

annuity would be \$764,569 (\$103,000 × 7.4230). Assuming the presumption provided in paragraph (b)(3) of this section does not apply, because there is at least a 50 percent probability that the donor will die within 1 year, the standard section 7520 annuity factor may not be used to determine the present value of the donor's annuity interest. Instead, a special section 7520 annuity factor must be computed that takes into account the projection of the donor's actual life expectancy.

(5) *Additional limitations.* Section 7520 does not apply to the extent as may otherwise be provided by the Commissioner.

(c) \* \* \* The provisions of paragraph (b) of this section are effective with respect to gifts made after December 13, 1995.

Michael P. Dolan,

*Acting Commissioner of Internal Revenue.*

Approved: October 29, 1995.

Leslie Samuels,

*Assistant Secretary of the Treasury.*

[FR Doc. 95-30272 Filed 12-12-95; 8:45 am]

BILLING CODE 4830-01-U

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 943

[SPATS No. TX-024-FOR]

#### Texas Regulatory Program

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

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

**SUMMARY:** OSM is approving a proposed amendment to the Texas regulatory program (hereinafter referred to as the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposed revisions to its regulations pertaining to self-bonding. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations, provide additional safeguards, and improve operational efficiency.

**EFFECTIVE DATE:** December 13, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6548, Telephone: (918) 581-6430.

#### SUPPLEMENTARY INFORMATION:

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

#### I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. 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 conditions of approval and program amendments can be found at 30 CFR 943.10, 943.15, 943.16.

#### II. Submission of the Proposed Amendment

By letter dated August 11, 1995 (Administrative Record No. TX-593), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. Texas proposed to revise 16 Texas Administrative Code 11.221, Texas Coal Mining Regulations (TCMR) at subsection 806.309(j)(2)(C)(iv) concerning alternative criteria for acceptance of self-bonds to ensure reclamation performance.

OSM announced receipt of the proposed amendment in the September 12, 1995, Federal Register (60 FR 47316), 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 would have closed on October 12, 1995.

During its review of the amendment, OSM identified a concern relating to TCMR 806.309(j)(2)(C)(iv)(II)(C). Specifically OSM needed clarification on what effect, if any, Texas' existing 25 percent net worth limitation provision at TCMR 806.309(j)(5)(A) would have on the proposed 16 $\frac{2}{3}$  percent net worth limitation provision at TCMR 806.309(j)(2)(C)(iv)(II)(C). OSM notified Texas of this concern by telephone on September 23, 1995 (Administrative Record No. TX-593.03).

By letter dated September 25, 1995 (Administrative Record No. TX-593.02), Texas responded to OSM's concern by submitting a revision to its proposed program amendment. Texas proposed an additional revision to TCMR 806.309(j)(2)(C)(iv) by adding the following clarification provision.

The limitation contained in subparagraph (II)(C) of this section applies to applicants or guarantors qualifying pursuant to subparagraph (II) only and does not affect the limitation set out in Section 806.309(j)(5)(A) for applicants or guarantors seeking acceptance of a self-bond pursuant to paragraphs i-iii or subparagraph (I) of this section.

Based upon the additional explanatory revision to the proposed program amendment submitted by Texas, OSM reopened the public comment period in the October 16, 1995, Federal Register (60 FR 53567). The public comment period closed on October 31, 1995.

#### III. Director's Findings

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

*TCMR 806.309(j)(2)(C)(iv) Self-Bonding: Requirements for a Business and Governmental Entities, Alternative Financial Eligibility Criteria*

#### 1. Existing State Regulation Requirements

Like the Federal self-bonding regulations at 30 CFR 800.23(b)(3) (i), (ii), and (iii), Texas has standard financial criteria for self-bonding at § 806.309(j)(2)(C) (i), (ii), and (iii) that are substantively identical to the corresponding Federal regulations. Under the State's standard criteria, an applicant can qualify for self-bonding by meeting one of three criteria that pertain to having either a bond rating of A or higher; or \$10 million net worth and certain financial ratio values; or having fixed assets of \$20 million and certain financial ratio values.

To provide additional flexibility to financially strong firms, Texas proposed an alternative four-part test at § 806.309(j)(2)(C)(iv) that was approved by OSM on February 19, 1992, as an alternative test under the Texas self-bonding program (57 FR 5983). Texas' alternative test allows an applicant to qualify if it meets four criteria in combination. Specifically, an applicant applying for self-bonding under § 806.309(j)(2)(C)(iv) must have an investment-grade bond rating (§ 806.309(j)(2)(C)(iv)(I)); tangible net worth of at least \$10 million and fixed assets in the United States of \$20 million (§ 806.309(j)(2)(C)(iv)(II)); a ratio of total liabilities to net worth that is equal to or less than the industry median (§ 806.309(j)(2)(C)(iv)(III)); and a ratio of current assets to current liabilities that is equal to or greater than the industry median or a current credit

rating of 4A2 or higher from Dun and Bradstreet Corporation (§ 806.309(j)(2)(C)(iv)(IV)).

There is no direct Federal counterpart regulation to Texas' alternative test for self-bonding. However, as explained in the February 19, 1992, Federal Register (57 FR 5983), the Director found that when an applicant for self-bonding in Texas meets the combined requirements of the alternative test at § 806.309(j)(2)(C)(iv), the applicant is complying with financial strength and solvency requirements that are no less effective than the standard financial safeguards of the Federal regulations at 30 CFR 800.23(b)(3).

## 2. Proposed State Regulation Requirements

On its own initiative, Texas proposes to recodify and expand the existing alternative financial criteria at § 806.309(j)(2)(C)(iv) to provide applicants a choice between two, four-part financial tests. The State's intention is to maintain consistency with the Federal regulations while providing flexibility to financially strong applicants who apply for self-bonding under its alternative eligibility criteria.

Texas proposes to recodify its existing regulations at § 806.309(j)(2)(C)(iv) (I)-(IV) as § 806.309(j)(2)(C)(iv)(I) (A), (B), and (C). This remodified section serves as the first optional financial test under the State's proposed alternative tests for self-bonding. Texas proposes to add § 806.309(j)(2)(C)(iv)(II) (A), (B), and (C). This new section constitutes the second optional financial test under the State's proposed alternative tests for self-bonding.

The State's proposal allows applicants the option of qualifying for self-bonding by meeting the combined requirements of either subparagraph (I) or subparagraph (II) of § 806.309(j)(2)(C)(iv). These proposed requirements are further discussed below:

a. *Investment-Grade Bond Rating (Applicable to both Alternative Test I and Test II).* TCMR § 806.309(j)(2)(C)(iv). First, an applicant applying for self-bonding under either of the two proposed alternative financial tests at § 806.309(j)(2)(C)(iv) (I) or (II) must have an investment-grade rating for its most recent bond issuance (Baa3 or higher from Moody's Investor Service and BBB- or higher from Standard and Poor's Corporation). This requirement is identical to the existing criteria at § 806.309(j)(2)(C)(iv)(I).

In the preamble to the final Federal self-bonding regulations (48 FR 36418, August 10, 1983), OSM stated that "The services [bond rating services] are relied

upon heavily by creditors and maintain a high rate of predictive success [about a bond issuer's ability to re-pay bond issues]." OSM's allowance of a bond rating of "A or higher" in the Federal regulations as a stand-alone test for self-bonding is based on reliance on the expertise of the rating service to evaluate the financial position of a firm. In determining the rating of a bond issue, rating services conduct an in-depth financial analysis of the issuer. Using Standard and Poor's rating of bonds issued by public utilities as an example, some factors that it considers include: (1) Legal considerations such as the rate covenant (which defines the size and source of the utility's financial reserve); the flow of funds (or the priority of claims on the revenue stream); and the legal implications of energy sales contracts (the company's potential liabilities); (2) economic considerations such as income trends; diversification of the employment base (analysis of key local industries); and growth trends; and (3) systems considerations such as projected energy growth; generating capacity and fuel sources; and whether customer profiles indicate that end-users are balanced in terms of including residential, commercial and industrial customers. Also considered are the company's capital improvement and financing plans; the stability and predictability of the revenue stream pledged to pay debt service; the liquidity position and equity position of the company; and the financial implications of the regulatory environment.

In the preamble to OSM's final self-bonding regulations, OSM also explained that since it was allowing a self-bonding applicant to qualify by meeting one financial test (unlike EPA that requires more than one test, and thus allows a lower, investment-grade bond rating), an applicant that selected the bond rating test would have to have bonds rated "A or higher." This is because the bond rating of "A or higher" is a stand-alone test in the Federal regulations. While not specifically addressed by OSM in its final regulations on self-bonding, it follows that a State's self-bonding program that requires an applicant to meet multiple financial criteria in addition to having an investment-grade bond rating is no less effective than the Federal regulations that allow a bond rating of "A or higher" as a stand-alone financial test.

As an additional safeguard, Texas is requiring applicants to notify the Commission of any rating change to a lower bond rating than the applicant had at the time the self-bond was

approved. If an applicant's rating is down-graded, then the Commission will immediately hold a hearing to decide whether the applicant may remain in the self-bonding program. This requirement is in addition to the existing requirement at § 806.309(j)(8) for applicants to notify the Commission if it no longer meets the criteria at (2)(C) and (2)(D) of the self-bonding regulations.

b. *Alternative Test I.* TCMR 806.309(j)(2)(C)(iv)(I)(A). Under subparagraph (I)(A), Texas proposes to recodify the existing requirements at § 806.309(j)(2)(C)(iv)(II) [wherein an applicant must demonstrate that it has a tangible net worth of at least \$10 million and fixed assets in the United States totaling at least \$20 million]. Other than recodifying this section, no changes are proposed; therefore, the requirements at § 806.308(j)(2)(C)(iv)(I)(A) are no less effective than the Federal self-bonding requirements at 30 CFR 800.23(b)(3).

TCMR 806.309(j)(2)(C)(iv)(I)(B). Texas is revising requirements at § 806.309(j)(2)(C)(iv)(III) to provide flexibility under the recodified subparagraph at § 806.309(j)(2)(C)(iv)(I)(B). The State is revising this sub-part to provide an optional test whereby an applicant must demonstrate that it has either a ratio of total liabilities to net worth of 2.5 or less or a ratio of total liabilities to net worth that is equal to or less than the industry median reported by Dun and Bradstreet Corporation for the applicant's primary SIC code. A ratio value of 2.5 or less is the current standard test in the State's self-bonding program at § 806.309(j)(2)(C)(ii) and (iii), and in the Federal regulations at 30 CFR 800.23(b)(3) (ii) and (iii). Therefore, allowing applicants the option of meeting either the standard ratio value of 2.5 or less, or having a ratio value that is equal to or less than the industry median is no less effective than the Federal regulations for reasons further explained below.

The rationale for comparing an applicant's ratio of total liabilities to net worth to the industry median was discussed in detail in the preamble to the final Texas rule (57 FR 5983, February 19, 1992). Industry medians reflect the relative financial status of firms within an industry classified by net worth. Comparing a firm with current industry medians is more meaningful than comparing it with static values for financial ratios that represent the conditions of an industry at an historical point in time. OSM determined that ratio values that are keyed to an applicant's industry

medians are an appropriate measure of how the applicant performs financially in comparison to the rest of its industry. On this basis, OSM approved the use of industry median values in lieu of the standard value of 2.5 or less. However, since OSM's approval of Texas' alternative self-bonding test on February 19, 1992, changes have occurred in general financial accounting requirements resulting in industry median values that do not consistently reflect the true comparative financial strength of applicants for self-bonding.

For example, the Financial Accounting Standards Board (FASB) has issued new accounting standards that firms must follow in order to be in compliance with Generally Accepted Accounting Principles (GAAP). One such standard is the "Statement of Financial Accounting Standards No. 109, 'Accounting for Income Taxes'" (SFAS 109) issued in 1991. The effects of SFAS 109 and another accounting standard, "Employer's Accounting for Postretirement Benefits Other than Pensions" (SFAS 106), are complex and affect both sides of a firm's balance sheet in a variety of ways.

Upon review, ratio values for a firm that has adopted SFAS 106 (post-retiree health benefits) may not compare well with ratio values for a firm that has not yet adopted the standard or a firm that is on different implementation schedule. On the other hand, a firm that has adopted SFAS 109 (accounting for deferred income taxes) may appear financially stronger than it actually is. Accounting for deferred tax assets is an example. In an article entitled "Evaluating Deferred-Tax Assets: Some Guidance for Lenders" (Commercial Lending Review, July 1994, pp. 12-25), Eugene Comiskey and Charles Mulford state that "deferred tax assets result in increases to earnings, assets, and shareholders' equity which in essence do not increase the financial strength of the firm from that before adoption of FASB 109 [SFAS 109]." The authors advise that deferred tax assets "especially those recorded for various tax carryforwards, share features with intangible assets—assets that are often deducted from equity in the measurement of tangible net worth in debt covenants." These examples illustrate the many complexities involved in analyzing the interdependent effects that recent FASB standards have had on the financial status of self-bonding applicants. Therefore, Texas proposes to revise its alternative test to allow financially strong applicants the flexibility of qualifying by either having a ratio of total liabilities to net worth that meets

the standard criteria (2.5 or less) or a ratio value that meets the industry median test.

Changes to accounting standards notwithstanding, ratio analysis based on industry medians, (industry norms) has merit when comparing firms with similar conditions (net worth and asset size) in the same industry. However, not all firms are adopting the FASB financial accounting standards during the same accounting year and/or in the same manner; so the industry medians do not always reflect a level financial playing field for the purpose of comparing a firm to its industry.

Under the State's proposal, an applicant that meets the standard criterion, 2.5 or less for the ratio of total liabilities to net worth, satisfies the Federal ceiling for this ratio under the Federal regulations at 30 CFR 800.23(b)(3) (ii) and (iii). In addition, the ratio criterion based on comparison with the industry median is an approved financial test in the State's existing alternative criteria for self-bonding. Therefore, Texas' proposed revision at § 806.309(j)(2)(C)(iv)(I)(B) that allows an applicant the option of qualifying under either of these two ratio criteria is no less effective than the Federal regulations.

*TCMR 806.309(j)(2)(C)(iv)(I)(C).* Under subparagraph (I)(C), Texas proposes to recodify the existing State requirement at § 806.309(j)(2)(iv)(IV). Other than recodifying this section, no changes are proposed. Therefore, the State's proposed requirements at § 806.309(j)(2)(iv)(I)(C) are no less effective than the Federal regulations.

*c. Alternative Test II. TCMR 806.309(j)(2)(C)(iv)(II).* Applicants applying for self-bonding under the Federal regulations at 30 CFR 800.23(b)(3) (ii) and (iii) and under the State's standard self-bonding test at § 806.309(j)(2)(C) (ii) and (iii) are required to have certain financial ratio values that indicate solvency and a reasonable liquidity position. Rather than measuring an applicant's liquidity position by requiring certain values for the ratio of current assets to current liabilities and the ratio of total liabilities to net worth, Texas is proposing alternative criteria to demonstrate financial strength.

In OSM's final self-bonding rules (48 FR 36418, August 10, 1983), OSM indicated that the self-bonding program was established at 30 CFR 800.23 for firms that could demonstrate a low likelihood of bankruptcy, debts that are not disproportionate to assets, and reasonable liquidity. OSM also stated that the "New § 800.23 allows a State to develop a comprehensive self-bonding

program to balance the risk of forfeiture versus the benefits to financially sound operators of a self-bonding program," and that . . . "These final rules [Federal regulations] contain standards general enough to take into account state-specific conditions." To recognize variability among financially strong industries mining coal in Texas, the State proposes to add a second set of alternative criteria to provide financially strong applicants an additional option for demonstrating liquidity and financial strength. This proposed alternative test will provide flexibility and increase the availability of the self-bonding program without jeopardizing the level of reclamation assurance.

Texas' new proposed alternative test at § 806.309(j)(2)(C)(iv)(II), consists of three subparagraphs. All financial criteria (including the investment-grade bond rating discussed above) must be met in combination in order for an applicant to qualify for self bonding under this proposed alternative test.

*TCMR 806.309(j)(2)(C)(iv)(II)(A).* Texas is proposing that an applicant applying for self-bonding have a net worth of at least \$100 million and fixed assets in the United States totaling at least \$200 million. These proposed levels of net worth and fixed assets are ten times greater than the \$10 and \$20 million respective levels required by the standard self-bonding criteria at § 806.309(j)(2)(C) (i), (ii), and (iii), and the counterpart Federal regulations at 30 CFR 800.23(b)(3) (i), (ii), and (iii). Intangible assets such as goodwill, patents, royalties, and trademarks (if any) are included in the calculation of net worth in this proposal; whereas in the existing approved alternative test and standard criteria, intangible assets are not counted in the calculation of net worth. However, the Director finds that a tenfold increase in the required level of net worth from \$10 million to \$100 million provides assurance, no less effective than the Federal regulations, that sufficient assets should be available to conduct reclamation and avoid bankruptcy. Since the levels of net worth and fixed assets under this proposal require financial strength levels that are higher than the existing levels in the Federal counterpart regulations at 30 CFR 800.23(b)(3) (i), (ii), and (iii), the State's requirements at § 806.309(j)(2)(C)(IV)(II)(A) are no less effective than the Federal regulations.

*TCMR 806.309(j)(2)(C)(IV)(II)(B).* Under subparagraph (II)(B), the Texas proposal requires the applicant to have issued securities in accordance with the requirements of the Securities Act of 1933, and that the applicant is subject to the periodic financial reporting

requirements established by the Securities and Exchange Act of 1934. To protect investors, the Securities and Exchange Commission (SEC) has stringent financial disclosure and reporting requirements for issuers of securities.

Annual reports filed with the SEC are readily available public filings that require disclosure of detailed financial and business information that exceeds the level of detail usually found in a firm's annual report to its stockholders. Like the Federal self-bonding program, whether or not Texas accepts a qualified applicant's self-bond is discretionary with the State. In making this decision, the State is not limited to the materials filed by an applicant. In its analysis of an applicant's qualifications, Texas can calculate financial ratios from the applicant's balance sheet data, compare an applicant's ratios to industry norms, and conduct any number of other financial tests to determine whether an applicant is a good candidate for self-bonding. Having an applicant's SEC financial information at its disposal places the State in a position to make an informed decision about a self-bonding applicant's qualifications. For example, in addition to requiring that financial statements be prepared in conformance with GAAP, Section 78m.(b)(2)(B) of the Securities and Exchange Act requires firms to assure that safeguards are present to protect assets. Protecting assets helps assure reasonable liquidity which is one of the requirements for qualifying under the Federal and Texas self-bonding programs.

In lieu of using financial ratios to measure liquidity, Texas is proposing that under this alternative test applicants meet a combination of requirements including: stringent SEC financial reporting, an investment-grade bond rating, and net worth that is six times the total amount of the applicant's outstanding and proposed self-bonds. Meeting the combined financial requirements of Texas' proposed alternative test will assure that an applicant has reasonable liquidity and a low risk of bankruptcy. The requirement for net worth that is six times the total self-bonded amount is further discussed under subparagraph (C) below.

*TCMR 806.309(j)(2)(C)(iv)(II)(C)*. Like the Federal self-bonding regulations at 30 CFR 800.23, an applicant applying for self-bonding under Texas' standard test at § 806.309(j)(2)(C) (i), (ii), and (iii) and an applicant applying for self-bonding under the first of Texas' alternative tests at § 806.309(j)(2)(C)(iv)(I) may not have outstanding and proposed self-bonds that are greater than 25 percent of the

applicant's tangible net worth in the United States. In other words, tangible net worth must be four times the outstanding and proposed self-bonded amount. Tangible net worth is used as the basis for comparison with the amount of proposed and outstanding self-bonds because intangible assets such as goodwill, patents, royalties, and trademarks are difficult to evaluate and liquidate. Under the new alternative at § 806.309(j)(2)(C)(iv)(II)(C), Texas is proposing that an applicant's total outstanding and proposed self-bond amount not exceed  $16\frac{2}{3}$  percent of the applicant's net worth in the United States. In other words, net worth [including intangible assets] must be six times the amount of outstanding and proposed self-bonds. Under this proposal, Texas is allowing the basis of comparison to be total net worth including the calculation for intangible assets. However, the Director finds that the inclusion of intangible assets in this calculation is offset by the State's proposal to increase the ratio of net worth to self-bond amount to six times rather than four times. This proposed increase to the required level of net worth should provide assurance that a self-bonded permittee has sufficient assets to perform reclamation and stave off bankruptcy. Therefore, under this proposed second alternative test at § 806.309(j)(2)(C)(iv)(II), Texas is requiring that an applicant have a greater financial cushion to protect the State should it be required to attempt to recover self-bonded amounts from the applicant's assets in the event the applicant files for bankruptcy.

In the preamble to the final Federal self-bonding regulations (48 FR 36418, August 10, 1983), OSM responded to a commenter who recommended a 6 to 1 ratio of net worth to self-bonded amount in the Federal regulations "to be more in keeping with the rates used by the surety industry." OSM responded by saying that "Although the requirements of these rules are such that only well-established, financially solvent business entities will qualify for self-bonding, there is always an element of risk involved in underwriting the obligations for such companies. The 25 percent restriction provides a financial cushion, in the event that a self-bonded entity should fail, to allow the regulatory authority to attempt to recoup self-bonded amounts from the assets of the bankrupt entity. A 6 to 1 ratio is considered overly restrictive, especially in light of other required financial tests [at 30 CFR 800.23(b)(3)]." The State's proposal for a 6 to 1 ratio of net worth to self-bonded amount plus meeting a

combination of three additional financial tests (investment-grade bond rating, \$100 million net worth plus \$200 million domestic fixed assets, and SEC financial reporting) is no less effective than the Federal regulations that require a 4 to 1 ratio of tangible net worth to self-bonded amount plus meeting one of three stand-alone financial tests (bond rating of A or higher; or \$10 million tangible net worth plus 1.2 or greater current ratio of assets to liabilities plus 2.5 or less ratio of total liabilities to net worth; or \$20 million domestic fixed assets plus the same ratio values as stated above).

d. Based on the above discussions, the Director finds that Texas' proposed financial criteria at TCMR 806.309(j)(2)(C)(iv) (I) and (II) are either already contained in Texas' existing approved alternative test for self-bonding or provide financial options for the new proposed alternative test that are no less effective at measuring financial strength and reasonable liquidity than the Federal self-bonding regulations at 30 CFR 800.23(b)(3).

#### IV. Summary and Disposition of Comments

##### *Public Comments*

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No one requested an opportunity to speak at a public hearing; therefore, no hearing was held.

Texas Utilities Services Inc. provided written support for the proposed amendment (Administrative Record No. TX-593.07).

##### *Federal Agency Comments*

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record No. 593.01).

On September 15, 1995 (Administrative Record No. TX-593.06), the U.S. Bureau of Land Management commented that the revised regulations addressed by the documents appear to exceed Federal coal standards. On September 18, 1995 (Administrative Record No. TX-593.04), the U.S. Army Corps of Engineers acknowledged that the revisions were satisfactory. On October 2, 1995 (Administrative Record No. TX-593.08), the Natural Resources Conservation Services responded without comment.

##### *Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written

concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). However, none of the revisions that Texas proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comment on the proposed amendment from EPA (Administrative Record No. TX-593.01). EPA did not respond to OSM's request.

*State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. TX-593.01). Neither SHPO nor ACHP responded to OSM's request.

**V. Director's Decision**

Based on the above findings, the Director approves the proposed amendment as submitted by Texas on August 11, 1995, and as revised on September 25, 1995, concerning self-bonding alternative financial requirements for a business and governmental entities.

The Director approves the rules as proposed by Texas with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR 943, codifying decisions concerning the Texas program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

**VI. 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 the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. 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 corresponding Federal regulations.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 1, 1995.

Brent Wahlquist,

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

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

**PART 943—TEXAS**

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

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

2. Section 943.15 is amended by adding paragraph (1) to read as follows:

**§ 943.15 Approval of regulatory program amendments.**

\* \* \* \* \*

(1) The revisions to the following regulations at 16 Texas Administrative Code 11.221, the Coal Mining Regulations of the Railroad Commission of Texas, as submitted to OSM on August 11, 1995, and as revised on September 25, 1995, are approved effective December 13, 1995.

TCMR 806.309(j)(2)(C)(iv) (I)(A), (B), and (C).	Self-bonding: financial requirements for a business and governmental entities, Alternative Financial Eligibility Criteria Test I.
TCMR 806.309(j)(2)(C)(iv) (II)(A), (B), and (C).	Self-bonding: financial requirements for a business and governmental entities, Alternative Financial Eligibility Criteria Test II.

[FR Doc. 95-30330 Filed 12-12-95; 8:45 am]

BILLING CODE 4310-05-M

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 1**

**RIN 2900-AE28**

**Confidentiality of Certain Medical Records**

**AGENCY:** Department of Veterans Affairs.