

(a) No land within 100 feet of a perennial stream or an intermittent stream shall be disturbed by surface mining activities, unless the Commission specifically authorizes surface mining activities closer to, or through, such a stream. The Commission may authorize such activities only upon finding that—(1) Surface mining activities will not cause or contribute to the violation of applicable State or Federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and (2) If there will be a temporary or permanent stream-channel diversion, it will comply with Section 816.341 [817.511].

(b) The area not to be disturbed shall be designated as a buffer zone, and the operator shall mark it as specified in Section 816.330 [817.500].

**29. TCMR 816.358 Use of Explosives: Pre-Blasting Survey**

Texas proposes to add the italicized language shown in the following existing provision: Assessments of structures such as pipelines, pipes, cables, transmission lines, cisterns, wells and other water systems warrant special attention; however, assessment of these structures may be limited to surface conditions and other readily available data.

**30. TCMR 816.376 Coal Mine Waste: Dams and Embankments: General Requirements**

a. Texas proposes to change the title of TCMR 816.376 from "Coal Processing Waste: Dams and Embankments: General Requirements" to Coal Mine Waste: Dams and Embankments: General Requirements."

b. At TCMR 816.376(a), Texas proposes to replace the word "processing" with the word "mine" in two places.

c. At TCMR 816.376(b), Texas proposes to add the term "coal mine" before the term "waste" in two places, and to replace the reference to "Section .378(a)" with a reference to "this Part."

**31. TCMR 816.377 Coal Mine Waste: Dams and Embankments: Site Preparation**

a. Texas proposes to change the title of TCMR 816.377 from "Coal Processing Waste: Dams and Embankments: Site Preparation" to "Coal Mine Waste: Dams and Embankments: Site Preparation."

b. Texas proposes to replace the word "processing" with the word "mine" in the introductory sentence of TCMR 816.377.

**32. TCMR 816.378 Coal Mine Waste: Dams and Embankments: Design and Construction**

a. Texas proposes to change the title of TCMR 816.378 from "Coal Processing Waste: Dams and Embankments: Design and Construction" to "Coal Mine Waste: Dams and Embankments: Design and Construction."

b. At TCMR 816.378(a), Texas proposes to replace the word "processing" with the word "mine" and to change the Section reference to ".347(a) and (c)."

**33. TCMR 816.390 Revegetation: General Requirements**

At TCMR 816.390, Texas added new Paragraph (b)(5) which requires that the reestablished plant species (i) [b]e capable of self-generation and plant succession; (ii) [b]e compatible with the plant and animal species of the area; and (iii) [m]eet the requirements of applicable State and Federal seed, poisonous and noxious plant, and introduced species laws or regulations.

**34. TCMR 816.395 (Surface) and TCMR 817.560 (Underground) Revegetation: Standards for Success**

a. Texas proposes to revise the previously proposed provision at TCMR 816.395(a)(1) and 817.560(a)(1) by requiring that standards for success and statistically valid sampling techniques

for measuring success be selected by the Commission.

b. Texas proposes to remove the previously proposed language at TCMR 816.395(c)(4) and 817.560(c)(4) and to add the following new language.

(4) The Commission may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from the Director, Office of Surface Mining Reclamation and Enforcement in accordance with CFR 732.17 that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability if such practices can be expected to continue as part of the postmining land use or if the discontinuance of the practices will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting, specifically necessary by such actions.

**35. TCMR 816.405 (Surface) and TCMR 817.574 (Underground) Roads: Class I: Maintenance**

a. At TCMR 816.405(a) and 817.574(a), Texas proposes to remove the previously proposed revisions to the existing provision and to add the phrase "and any additional criteria specified by the Commission" at the end of the existing provision.

b. At TCMR 816.405(b) and 817.574(b), Texas proposes to replace the existing second sentence with the following language.

This includes maintenance to control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with prudent engineering practices.

**36. TCMR 816.406 (Surface) and TCMR 817.575 (Underground) Roads: Class I: Restoration**

a. Texas proposes to revise the previously proposed language of TCMR 816.406(a)(4) and 817.575(a)(4) as follows.

(4) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements;

b. At TCMR 816.406(a)(10) [existing (a)(9)], Texas proposes to change the

Section reference from .337(b) to .334-.338.

**37. TCMR 816.412 (Surface) and TCMR 817.581 (Underground) Roads: Class II: Maintenance**

At TCMR 816.412(a) and 817.581(a), Texas proposes to remove the previously proposed revisions and to add the language "entire transportation" before the word "facility" and to add the language "and any additional criteria specified by the Commission" at the end of the provision.

**38. TCMR 816.413 Roads: Class II: Restoration**

a. Texas proposes to revise the previously proposed language of TCMR 816.413(a)(4) as follows:

(4) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements;

b. At TCMR 816.413(a)(10) [existing (a)(9)], Texas proposes to change the Section reference from .337(b) to .334-.338.

**39. TCMR 816.420 Roads: Class III: Restoration**

a. Texas proposes to revise the previously proposed language of TCMR 816.420(d) as follows.

(d) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements;

b. At TCMR 816.420(i) [existing (h)], Texas proposes to change the Section reference from .337(b) to .334-.338.

**40. TCMR 817.535 Coal Mine Waste Banks: General Requirements**

a. Texas proposes to change the title of TCMR 817.535 from "Coal Processing Waste Banks: General Requirements" to "Coal Mine Waste Banks: General Requirements."

b. Texas proposes to add the following new provision at TCMR 817.535(c).

The disposal facility shall be designed using current, prudent engineering practices and shall meet any design criteria established by the Commission. A qualified registered professional engineer, experienced in the design of similar earth and waste structures, shall certify the design of the disposal facility.

**41. TCMR 817.538 Coal Mine Waste Banks: Construction Requirements**

Texas proposes to change the title of TCMR 817.538 from "Coal Processing Waste Banks: Construction Requirements" to "Coal Mine Waste Banks: Construction Requirements."

**42. TCMR 817.543 Coal Mine Waste: Dams and Embankments: General Requirements**

a. Texas proposes to change the title of TCMR 817.543 from "Coal Processing Waste: Dams and Embankments: General Requirements" to "Coal Mine Waste: Dams and Embankments: General Requirements."

b. At TCMR 817.543(a), Texas proposes to replace the word "processing" with the word "mine" in two places.

c. At TCMR 817.543(b), Texas proposes to add the term "coal mine" before the term "waste" in two places, and to replace the reference to "Section .545(a)" with a reference to "this Part."

**43. TCMR 817.544 Coal Mine Waste: Dams and Embankments: Site Preparation**

a. Texas proposes to change the title of TCMR 817.544 from "Coal Processing Waste: Dams and Embankments: Site Preparation" to "Coal Mine Waste: Dams and Embankments: Site Preparation."

b. Texas proposes to replace the word "processing" with the word "mine" in the introductory language.

**44. TCMR 817.545 Coal Mine Waste: Dams and Embankments: Design and Construction**

a. Texas proposes to change the title of TCMR 817.545 from "Coal Processing Waste: Dams and Embankments: Design and Construction" to "Coal Mine Waste: Dams and Embankments: Design and Construction."

b. At TCMR 817.545(a), Texas proposes to replace the word "processing" with the word "mine" and to change the Section reference to ".517(a) and (c)."

**45. TCMR 817.555 Revegetation: General Requirements**

At TCMR 817.555, Texas added new Paragraph (b)(5) which requires that the reestablished plant species (i) [b]e capable of stabilizing the soil surface erosion; (ii) [b]e compatible with the plant and animal species of the area; and (iii) [m]eet the requirements of applicable State and Federal seed, poisonous and noxious plant, and introduced species laws or regulations.

**46. TCMR 817.575 Roads: Class I: Restoration**

a. Texas proposes to revise the previously proposed language of TCMR 817.575(a)(4) as follows.

(4) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements;

b. At TCMR 817.575(a)(10) [existing (a)(9)], Texas proposes to change the Section references from .507(b) to 817.504-817.508 and from .561 to .555-.560.

**47. TCMR 817.582 Roads: Class II: Restoration**

a. Texas proposes to revise the previously proposed language of TCMR 817.582(a)(4) as follows.

Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements;

b. At TCMR 817.582(a)(10) [existing (a)(9)], Texas proposes to change the Section references from .507(b) to 817.504-817.508 and from .561 to .555-.560.

**48. TCMR 817.584 Roads: Class III: Location**

At TCMR 817.584(d), Texas proposes to replace the word "constructed" with the word "located."

**49. TCMR 817.589 Roads: Class III: Restoration**

a. Texas proposes to revise the previously proposed language of TCMR 817.589(d) as follows.

Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements;

b. At TCMR 817.589(i) [existing (h)], Texas proposes to change the Section references from .507(b) to .504-.508 and from .561 to .555-.560.

**50. TCMR 846.001 Definitions—Individual Civil Penalties**

At TCMR 846.001(2), Texas proposes to add the language "except an order incorporated in a decision issued under Section 30(b) of the Act" at the end of the sentence.

**51. TCMR 850.702 General Requirements**

Texas proposes to remove existing TCMR 850.702(e).

**52. TCMR 850.704 Training Courses**

At TCMR 850.704(b), Texas proposes to replace the word "courses" with the word "subjects."

**53. Revegetation Guidelines**

Texas submitted a proposed technical guidance document entitled "Field Sampling Procedures for Determining Groundcover, Productivity, and Woody-Plant Stocking Success of Reclaimed Surface Mined Land Uses; Revegetation Success Standards for Reclaimed Surface Mined Land Uses; and Normal Husbandry Practices on Unmined Land"

dated August 31, 1995. The document contains the following sections.

*Procedures for Determining Ground Cover and Woody-Plant Stocking*

This section contains a description of the process for establishing transects; a description for determining the placement and measurement of sample points for herbaceous vegetation; and a description for determining the placement and measurement of sample plots for woody plants (trees, shrubs, half shrubs, and vines). It also requires that all permanent ground cover and woody-plant count evaluations be conducted during the growing season.

*Methods To Measure Herbaceous and Crop Productivity*

This section contains four methods for measuring herbaceous and crop productivity. These include whole-field harvest; clipping method; double sampling method; and grazing method.

*Success Standards for Ground Cover, Productivity, and Stocking*

This section contains standards for ground cover; forage and herbaceous productivity for pastureland, grazingland, and undeveloped land use; crop productivity; prime farmland productivity; and woody-plant stocking.

*Normal Husbandry Practices*

This section contains the following language.

Approved husbandry practices for postmine lands bonded under the extended liability period are the normal husbandry practices within the region for unmined lands having the same land uses as the approved postmining land uses. Normal husbandry practices are the normal conservation practices that can be expected to continue as part of the approved postmine land use after final bond release.

Normal husbandry practices for unmined lands within the region having the same land uses as the approved postmine land use may include management practices at levels recommended by the U.S. Department of Agriculture Natural Resource Conservation Service (NRCS), the Texas Forest Service, and the Texas Parks and Wildlife Department.

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 November 9, 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 collections 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: October 17, 1995.

Charles E. Sandberg,

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

[FR Doc. 95-26402 Filed 10-24-95; 8:45 am]

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**National Park Service****36 CFR Part 7**

RIN 1024-AC34

**Grand Teton National Park and John D. Rockefeller, Jr. Memorial Parkway; Snowmobile and Snowplane Routes and Regulations**

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule

**SUMMARY:** The National Park Service (NPS) proposes to change the special regulations relating to the use, and designated routes for snowmobiles and snowplanes within Grand Teton National Park and John D. Rockefeller, Jr. Memorial Parkway. The proposed rule change will more clearly define the use of snowmobiles, snowplanes, and designated routes. This rule change would allow for the closure of the Potholes—Baseline Flats area to snowmobiles at the discretion of the Superintendent and establish the special regulation allowing snowmobile use on the Continental Divide Snowmobile Trail (CDST). The proposed rule change will also establish a requirement for operators of snowmobiles within Grand Teton National Park to have a valid State driver's license or learner's permit.

**DATES:** Written comments will be accepted through December 26, 1995.

**ADDRESSES:** Comments should be addressed to: Jack Neckels, Superintendent, Grand Teton National Park, P.O. Box 170, Moose, Wyoming 83012.

**FOR FURTHER INFORMATION CONTACT:** Colin W. Campbell, Chief Ranger, Grand Teton National Park, Moose, Wyoming 83012, Telephone: 307-739-3472.

**SUPPLEMENTARY INFORMATION:**

## Background

The Winter Use Plan of 1990 authorized the Continental Divide Snowmobile Trail (CDST) within the road prism from the east entrance of Grand Teton National Park through John D. Rockefeller, Jr. Parkway to the south entrance of Yellowstone National Park.

In 1993, a joint task force of the two national parks developed and approved a Visitor Use Management Work Plan for implementing the Winter Use Plan. One major action item, the CDST, required promulgation of a special regulation prior to full implementation.

The proposed trail through Grand Teton National Park and the Parkway would link the existing completed CDST in the State of Wyoming with the snowmobile trail network in Yellowstone National Park. Currently, the only incomplete portion of the CDST between State lands and Yellowstone occurs within Grand Teton National Park. Snowmobile users must transport their machines from the east boundary of Grand Teton National Park to the south gate of Yellowstone National Park through the John D. Rockefeller Memorial Parkway. By designating the proposed trail, CDST users will have a continuous trail system for travel through State land as well as a trail linking Grand Teton with Yellowstone.

Furthermore the proposed CDST rule will likely affect snowmobile use within the area known as the Potholes—Baseline Flats area. This area is proposed wilderness and currently designated as an area open for snowmobiling. With the successful completion and opening of the CDST within Grand Teton National Park, the proposed rule will give the Superintendent the discretion to close the Potholes—Baseline Flats area to snowmobiling.

The proposed rule provides for a licensing requirement, in accordance with State law, for operators to provide for safer operation of snowmobiles within the Park.

This rule change will more clearly define the use of snowmobiles within Grand Teton National Park, and make snowmobiling on the CDST consistent with the practices of both State and Federal agencies, Forest Service and Fish and Wildlife Service, whose lands are contiguous with Grand Teton National Park.

## Section-by-Section Analysis

*36 CFR 7.22 Grand Teton National Park*

In November of 1990, a Winter Use Plan was completed for Yellowstone and Grand Teton National Parks, and the John D. Rockefeller, Jr. Memorial Parkway. The proposed changes to the regulations implement components of the Plan that affect Grand Teton National Park.

(g) Snowmobiles. (1) The wording was changed in this section to differentiate

snowmobiles from snowplanes, because the Winter Use Plan eliminates snowplane use on designated routes open to snowmobiles, and limits snowplane use to the frozen surface of Jackson Lake. Reference to paragraph (g)(6) was deleted because no exception applies to that paragraph.

(2)(i) The Spread Creek Road was deleted from the list of designated routes open to snowmobiling. The Spread Creek Road is less than 2 miles long, is adjacent to an area closed to all use in winter to protect wintering wildlife, and does not connect to areas open to snowmobiling on adjacent Forest Service lands. Other language in this section was changed to open only the unplowed portion of the Teton Park Road, and to give the Superintendent the discretion to close the Potholes-Baseline Flats areas to snowmobiles. The Lizard Creek Campground Road was deleted as a designated route, because it has been largely unused, and it lacks adequate trailhead parking space. Sufficient alternative access to Jackson Lake is provided at Signal Mountain and Colter Bay.

(2)(ii) This paragraph was added to allow the use of snowmobiles within Grand Teton National Park along the State proposed CDST. This trail follows existing roads in Grand Teton National Park and is consistent with NPS policy that states that snowmobiles are allowed only on designated routes. Traffic lanes along this route will continue to be plowed for cars and trucks, and snowmobiles will be permitted on a groomed trail adjacent to the traffic lanes. Connections from the trail to other snow roads (i.e., the unplowed portion of the Teton Park Road) are also permitted in the Winter Use Plan. The trail and connections to the trail will use the width of the existing roadway (ditches, cut slopes, fill slopes and other areas disturbed by road construction) immediately adjacent to the plowed vehicular traffic lanes.

(2)(iii) This language was added to permit snowmobiles to cross the highway only at designated points, in order to make connections to rest stops, fuel, meals, lodging and other related visitor services; to permit snowmobiles to use portions of highway bridges where it is difficult or environmentally improper to use alternate routes; to permit snowmobile travel within parking and staging areas; and to connect to and/or travel within developed areas in a regulated manner.

(2)(iv) This language was added to permit private property owners to access their properties. Use of oversnow vehicles will be restricted to travel over unplowed roads, during winter months.