

SUMMARY: On January 19, 1996, 61 FR 1282, EEOC announced the scheduled dates, February 6–7, 1996, for a meeting of EEOC's Negotiated Rulemaking Advisory Committee for Regulatory Guidance on Unsupervised Waivers of Rights and Claims under the Age Discrimination in Employment Act" (the Committee). The meeting scheduled for February 6–7, 1996 has been cancelled.

FOR FURTHER INFORMATION CONTACT: Joseph N. Cleary, Paul E. Boymel, or John K. Light, ADEA Division, Office of Legal Counsel, EEOC, 1801 L Street, N.W., Washington, D.C. 20507, (202) 663-4692.

SUPPLEMENTARY INFORMATION: Copies of this notice are available in the following alternate formats: large prints, braille, electronic file on computer disk, and audio tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663-4395 (voice), (202) 663-4399 (TDD).

Dated: January 26, 1996.

Frances M. Hart,
Executive Officer.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SPATS NO. NM-036-FOR]

New Mexico Regulatory Program

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

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

SUMMARY: OSM is announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to and/or additions of rules pertaining to definitions; procedures for designating lands unsuitable for coal mining; permit application requirements concerning compliance information, the reclamation plan, and the subsidence information and control plan; procedures concerning permit application review; criteria for permit approval or denial; procedures concerning imprudently issued

permits; permit conditions; requirements concerning ownership and control information; and performance standards for coal exploration, hydrologic balance, permanent and temporary impoundments, coal processing waste, disposal of noncoal waste, protection of fish, wildlife, and related environmental values, revegetation success, subsidence control, and roads. The amendment is intended to revise the New Mexico program to consistent with the corresponding Federal regulations, incorporate the additional flexibility afforded by the revised Federal regulations, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.s.t., March 4, 1996. If requested, a public hearing on the proposed amendment will be held on February 26, 1996. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t., on February 16, 1996.

ADDRESSES: Written comments should be mailed or hand delivered by Guy Padgett at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Guy Padgett, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102
Mining and Minerals Division, New Mexico Energy & Minerals Department, 2040 South Pacheco Street, Santa Fe, New Mexico 87505, Telephone: (505) 827-5970

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (505) 248-5081.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, Federal Register (45 FR 86459). Subsequent actions concerning New

Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment.

By letter dated January 22, 1996, New Mexico submitted a proposed amendment to its program (administrative record No. NM-766) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment at its own initiative and in response to the required program amendments at 30 CFR 931.16 (a), (c), (d), and (f) through (s) (55 FR 48841, November 23, 1990; 56 FR 67520, December 31, 1991; and 58 FR 65907, December 17, 1993).

The provisions of the Coal Surface Mining Commission (CSMC) rules that New Mexico proposes to revise are:

CSMC Rule 80-1-5, by (1) adding new definitions for "applicant/violator system or avs," "drinking, domestic or residential water supply," "federal violation notice," "material damage," "noncommercial building," "occupied residential dwelling and associated structures," "OSM," "ownership or control link," "replacement of water supply," "SMCRA," "state violation notice," and "qualified laboratory," and (2) revising existing definitions for "road and" "violation notice;"

CSMC Rule 80-4-15(b)(1), concerning procedures for designating land unsuitable for coal mining, by adding the requirement that the regulatory authority notify the general public of the receipt of the petition and request submissions of relevant information through the publication of a notice in the New Mexico State Register;

CSMC Rule 80-7-14(c), concerning permit application requirements for compliance information, by adding the requirement for information on violations received pursuant to SMCRA, its implementing regulations, and to any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA;

CSMC Rules 80-9-25(a)(2), (a)(3), and (c), concerning permit application requirements for the reclamation plan, by adding the requirement that certain existing design specifications apply to structures that meet the U.S. Soil Conservation Service Class B or C criteria for dams in this agency's Technical Release No. 60 (210-VI-TR60, October 1985), "Earth Dams and Reservoirs;"

CSMC Rules 80-9-39(a) through (c), concerning permit application requirements for the subsidence information and control plan, to (1) add the requirement for a description of the measures to be taken to mitigate or

remedy subsidence-related material damage (regardless of the liability, or lack thereof, under other State laws) to the land and subsidence-related material damage incurred after October 24, 1992, by occupied residential dwellings, structures related thereto, and noncommercial buildings and (2) remove the exception to the requirement to mitigate or remedy subsidence-related material damage that was previously allowed at CSMC Rule 80-9-39(c)(2);

CSMC Rules 80-11-17(c) and (d) and 80-11-19(i), concerning the requirement that the regulatory authority, when making a determination of whether a pattern of willful violations exists (during review of a permit application and when deciding whether to approve a permit application), shall also consider violations received by the applicant, anyone who owns or controls the applicant, or the operator named in the application, pursuant to SMCRA, the Federal regulations at 30 CFR Chapter VII, the Federal program for Indian lands, Federal programs for States, or OSM-approved State programs other than the New Mexico program;

CSMC Rules 80-11-20(b)(1)(ii) and (3), concerning the review criteria under which the regulatory authority would find that a surface coal mining and reclamation permit had been improvidently issued, by including situations where (1) the permit was issued on the presumption that a notice of violation was in the process of being corrected, but a cessation order subsequently was issued, and (2) the permittee was linked to the violation, penalty, or fee through ownership or control under the violations review criteria of the regulatory program at the time the permit was issued, an ownership or control link between the permittee and the person responsible for the violation, penalty, or fee still exists, or where the link has been severed, the permittee continues to be responsible for the violation, penalty, or fee.

CSMC Rules 80-11-20(c) and (e) by adding (1) provisions identifying when the provisions for challenging ownership or control links and the status of violations at Rule 80-11-34 apply to determinations regarding improvidently issued permits and (2) a provision which establishes public notice and administrative review procedures that are applicable when the regulatory authority decides to suspend or rescind a permit;

CSMC Rules 80-11-24(a) and (c) by specifying new timeframes and review procedures applicable to automatic permit suspension and rescission;

CSMC Rule 80-11-29(d), concerning the permit condition which identifies the permittee's responsibility upon receiving a cessation order issued by New Mexico, by including cessation orders issued in accordance with the Federal regulations at 30 CFR 843.11;

CSMC Rules 80-11-31 through 80-11-34 by adding new provisions concerning verification of ownership or control application information, review of ownership or control and violation information, procedures for challenging ownership or control links shown in the applicant violator system (AVS), and standards for challenging ownership or control links and the status of violations;

CSMC Rules 80-19-15(c)(2) through (c)(4), concerning performance standards for coal exploration, by applying the reclamation requirements to all roads or other transportation facilities used in exploration activities;

CSMC Rules 80-20-41(e)(3)(i), 80-20-82(a)(4), 80-20-89(d)(2), concerning respectively, general requirements for the hydrologic balance, site inspections for coal processing waste banks, and disposal of noncoal wastes, by referencing, respectively, (1) "Rule 80-20-41(e)(2)(i)," (2) "Part 9," and (3) the New Mexico Water Quality Control Commission regulations at "Section 3-109 D."

CSMC Rule 80-20-49(e), concerning performance standards for permanent and temporary impoundments, by adding the requirement that certain existing design specifications apply to structures that meet the U.S. Soil Conservation Service Class B or C criteria for dams in this agency's Technical Release No. 60 (210-VI-TR60, October 1985), "Earth Dams and Reservoirs;"

CSMC Rule 80-20-93(a), concerning design and construction of coal processing waste dams and embankments, by removing the provision at paragraph (a)(1) which required that the design freeboard between the lowest point on the embankment crest and the maximum water elevation be at least 3 feet;

CSMC Rules 80-20-97 (b) and (c), concerning performance standards for protection of fish, wildlife, and related environmental values, by (1) referring to "surface coal mining operations or reclamation" in order to extend the protection of threatened and endangered species to areas disturbed by the conduct of reclamation in addition to surface coal mining operations and surface impacts of underground mining operations and (2) requiring protection of endangered or threatened species

listed by the New Mexico Game and Fish Department;

CSMC Rule 80-20-116(b) (1) and (6), concerning revegetation success standards, by (1) providing for approval of normal husbandry practices that would not restart the liability period, (2) removing the unconditional allowance for interseeding and supplemental fertilization in the first 2 or 7 years of the applicable 5- or 10-year liability period, (3) recodifying Rules 80-20-116(b)(1) (i) and (ii) as Rules 80-20-116(b) (2) and (3) with editorial revisions; and (4) recodifying Rules 80-20-116(b) (2) and (3) as Rules 80-20-116(b) (4) and (5), and revising paragraph (5) to provide that revegetated "shrubland stocking" may be considered successful when it is at least 90 percent of the technical standard developed using historic records;

CSMC Rule 80-20-117, concerning revegetation success standards for tree and shrub stocking, by (1) requiring that the tree and shrub stocking success standards apply to reclaimed lands developed for use as fish and wildlife habitat, recreation, and shelterbelts, in addition to forestry, and (2) including the requirement that trees and shrubs used in determining the success of stocking and the adequacy of the plant arrangement shall have the utility for the approved postmining land use;

CSMC Rule 80-20-117, concerning revegetation success standards for tree and shrub stocking, by recodifying Rule 80-20-117(b), concerning areas where commercial forest land is the approved postmining land use, as Rule 80-20-117(c) and (1) clarifying at paragraph (c)(1) that the success standard for stocking of trees and shrubs will be determined by the State Forester "on a permit-specific basis," and (2) referencing in, respectively, paragraphs (c)(3) and (c)(4), the procedures for determining the number of trees or shrubs and the ground cover at "Sections 20-116(b)(5)(iv) and 20-117(b)," and the requirements for successful stocking of trees and shrubs and groundcover in "Sections 20-116 and 20-117;"

CSMC Rule 80-20-117, concerning revegetation success standards for tree and shrub stocking, by recodifying Rule 80-20-117(c), concerning performance standards for areas where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land, as Rule 80-20-117(d), and, at paragraph (d)(2), by (1) referencing "Sections 20-116(b) and (5)(iv) and Section 20-117(d)(1)" for the success standards for revegetated stocking of trees, half-shrubs, shrubs, and ground cover, and

(2) removing the requirement that stocking of live woody plants shall be equal to or greater than 90 percent of the stocking of woody plants of the same life forms ascertained pursuant to Section 20-116(a);

CSMC Rule 80-20-117(d)(3)(i), concerning the required demonstration for success of revegetated woody plants required upon expiration of the 5 or 10 year responsibility period and at the time of request for bond release, by (1) referencing "Section 20-117(b)" for the success standards for stocking, (2) requiring 90, rather than 80, percent statistical confidence when demonstrating success, and (3) providing for the "use of an appropriate (parametric or nonparametric) one-tail test with a 10 percent alpha error" when determining the statistical confidence of the measurements of successful stocking;

CSMC Rules 80-20-121 (a) through (d) by providing new performance standards for subsidence control;

CSMC Rules 80-20-124 (a) through (d) by (1) providing new performance standards for the measures to be taken to mitigate or remedy subsidence-related material damage (regardless of the liability, or lack thereof, under other State laws) to the land and subsidence-related material damage incurred after October 24, 1992, by occupied residential dwellings, structures related thereto, and noncommercial buildings, and (2) requiring the replacement of any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption;

CSMC Rules 80-20-125 (a) through (e) by providing new performance standards concerning the rebuttable presumption of causation for damage resulting from subsidence;

CSMC Rules 80-20-127 by providing a new performance standard that requires the permittee to obtain additional performance bond in the amount of the estimated cost of the repairs if the permittee will be repairing, or in the amount of the decrease in value if the permittee will be compensating the owner, or in the amount of the estimated cost to replace the protected water supply if the permittee will be replacing the water supply, until the repair, compensation, or replacement is completed, unless repair, compensation, or replacement is completed within 90 days of the occurrence of damage; and

CSMC Rule 80-20-150, concerning roads, by removing the provision at paragraph (c), which prohibited vehicular use of fords or low water crossings by ancillary roads at any time there is a visible surface flow.

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 New Mexico program.

1. 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 Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t., on February 16, 1996. 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**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify 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 testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify 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

1. 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).

2. 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 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.

3. 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 of 1969 (42 U.S.C. 4332(2)(C)).

4. 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.*).

5. 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 that 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 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 24, 1996.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 96-1989 Filed 1-31-96; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 943

[SPATS No. TX-029-FOR]

Texas Regulatory Program

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

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

SUMMARY: OSM is announcing receipt of a proposed amendment to the Texas regulatory program (hereinafter the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Texas Coal Mining Regulations pertaining to road systems, support facilities, and utility installations. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations and incorporate the additional flexibility afforded by the revised Federal regulations.

DATES: Written comments must be received by 4:00 p.m., c.s.t., March 4, 1996. If requested, a public hearing on the proposed amendment will be held on February 26, 1996. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t., on February 16, 1996.

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

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

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.

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

FOR FURTHER INFORMATION CONTACT: 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 can be found at 30 CFR 943.10, 943.15, and 943.16.

II. Description of the Proposed Amendment

By letter dated December 20, 1995 (Administrative Record No. TX-608), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to a February 21, 1990, letter (Administrative Record No. TX-476) that OSM sent to Texas in accordance with 30 CFR 732.17(c) and at its own initiative. The provisions of the Texas Coal Mining Regulations (TCMR) that Texas proposes to amend are TCMR 708.008(71), definition of road; 780.154, road systems and support facilities; 816.400-403, roads, primary roads, utility installations, and support facilities (surface); 784.198, road systems and support facilities

(underground); 817-569-572, roads, primary roads, utility installation, and support facilities (underground); 815.327, coal exploration performance standards; and 827.651, coal processing plants performance standards.

1. TCMR 701.008(71), Definition of Road.

Texas proposes to revise its definition of road to read as follows.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal-hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

2. TCMR 780.154 (Surface Mining) and 784.198 (Underground Mining), Road Systems and Support Facilities.

Texas proposes to remove its current provisions at TCMR 780.154 for surface mining operations and TCMR 784.198 for underground mining operations, entitled Transportation Facilities, and replace them with the following provisions, entitled Road Systems and Support Facilities. Significant differences between the surface and underground regulations are shown with the underground language in brackets.

(a) Plans and drawings. Each applicant for a surface [an 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 Section 816.400(d)(1) [817.569(d)(1)] of this chapter;

(3) Contain the drawings and specifications for each proposed ford of perennial or intermittent streams that is