

PART 620—DISCLOSURE TO SHAREHOLDERS

35. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa-11); sec. 424 of Pub. L. 100-233, 101 Stat. 1568, 1656.

Subpart B—Annual Report to Shareholders

36. Section 620.5 is amended by revising paragraphs (d)(1)(ix) and (g)(4)(ii) to read as follows:

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(d) * * *

(1) * * *

(ix) The statutory and regulatory restriction regarding retirement of stock and distribution of earnings pursuant to § 615.5215, and any requirements to add capital under a plan approved by the Farm Credit Administration pursuant to §§ 615.5330, 615.5335, 615.5351, or 615.5357.

* * * * *

(g) * * *

(4) * * *

(ii) Describe any material trends or changes in the mix and cost of debt and capital resources. The discussion shall consider changes in permanent capital, core and total surplus, and net collateral requirements, debt, and any off-balance-sheet financing arrangements.

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PART 626—NONDISCRIMINATION IN LENDING

37. The authority citation for part 626 is added to read as follows:

Authority: Secs. 1.5, 2.2, 2.12, 3.1, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2073, 2093, 2122, 2243, 2252); 42 U.S.C. 3601 *et seq.*; 15 U.S.C. 1691 *et seq.*; 12 CFR 202, 24 CFR 100, 109, 110.

§ 626.6025 [Amended]

38. Newly designated § 626.6025 is amended by removing the reference “§ 613.3160(b)” and adding in its place, the reference “§ 626.6020(b)” in paragraph (b).

* * * * *

Dated: January 23, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97-2058 Filed 1-29-97; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX-025-FOR]

Texas Regulatory Program and Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, a proposed amendment to the Texas regulatory program and abandoned mine land reclamation plan (hereinafter referred to as the “Texas program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas is proposing to recodify the Texas Surface Coal Mining and Reclamation Act. Texas intends to reclassify and rearrange its statutes into a format that will accommodate further expansion of the law and to eliminate repealed, invalid, and duplicated provisions in order to make the statutes more understandable and usable without altering the meaning or effect of the law.

EFFECTIVE DATE: January 30, 1997.

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 regulatory 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, and 943.16.

On June 23, 1980, the Secretary of the Interior approved the Texas abandoned mine plan as submitted on April 24, 1980, and amended on May 30, and

June 2 and 4, 1980. Information pertaining to the general background, revisions, and amendments to the initial plan submission, as well as the Secretary’s findings and the disposition of comments can be found in the June 23, 1980, Federal Register (45 FR 41940). Subsequent actions concerning plan amendments can be found at 30 CFR 943.25.

II. Submission of the Proposed Amendment

By letter dated August 24, 1995 (Administrative Record No. TX-594), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. Texas proposed to recodify the Texas Surface Coal Mining and Reclamation Act (TSCMRA) as enacted by Senate Bill (S.B.) 959 (Section 12.02), 74th Texas Legislature (1995). S.B. 959 codified, with revisions, the TSCMRA at Chapter 134 of Title 4, Natural Resources Code, and it repealed Article 5920-11, Vernon’s Texas Civil Statutes with exceptions, including Sections 11 (b), (c), and (d).

OSM announced receipt of the proposed amendment in the October 16, 1995, Federal Register (60 FR 53569), 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 November 15, 1995.

During its review of the amendment, OSM identified concerns relating to: (1) A definition for “permit applicant” or “applicant” [Article 5920-11, Section 3(2)]; (2) repeal of the exemption for surface coal mining operations affecting two acres or less [Article 5920-11, Section 35(2) and Chapter 134, Section 134.005(a)(2), as recodified]; (3) coal exploration operations being subject to penalties for violating statutes and/or regulations [Article 5920-11, Section 27(c) and Chapter 134, Section 134.014, as recodified]; (4) the determination date on which surface coal mining operations are exempted from being subject to designations of areas unsuitable for mining [Article 5920-11, Section 33(e) and Chapter 134, Section 134.022, as recodified]; (5) notices of violations that permit applicants are required to disclose when applying for a coal mining permit [Article 5920-11, Section 21(c) and Chapter 134, Section 134.068, as recodified]; (6) performance standards regarding the elimination of all highwalls and spoil piles [Article 5920-11, Section 23(b)(3) and Chapter 134, Section 134.092(a)(2), as recodified]; (7) violations not creating

imminent danger or causing imminent harm [Article 5920–11, Section 32(b) and Chapter 134, Section 134.162(a)(2)(A), as recodified]; (8) the termination of cessation orders [Article 5920–11, Section 32(a) and Chapter 134, Section 134.163(1), as recodified]; (9) the payment of penalties [Article 5920–11, Section 30(c) and Chapter 134, Section 134.176, as recodified]; and (10) mining by government agencies [Article 5920–11, Section 34(b)]. OSM discussed these concerns with Texas by telephone on February 9, and 27, 1996, and August 19, 1996 (Administrative Record Nos. TX–594.06, TX–594.07, and TX–594.12, respectively); by telefax dated February 28, 1996 (Administrative Record No. TX–594.09); and by letter dated July 10, 1996 (Administrative Record No. TX–594.12).

By letters dated April 2 and July 30, 1996 (Administrative Record Nos. TX–594.08 and TX–594.11, respectively), Texas responded to OSM's concerns by submitting additional explanatory information to its proposed program amendment.

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.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

The previously approved provisions at Article 5920–11, Vernon's Texas Civil Statutes are shown in brackets. When applicable.

A. Nonsubstantive Recodification of Texas's Statutes

With the exceptions discussed in the findings below, the proposed recodification of the Texas statutes is nonsubstantive in nature, and the Director finds that the recodification does not make these statutes less stringent than SMCRA.

B. Revisions to Texas' Statutes With no Corresponding Federal Provisions

1. Short Title

At Chapter 134, Section 134.001 [Article 5920–11, Section 1], Texas proposes to change the reference for the Texas Surface Coal Mining and Reclamation Act (TSCMRA) from "Act" to "chapter" throughout the recodified statutes. The Director finds that this change is not inconsistent with SMCRA because Texas proposes only a change

in the term used to describe the statutes that govern coal mining in the State.

2. Definitions

a. At Chapter 134, Section 134.004(1), Texas proposes to add a new definition, "Affected person," which means "a person having an interest that is or may be affected." Accordingly, all references to "a person having an interest that is or may be affected" are proposed to be changed to "affected person" throughout the recodified statutes. The Director finds that the proposal to add existing language to the new definition and to refer to the defined term is not inconsistent with SMCRA and will not render the Texas program less stringent than SMCRA or less effective than the Federal regulations.

b. Texas proposes to change the definition for "Secretary" at Chapter 134, Section 134.004(16) [Article 5902–11, Section 3(19)] to "Secretary of Agriculture," which means the secretary of the United States Department of Agriculture. Accordingly, all references to "Secretary" are proposed to be changed to "Secretary of Agriculture" throughout the recodified statutes. The Director finds that the definition for "Secretary of Agriculture" is substantively identical to that for "Secretary" which is previously approved language.

3. Jurisdiction of Commission over Surface Coal, Iron Ore, and Iron Ore Gravel Mining and Reclamation Operations

Texas proposes to add provisions for jurisdiction of the commission over iron ore and iron ore gravel mining and reclamation operations. Chapter 134, Section 134.012(a)(2) [Article 5902–11, Section 4(b)], would provide for exclusive jurisdiction over iron ore and iron ore gravel mining and reclamation operations in the State. Chapter 134, Section 134.012(b) [Article 5902–11, Section 4(b)] would provide for Chapter 134, Natural Resources Code, to govern these operations to the extent it can be made applicable. Chapter 134, Section 134.012(c) [Article 5902–11, Section 4(b)(1) and (2)] would provide exceptions for iron ore and iron ore gravel mining and reclamation activities in progress on or before September 1, 1985, or for iron ore and iron ore gravel mining operations and reclamation activities that are conducted solely on real property owned in fee simple by the person authorizing the operations or reclamation activities and that is confined to a single, contiguous tract of land if the activities are conducted in an area not larger than 20 acres, the depth of mining operations is restricted to 30

inches or less, and the fee simple owner receives surface damages. Chapter 134, Section 134.188 [Article 5902–11, Section 4(c)] would provide that it is a defense to a civil or criminal penalty under Chapter 134 that a person allegedly conducting an iron ore or iron ore gravel mining and reclamation operation in violation in Chapter 134 has a written general warranty or ownership of land, separate from any lease, from the person authorizing the operation. There are not counterpart provisions in SMCRA or the Federal regulations pertaining to iron ore or iron ore gravel mining and reclamation. However, the Director finds that the proposed provisions do not make the Texas program less stringent than SMCRA or less effective than the Federal regulations.

C. Revisions to Texas' Statutes That Are Substantively Identical to the Corresponding Federal Provisions

1. Definitions

a. At Chapter 134, Section 134.004(7), Texas proposes to add a new definition, "Federal Act," which is defined as "the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. Section 1201 et seq.)." Consequently, all references to SMCRA are proposed to be changed to "Federal Act" throughout the recodified statutes. The proposed definition is substantively the same as the Federal definition of "Act" at 30 CFR 700.5. Therefore, the Director finds that defining and referring the SMCRA as the "Federal Act" is not inconsistent with SMCRA or the Federal regulations, which define and reference SMCRA as the "Act."

b. At Chapter 134, Section 134.004(13) [Article 5920–11, Section 3(13)], Texas proposes to change the term "permittee" to "permit holder," with no change in the definition. Accordingly, all references to "permittee" are proposed to be changed to "permit holder" throughout the recodified statutes. The Director finds that the definition for "permit holder" is substantively identical to that previously approved for "permittee" and the proposed change in terminology will not make the definition less stringent than the definition for "permittee" at section 701(18) of SMCRA.

c. At Chapter 134, Section 134.004(17), Texas proposes to add the definition, "Secretary of the interior," as meaning "the Secretary of the United States Department of the Interior." Accordingly, all references to "the Secretary of the United States Department of the Interior" are

proposed to be changed to "Secretary of the interior" throughout the recodified statutes. The Director finds that this definition is substantively identical to the definition of "Secretary" found at section 701(23) of SMCRA and is, therefore, approving its addition.

d. At Article 5920-11, Section 3(7), Texas proposes to remove the definition for "Eligible land and water" and to recodify its substantively identical provisions at Chapter 134, Section 134.142, Eligibility of Land and Water. The Director finds that removing these provisions from the general definition section of the Texas statutes and adding them to the abandoned mine reclamation section is consistent with section 404 of SMCRA.

D. Revisions to Texas' Statutes That Are Not Substantively Identical to the Corresponding Federal Provisions

1. Definitions

a. At Article 5920-11, Section 3(2), Texas proposes to delete the definition for "applicant" and not include the definition in its recodified statutes. The Director is approving the removal of this definition because Texas proposed to add a definition for "applicant" to the Texas Coal Mining Regulations in a revised amendment submittal dated July 31, 1996 (Administrative Record No. TX-621).

b. At Chapter 134, Section 134.004(3) [Article 5920-11, Section 3(3)], Texas proposes to remove, from the definition of "Approximate Original Contour," the language "and water impoundments may be permitted if the commission determines that they are in compliance with Section 23(b)(8) of this Act." The Federal definition for "approximate original contour" at section 701(2) of SMCRA allows regulatory authorities to permit water impoundments if they determine that the impoundments are in compliance with section 515(b)(8) of SMCRA. Since the Texas program continues to allow permanent water impoundments to be permitted under Chapter 134 if they meet the performance standards of Section 134.092(8), which is a counterpart to section 515(b)(8) of SMCRA, the Director finds that the change to the definition does not render the Texas program less stringent than SMCRA.

c. At Article 5920-11, Section 3(15), Texas proposes to remove the following sentence from the definition of prime farmland: "The slope of the land can be a factor in determining whether a given soil is outside the purview of prime farmland and the commission may thus make a negative determination based upon soil type and slope," and to

recodify this sentence at Chapter 134, Section 134.032, Determination Regarding Prime Farmland. Texas also proposes to recodify the new definition for prime farmland at Chapter 134, Section 134.004(15). The Director finds that the recodified sections contain previously approved language and is approving them.

2. Exemptions

a. At Chapter 134, Section 134.005(a)(2) [Article 5920-11, Section 35(2)], Texas proposes to recodify a provision that states that, "This chapter does not apply to the extraction of coal: * * * for commercial purposes if the surface mining operation affects two acres or less." On May 7, 1987, section 528(2) of SMCRA was amended to remove the exemption on surface coal mining operations affecting two acres or less {[101 STAT. 300] SMCRA Title II—Two-Acre Exemption, Section 201 Repeal of Exemption (a)(2)}. In addition, {[101 STAT. 301] Title II, Section 201(d), Effect on State Law, rendered ineffective any provision of a State law, or of a State regulation that allowed this exemption. Therefore, the Director finds that keeping this exemption in the Texas statutes does not render the statutes less stringent than SMCRA. Nevertheless, in order to prevent confusion as to whether or not this exemption is allowable, and as a housekeeping measure, Texas should remove this exemption from its statutes.

In an enclosure to a letter dated April 2, 1996 (Administrative Record No. TX-594.08), Texas agreed that it was appropriate to repeal this exemption.

b. At Article 5920-11, Section 35(4), Texas proposes to remove an exemption, from the provisions of TSCMRA, regarding the extraction of coal incidental to the extraction of other minerals. In the exemption that is proposed to be removed, the extracted coal cannot exceed 16 $\frac{2}{3}$ percent of the total tonnage of coal and other minerals removed annually for purposes of commercial use or sale or coal explorations subject to TSCMRA. The removed exemption is a duplication of language in Texas' definition of "Surface coal mining operations" at Chapter 134, Section 134.004(19) [Article 5920-11, Section 3(17)]. Therefore, the Director finds that the proposal to remove this exemption does not make the Texas statutes less stringent than SMCRA.

3. Coal Exploration Operations

Texas proposes not to recodify the provision at Article 5920-11, Section 27(c) that provides for penalties for any person who conducts any coal

exploration operations, that substantially disturb the natural land surface, in violation of Article 5920-11, Section 27, Coal Exploration Permits, or the rules issued pursuant to Section 27. In the recodified statutes at Chapter 134, Section 134.014, Coal Exploration Operations, the proposed amendment states that, "A person who conducts coal exploration operations that substantially disturb the natural land surface shall comply with commission rules adopted to govern those operations." Also, in the recodified statute at Chapter 134, Section 134.174, Administrative Penalty for Violation of Permit Condition or this Chapter, Texas proposes that, "The commission may assess an administrative penalty against a person who violates a permit condition or this chapter." The Director finds that the decision of the State not to recodify Article 5920-11, Section 27(c) will not render this portion of the State statutes less stringent than SMCRA because the provisions for administrative penalties at recodified Chapter 134, Section 134.174 apply to violations of permit conditions and/or violations of the statutes governing the Texas surface coal mining program.

4. Rules Regarding Monitoring, Reporting, and Inspections

At Chapter 134, Section 134.030(2) [Article 5920-11, Section 29(d)], Texas proposes to add a provision that would prohibit it from disclosing confidential information, as discussed under Chapter 134, Section 134.031, when making public all inspection and monitoring reports and other records and reports required to be kept under Chapter 134 and rules adopted under Chapter 134. The confidential information discussed under Chapter 134, Section 134.031 refers only to the analysis of the chemical and physical properties of the coal, except information regarding the mineral and chemical content that is potentially toxic in the environment. The Director finds that this provision is no less stringent than section 507(b)(17) of SMCRA and that it adds clarification that confidential information will not be disclosed.

5. Contents of Permit Application

At Chapter 134, Section 134.052(a)(18), Texas proposes to add a provision that would require the submittal of a schedule listing any notices of violations, incurred by the applicant at coal mining operations, as part of the permit application. Section 510(c) of SMCRA, Permit Approval and Denial, requires that the permit applicant file, with his permit application, a schedule of notices of

violations. Therefore, the Director finds the proposed provision is consistent with SMCRA.

6. Application Fees

At Chapter 143, Section 134.054(b) [Article 5920-11, Section 18(b)], Texas proposes to change its initial application fee for a permit to a minimum of \$5,000. In the previous Texas statutes there was no minimum application fee, but the maximum fee could not exceed \$1,000. Texas also proposes to add requirements for a minimum application fee of \$3,000 for renewal of a permit, and a minimum application fee of \$500 for revision of a permit. At Chapter 134, Section 134.054(c) [Article 5920-11, Section 18(b)], Texas proposes to allow initial application fees and renewal application fees to be paid in equal annual installments during the term of the permit. Also, Texas proposes to remove the provision at Article 5920-11, Section 18(d), as amended, that requires fees to be deposited in the State treasury and credited to the general revenue fund. The Director finds that the Texas proposals regarding a fee structure for initial, renewal, and revision permit applications are no less stringent than section 507(a) of SMCRA which allows application fees to be determined by the regulatory authority. Also, the proposal to allow initial and renewal application fees to be paid in equal installments during the term of the permit is in accordance with section 507(a) of SMCRA which allows the regulatory authority to develop procedures to enable the cost of fees to be paid over the term of the permit. The proposal to stop requiring fees to be deposited in the State treasury and credited to the general revenue fund is not inconsistent with SMCRA.

7. Annual Fee

At Chapter 134, Section 134.055 [Article 5920-11, Section 18(c)], Texas proposes to add a new provision that requires a permit holder to pay the commission an annual fee, in an amount determined by the commission, for each acre of land in the permit area on which the permit holder actually conducted operations for removing coal during the year. The fee is due by March 15 of the year following the year of the removal operations. The minimum fee is \$120 per acre. Section 507(a) of SMCRA provides that an application for a surface coal mining and reclamation permit shall be accompanied by a fee determined by the regulatory authority. Such fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing

the permit. The regulatory authority may develop procedures to allow the fee to be paid over the term of the permit. The Director finds that the income will be less than the anticipated cost of reviewing, administering, and enforcing permits under the Texas program. Therefore, the proposed provision pertaining to an annual fee does not render the Texas statutes less stringent than section 507(a) of SMCRA.

8. Public Inspection of Application

Texas proposes to amend Chapter 134, Section 134.057(b) [Article 5920-11, Section 17(b)], to include a provision that specifies that subsection (b) does not apply to records, reports, inspection materials, or information that is confidential under Chapter 134, Section 134.031. The Director finds that the inclusion of this provision only adds clarification that confidential information will not be disclosed and does not render the State statute less stringent than section 507(b)(17) of SMCRA.

9. Notice by Applicant

At Chapter 134, Section 134.058(2) [Article 5920-11, Section 20(a)], Texas proposes to add a new provision that specifies that the advertisement published in the newspaper of general circulation in the locality of the proposed mining operation state that the application is available for public inspection at the county courthouse of the county in which the property lies. The Director finds that the addition of this provision is consistent with section 507(b)(6) of SMCRA, which requires the advertisement to include the location of where the application is available for public inspection.

10. Lien

Previously approved Article 5920-11, Section 9(a) concerns past mining practices on privately owned land and makes reference to the completion of projects “* * * to restore, reclaim, abate, control, or prevent the adverse effects * * *” on these lands. At Chapter 134, Section 134.150(A), Texas proposes to remove the words “restore,” “abate,” “control,” and “prevent,” and to use only the word “reclaim.” The Director finds that the omitted words or variations thereof are included in Chapter 134, Section 134.150(a)(2) and when Section 134.150, as recodified, is read in its entirety, the proposed revision is no less stringent than section 408(a) of SMCRA.

11. Prohibition on Surface Coal Mining in Certain Areas

At Article 5920-11, Section 33(e), pertaining to areas unsuitable for surface coal mining, Texas provided that after May 9, 1979, and subject to valid existing rights, no surface coal mining operation except those that existed on August 3, 1977, shall be permitted to mine in areas designated as unsuitable for mining. At Chapter 134, Section 134.022(c), as recodified, Texas proposes to extend the date for valid existing rights to May 9, 1979, and to provide that this section does not affect surface coal mining operations that existed on August 3, 1977. Section 522(e) of SMCRA provides that after August 3, 1977, and subject to valid existing rights, no surface coal mining operations except those that existed on August 3, 1977, shall be permitted to mine in areas designated as unsuitable for mining. Therefore, the Director finds that Texas is requiring a less stringent provision than SMCRA and is not approving this proposed amendment. The Director is requiring Texas to remove this unapproved provision from its recodified statutes and to restore its previously approved statute language. Texas is also directed to notify OSM when the previously approved language has been restored. It is the understanding of the Director that if any provisions of Chapter 134, Natural Resources Code are disapproved by OSM, the provisions of the former TSCMRA from which the disapproved provisions were derived are continued in effect for the purposes of those provisions until September 1, 1997.

In addition, it is the Director's understanding that Texas may amend Section 134.022(c) to refer to “rights existing on August 3, 1977,” rather than “rights existing on May 9, 1979,” so as to conform the Texas statute with SMCRA (Administrative Record No. TX-594.08).

12. Schedule of Notices of Violations

At Chapter 134, Section 134.068 [Article 5920-11, Section 21(c)], Texas proposes to remove the requirement that the applicant file a schedule listing any and all notices of violations (NOV's) of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant. Instead, Texas proposes that the applicant file a schedule that lists only NOV's of the proposed recodified Chapter 134 or of a law, rule, or regulation of the United States or Texas pertaining to air or water environmental protection incurred by the applicant in connection with a

surface coal mining operation in Texas during the three years before the application date. Because section 510(c) of SMCRA requires that the schedule list any and all NOV's of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with "any" surface coal mining operation, and not just those incurred at operations located in Texas, the Director finds the proposed statute amendment is less stringent than SMCRA and is not approving it.

However, Texas corrected this deficiency by revising Article 5920-11, Section 21(c) in an amendment submitted on August 30, 1995 (Administrative Record No. TX-595), which was approved in a separate Federal Register notice dated June 18, 1996 (61 FR 30805). This revision was enacted by Chapter 272, Senate Bill (S.B.) 271 during the same legislative session that S.B. 959 was enacted. In the amendment submitted on August 30, 1995 (Administrative Record No. TX-595), Texas provided a legal opinion of the effect of the enactments of S.B. 271 and S.B. 959. The opinion stated that the S.B. 271 amendments survive the repealer provision of S.B. 959 and are preserved as part of Chapter 134 of the Natural Resources Code.

13. Performance Standards

At Article 5920-11, Section 23(b)(3), Texas requires coal operators to "* * * restore the approximate original contour of the land with all highwalls, spoils piles, and depressions eliminated, * * *" At recodified Chapter 134, Section 134.092(a)(2), Texas proposes to remove the words "highwalls" and "spoil piles" from the requirement to restore the approximate original contour. The Director finds that the removal of the words "highwalls" and "spoil piles" from the requirement to restore the approximate original contour does not make this portion of the Texas statute less stringent than section 515(b)(3) of SMCRA because at recodified Chapter 134, Section 134.004(3), the definition for "approximate original contour" includes the elimination of all highwalls and spoils piles.

14. Violation not Creating Imminent Danger or Causing Imminent Harm

At Chapter 134, Section 134.162(a) [Article 5920-11, Section 32(b)], Texas requires the commission or its authorized representative to issue a notice, for abating a violation, to the permit holder if the violation does not create an imminent danger to the health

or safety of the public "and" is not causing or reasonably expected to cause significant, imminent environmental harm to land, air, or water resources. Section 521(a)(3) of SMCRA requires issuance of a notice if the violation does not create imminent danger to the health or safety of the public "or" cannot be reasonably expected to cause significant, imminent environmental harm to land, air or water resources. However, in a letter dated April 2, 1996 (Administrative Record No. TX-594.08), Texas indicated that it had no authority to issue a notice of violation if the violation creates an imminent danger or imminent environmental harm. Texas stated that, "If the violation meets either of those criteria, the commission is required to "immediately" order the cessation of operations." Thus, Texas' interpretation of the intent of Chapter 134, Section 134.162(a) is consistent with Section 521(a)(3) of SMCRA. It is also noted that the Texas Coal Mining Regulations (TCMR) 843.681(a) require an authorized representative of the commission to issue a notice of violation to any permit holder having a violation that does not create imminent danger "or" imminent environmental harm. Therefore, the Director finds that the intent and implementation of the proposed, recodified statute will be consistent with SMCRA and the Federal regulations and he is approving the recodification.

15. Term of Cessation Order

The currently approved Texas statutes at Article 5920-11, Sections 32 (a) and (b) set forth requirements under which a cessation order issued for two different classifications of violations can be terminated. For a cessation order that is issued when a violation "creates" an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, "* * * The cessation order shall remain in effect until the Commission or its authorized representative determines that the condition, practice, or violation has been abated * * *" For a cessation order that is issued when a violation "does not create" an imminent danger to the health or safety of the public or is not causing or cannot be reasonably expected to cause significant, imminent environmental harm to land, air, or water resources, "* * * The cessation order shall remain in effect until the Commission or its authorized representative determines that the violation has been abated * * *" The requirements of section 521(a)(2) of SMCRA are substantively the same as

the currently approved Texas statutes. In the proposed recodified statute at Chapter 134, Section 134.163, Texas proposes that a cessation order for both classifications of violations; i.e., those that "create" imminent danger or significant, imminent environmental harm and those that "do not create" imminent danger or significant, imminent environmental harm will remain in effect only until the Commission determines that the violation has been abated. However, Texas' implementing regulation at TCMR 843.680(c) requires a cessation order to remain in effect until the condition, practice or violation has been abated. Therefore, the Director finds that the implementation of the proposed, recodified statute will be consistent with SMCRA and the Federal regulations and he is approving the recodification.

It is the Director's understanding that Texas may amend Chapter 134, Section 134.163 to refer to "the condition, practice, or violation" in order to more closely track the language of SMCRA and the Texas regulation (Administrative Record No. TX-594.08).

16. Payment of Penalty; Refund

Texas proposes to amend its statute at recodified Chapter 134, Section 134.176 [Article 5920-11, Section 30(c)] by removing the provision which states that failure to forward money to the Commission within 30 days of notification of the proposed penalty shall result in a waiver of all legal rights to contest the violation or the amount of the penalty. Moreover, Texas has indicated an intention to interpret its statute such that no prepayment of penalty is required. Section 518(c) of SMCRA contains the procedural requirement that failure to forward the proposed penalty within 30 days results in a waiver of all legal rights to contest the violation or the amount of the penalty. Section 518(i) of SMCRA requires that the civil penalty provisions of a State program contain the same or similar procedural requirements relating thereto as does SMCRA. Since SMCRA has a prepayment requirement and consequences for failure to prepay, and Texas' recodified statute does not, the proposed amendment to the Texas Act is not consistent with SMCRA. Therefore, the Director finds that Chapter 134, Section 134.176 is less stringent than Section 518(c) of SMCRA and is not approving the proposed removal of the provision discussed above. The Director is requiring Texas to restore this previously approved statute language and to notify OSM when the previously approved language has been

restored. It is the understanding of the Director that if any provisions of Chapter 134, Natural Resources Code are disapproved by OSM, the provisions of the former TSCMRA from which the disapproved provisions were derived are continued in effect for the purposes of those provisions until September 1, 1997.

It should be noted that OSM has considered an amendment to 30 CFR 845.19 which would require prepayment only with respect to proceedings that occur after an administrative law judge has determined that a penalty is lawfully due. OSM has deferred final rulemaking on this issue. However, OSM has approved an amendment to the Kentucky State law regulating surface coal mining which allows for a waiver of the prepayment requirement under very limited circumstances. See 58 FR 42001, August 6, 1993. Texas may amend its program to include a limited waiver provision similar to the one approved for Kentucky.

17. Mining by Governmental Agencies; Mining on Government Land

Texas proposes not to recodify Article 5920-11, Section 34(b) which requires any agency, unit, or instrumentality of Federal, State, or local government, including any publicly owned utility or publicly owned corporation of Federal, State, or local government that proposes to engage in surface coal mining operations that are subject to the requirements of TSCMRA to comply with all provisions of TSCMRA. The Director finds that the removal of this provision does not render the Texas program less stringent than section 524 of SMCRA and is approving it because the Texas Act requires all surface coal mining operations to be permitted, and, therefore, every permit has a permit holder. The State's definition for permit holder is "a person holding a permit to conduct surface coal mining and reclamation operations or underground mining activities * * *" (Chapter 134, Section 134.004(13), as recodified). Texas further defines "person" to mean "an individual, partnership, society, joint-stock company, firm, company, corporation, business organization, governmental agency, or any organization or association of citizens" (Chapter 134, Section 134.004(14), as recodified). The definition for "person" includes "governmental agency," and because it does, the Texas statutes include a provision that government entities engaging in surface coal mining operations are subject to the requirements of TSCMRA.

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. OSM received only one public comment from the Texas Utilities Services, Incorporated, by letter dated November 15, 1995 (Administrative Record No. TX-594-05), thanking OSM for the opportunity to comment. No actual comments were offered on the proposed amendment. No one requested an opportunity to speak at a public hearing, therefore, no hearing was held.

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.

By a letter dated September 18, 1995 (Administrative Record No. TX-594.02), OSM received a response from the Department of the Army, United States Army Corps of Engineers, Engineering Division stating that the proposed changes were satisfactory.

By letter dated October 2, 1995 (Administrative Record No. TX-594.04), OSM received comments on the proposed program amendment from the United States Department of Agriculture, Natural Resources Conservation Service (NRCS). These comments concerned the definition Texas proposed for prime farmland at Chapter 134, Section 134.004(15), as recodified. The NRCS stated that the Texas State Office of the Natural Resources Conservation Service in cooperation with the Texas State Soil and Water Conservation Board, and the Texas Agricultural Extension Service developed guidelines to insure consistent interpretation of the prime farmland criteria prescribed by the United States Secretary of Agriculture and published in the Federal Register. The NRCS suggested that the State may wish to reference the "Texas" criteria, in its definition for prime farmland, as well as the Federal criteria that is published in the Federal Register. Because the Director considers the proposed definition for prime farmland to be a nonsubstantive recodification of a previously approved definition, it is unnecessary for Texas to reference the "Texas" criteria in its definition for prime farmland.

The NRCS had other comment on the proposed amendment at Chapter 134, Section 134.032, Determination Regarding Prime Farmland, as recodified. The NRCS stated that the

sentence, "The commission may determine that land is not prime farmland because of its soil type or slope," is very open-ended and does not refer back to the definition of prime farmland at Chapter 134, Section 134.004(15), and that Texas needs to provide more guidance regarding determination of prime farmland. The Director has determined that the language in Chapter 134, Section 134.032 is previously approved language.

By letter dated September 15, 1995 (Administrative Record No. TX-594.03), OSM received three comments from the United States Department of the Interior, Bureau of Land Management (BLM). BLM stated that Chapter 134, Sections 134.092(a)(8) and 134.107, as recodified, appear to conflict. Section 134.092(a)(8) pertains to the surface coal mining and reclamation operations performance standards regarding permanent impoundments. Section 134.107 pertains to permits that may be granted a variance from having to restore the land to approximate original contour after mining. BLM also had a comment regarding mining through abandoned underground mines. BLM believed that Chapter 134, Sections 134.092(a)(12) and 134.100 conflicted. The third comment from BLM pertained to the proposed recodified Chapter 134, Section 134.098, Prohibition on Augering. The Director finds that no substantive changes were made to these previously approved provisions.

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.*).

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 comments on the proposed amendment from EPA (Administrative Record No. 594.01). 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 an ACHP (Administrative Record No. 594.01). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and additional requirements, the proposed amendment as submitted by Texas on August 24, 1995.

As discussed in finding number D.2.a., the Director is recommending that Texas remove Chapter 134, Section 134.005(a)(2) from its statutes concerning an exemption for surface coal mining operations affecting two acres or less. Texas should notify OSM when the removal is completed.

As discussed in finding number D.11., the Director does not approve Chapter 134, Section 134.022(c) which extends the date for valid existing rights to May 9, 1979, for the provisions relating to designating areas unsuitable for mining and is requiring Texas to remove the disapproved language at recodified Chapter 134.022(c), to restore its previously approved statute language, and to notify OSM when the removal and restoration are completed.

As discussed in finding number D.12., the Director does not approve Chapter 134, Section 134.068 which requires an applicant to file a schedule listing only notices of violations of Chapter 134 or of a law, rule, or regulation of the United States or Texas pertaining to air or water environmental protection and is requiring Texas to remove the disapproved provision and to notify OSM when the removal is completed.

As discussed in finding number D.16., the Director does not approve at Chapter 134, Section 134.176 the removal of a provision that the person charged with a violation waives all legal rights to contest the violation or amount of the penalty unless the proposed penalty is paid within 30 days of notification of the proposed penalty and is requiring Texas to restore this previously approved statute language, and to notify OSM when the restoration is completed.

The Federal regulations at 30 CFR Part 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.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approve State programs. In the oversight of the Texas program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Texas of only such provisions.

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 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and abandoned mine land reclamation plans, and program and plan amendments since each such program and plan 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. Decisions on proposed abandoned mine land reclamation plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule regarding the regulatory program amendment 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)). Also, no environmental impact statement is required for this rule regarding the abandoned mine land reclamation plan amendment since agency decisions on proposed State abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

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.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 19, 1996.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

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

PART 943—TEXAS

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

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

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

§ 943.15 Approval of regulatory program amendments.

* * * * *

(p) With the exceptions noted below, the recodification of Article 5920–11, Vernon's Texas Civil Statutes, Sections 1 through 38 to Chapter 134 of Title 4, Natural Resources Code, Sections 134.001 through 134.188, the revisions to and the addition of statutes to the Texas Surface Coal Mining and Reclamation Act as submitted to OSM on August 24, 1995, and supplemented with explanatory information on April 2 and July 30, 1996, are approved effective January 30, 1997.

(1) The Director is not approving Chapter 134, Section 134.022(c) which extends the date for valid existing rights to May 9, 1979, for the provisions relating to areas unsuitable for mining.

(2) The Director is not approving Chapter 134, Section 134.068, which requires an applicant to file a schedule listing only notices of violations of Chapter 134 or of a law, rule, or regulation of the United States or Texas pertaining to air or water environmental protection.

(3) The Director is approving Chapter 134, Section 134.176, except to the extent that the recodified statute does not include the previously approved provision that the person charged with a penalty waives all legal rights to contest the violation or amount of the penalty unless the proposed penalty is paid within 30 days.

3. Section 943.25 is revised to read as follows:

§ 943.25 Approval of abandoned mine land reclamation plan amendments.

(a) The amendment, as submitted by Texas on May 11 and 26, 1989, and clarified by it on April 13, 1992, certifying completion of reclamation on all lands adversely impacted by past coal mining, is approved effective August 19, 1992.

(b) The recodification of Article 5920–11, Vernon's Texas Civil Statutes, Section 3(7) to Chapter 134 of Title 4, Natural Resources Code, Section 134.142 and revision to statutes of the Texas Surface Coal Mining and Reclamation Act concerning the Texas abandoned mine land reclamation plan as submitted to OSM on August 24,

1995, are approved effective January 30, 1997.

[FR Doc. 97–2329 Filed 1–29–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Parts 220 and 352****Third Party Collection Program and Comptroller of the Department of Defense Organizational Chart; Removal**

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes the Department of Defense's Third Party Collection (TPC) Program and the organizational charter on the Comptroller of the Department of Defense codified in the CFR. The parts have served the purpose for which they were intended and are no longer necessary in the CFR.

EFFECTIVE DATE: January 30, 1997.

FOR FURTHER INFORMATION CONTACT:

L. Bynum or P. Toppings, 703-697-4111.

SUPPLEMENTARY INFORMATION: DoD Instruction 6010.15, "Third Party Collection (TPC) Program" (32 CFR part 220) was replaced by DoD Instruction 6015.23. DoD Directive 5118.3, "Comptroller of the Department of Defense (C, DoD)" (32 CFR part 352) was revised by a January 6, 1997 version. Copies of the DoD Instruction 6015.23 and DoD Directive 5118.3 may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

List of Subjects**32 CFR Part 220**

Claims, Health care, Health insurance, Military personnel.

32 CFR Part 352

Organization and functions.

PARTS 220 AND 352—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR parts 220 and 352 are removed.

Dated: January 24, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–2249 Filed 1–29–97; 8:45 am]

BILLING CODE 5000–04–M

POSTAL SERVICE**39 CFR Part 7****Board of Governors Bylaws**

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Board of Governors of the United States Postal Service has approved amendments to its bylaws. The amendments repeal unnecessary provisions of the Board's regulations concerning the Government in the Sunshine Act. One change removes a provision for publishing in the Federal Register a notice not required to be published there by the Act. The other change removes an unused provision concerning Sunshine Act practice by committees of the Board.

EFFECTIVE DATE: January 30, 1997.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Koerber, (202) 268-4800.

SUPPLEMENTARY INFORMATION: The Board's bylaws, in §§ 7.4(e) and 7.5(d), have required publication in the Federal Register of two separate notices for each closed meeting of the Board. These are first, under § 7.4(e), a notice of the vote to close the meeting, which is published immediately after the vote; and second, under § 7.5(d), a notice of the time, date, place, and subject of the meeting, which is published about 10 days before the meeting.

The amendment repeals § 7.4(e), in order to remove the bylaws' requirement for Federal Register publication of the first of these notices, which goes beyond legal requirements and other agencies' practice. The Government in the Sunshine Act requires that notice of votes to close a meeting be made available to the public immediately after such a vote, but does not require that this notice be published in the Federal Register. The Act does require Federal Register publication of the notice of time, date, place, and subject of the meeting, as provided for in bylaw § 7.5(d), which is not changed. Other federal agencies ordinarily publish only this latter notice. As required by the Sunshine Act, 5 U.S.C. 552b(d)(3), the notice of votes to close a future meeting will continue to be made publicly available through the office of the Secretary to the Board, although no longer published in the Federal Register.

The other amendment repeals § 7.4(d) of the bylaws. This provision has provided that a committee of the Board may determine to close all of its meetings if it finds that most of them fall under certain exemptions under the Government in the Sunshine Act. This