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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–030–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 the Texas Coal Mining Regulations (TCMR) pertaining to the replacement of water supply where it has been adversely impacted by contamination, diminution, or interruption resulting from surface mining activities. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: April 29, 1997.

FOR FURTHER INFORMATION CONTACT: A. Dwight Thomas, 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

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, and 943.16.

II. Submission of the Proposed Amendment

By letter dated October 21, 1996 (Administrative Record No. TX–629), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to a July 8, 1996, letter (Administrative Record No. TX–618) that OSM sent to Texas in accordance with 30 CFR 732.17(c).

OSM announced receipt of the proposed amendment in the November 4, 1996, **Federal Register** (61 FR 56648), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on December 4, 1996. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified a concern relating to the proposed definition of the term ''replacement of water supply'' at TCMR 701.008(77). Texas had proposed language at TCMR 701.088(77)(a) that appeared to place a restriction on the option for a one-time payment of any operation and maintenance costs of a replacement water delivery system that were in excess of customary and reasonable delivery costs for the premining water supply. The proposed language would have required the permittee and the water supply owner to enter into an agreement prior to commencement of mining operations. The counterpart Federal definition at 30 CFR 701.5 contains no restriction as to when the permittee and the water supply owner may enter into an agreement for the one-time payment option. OSM notified Texas of this concern by letter dated January 8, 1997 (Administrative Record No. TX–629.08).

By letter dated March 5, 1997 (Administrative Record No. TX–619.11), Texas responded to OSM's concern by requesting that its amendment be revised at TCMR 701.008(77)(a) to exclude the proposed phrase ''at any time prior to commencement of mining operations.''

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.

1. TCMR 701.008(77) Definition of Replacement of Water Supply

Texas' proposed definition of the term ''replacement of water supply'' requires that protected water supplies contaminated, diminished, or interrupted by coal mining operations be replaced. It provides for replacement of water supplies which are equivalent to the premining quantity and quality on both a temporary and permanent basis. Replacement includes provision of an equivalent water delivery system and compensation for operation and maintenance costs in excess of customary and reasonable delivery costs for the premining water supply. If agreed to by the water supply owner, a one-time payment based on the present worth of the increased annual operating and maintenance costs for a period of time agreed upon by the water supply owner and the permittee would fulfill the obligation to compensate the owner. The definition allows the water supply owner to waive replacement in circumstances where the water supply is not needed for the current or postmining land uses. If water replacement is waived, the permittee must demonstrate that a suitable alternative water source is available and could be developed if needed.

The Director finds that Texas' proposed definition at TCMR 701.008(77) is substantively identical to the corresponding Federal definition at 30 CFR 701.5. Therefore, Texas' proposed regulation is no less effective than the Federal regulation.

2. TCMR 779.130 Alternative Water Supply Information

Texas proposed to revise its alternative water supply regulation by clarifying the existing requirements and adding the requirement that the application identify the suitability of the alternative water sources for existing premine uses and approved postmine land uses.

The Director finds that the revised regulation at TCMR 779.130 has substantively identical regulatory requirements as the counterpart Federal regulation at 30 CFR 780.21(e). Therefore, it is no less effective than the Federal regulation.

3. TCMR 816.352 Water Rights and Replacement

Texas proposed to replace the word ''affected'' with the words ''adversely impacted'' to clarify that the specified water supply to be replaced must have been adversely impacted by contamination, diminution, or interruption proximately resulting from

the surface mining activities. Texas also added a new provision requiring the baseline hydrologic information required in §§ 779.126, 779.130, and 780.146 of its regulations be used to determine the extent of the impact of mining upon ground water and surface water.

The Director finds that the revised regulation at TCMR 816.352 is substantively identical to the counterpart Federal regulation at 30 CFR 816.41(h). Therefore, it is no less effective than the Federal regulation.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

Public Comments

By letter dated November 22, 1996 (Administrative Record No. TX–629.04), Texas Utilities Services, Inc. submitted comments in support of Texas' proposed amendment.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record No. TX–629.03).

By letter dated November 22, 1996 (Administrative Record No. TX–629.06), the U.S. Army Corps of Engineers commented that it found the changes to be satisfactory.

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 the EPA (Administrative Record No. TX–629.01). The 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. 629.02). Neither the 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 October 21, 1996, and as revised on March 5, 1997.

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

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.

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 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 USC 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 USC 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 USC 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 USC 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 USC 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: April 8, 1997.

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 in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * *	*	* *
October 21, 1996	April 29, 1997	TCMR 701.008(77); 779.130; 816.352.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AI77

Compensation for Certain Undiagnosed Illnesses

AGENCY: Department of Veterans Affairs.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations regarding compensation for disabilities resulting from undiagnosed illnesses suffered by Persian Gulf Veterans. This amendment is necessary to expand the period within which such disabilities must become manifest to a compensable degree in order for entitlement for compensation to be established. The intended effect of this amendment is to ensure that veterans with compensable disabilities due to undiagnosed illnesses that may be related to active service in the Southwest Asia theater of operations during the Persian Gulf War may qualify for benefits.

DATES: *Effective date:* November 2, 1994. *Comment date:* Comments must be received by VA on or before June 30, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AI77.'' All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7230.

SUPPLEMENTARY INFORMATION: In response to the needs and concerns of Persian Gulf veterans, Congress enacted the ''Persian Gulf War Veterans' Benefits Act,'' Title I of the ''Veterans' Benefits Improvements Act of 1994,'' Pub. L. 103–446. That statute added a new section 1117 to Title 38, United States Code, authorizing the Secretary of Veterans Affairs to compensate any Persian Gulf veteran suffering from chronic disability resulting from an undiagnosed illness or combination of undiagnosed illnesses that became manifest either during active duty in the Southwest Asia theater of operations during the Persian Gulf War or to a degree of ten percent or more within a presumptive period, as determined by the Secretary, following service in the Southwest Asia theater of operations during the Persian Gulf War. The statute specified that in establishing a presumptive period the Secretary should review any credible scientific or medical evidence, the historical treatment afforded other diseases for which service connection is presumed, and other pertinent circumstances regarding the experience of Persian Gulf veterans.

In the **Federal Register** of February 3, 1995, VA published a final rule adding a new § 3.317 to title 38, Code of Federal Regulations, to establish the regulatory framework necessary for the Secretary to pay compensation under the authority granted by the Persian Gulf War Veterans' Benefits Act (*See* 60 FR 6660–6666). As part of that rulemaking, having determined that there was little or no scientific or medical evidence at that time that would be useful in determining an appropriate presumptive period, VA established a two-year-post-Gulf-service presumptive period based on the historical treatment of disabilities for which manifestation periods had been established and pertinent circumstances regarding the experiences of Persian Gulf veterans as they were then known.

Because of growing concerns regarding the adequacy of the two-year presumptive period for undiagnosed illnesses, the Secretary recently held a series of veterans' forums nationwide and consulted with members of Congress as well as the leadership of the national veterans' service organizations on the issue of that presumptive period. The Secretary has concluded that the two-year presumptive period is inadequate because: (1) Despite a broad federal research effort, there is insufficient data about the nature and causes of these illnesses to justify limiting the presumptive period to two years; and (2) it prevents VA from compensating certain veterans with disabilities due to undiagnosed conditions that may have resulted from their service in the Persian Gulf War. Based upon the consensus concerning the inadequacy of the current presumptive period and the continuing medical and scientific uncertainty about the nature and causes of these illnesses, the Secretary has determined that the presumptive period should be extended to disabilities due to undiagnosed illnesses that become manifest through the year 2001. By then, it is anticipated, results of ongoing research may shed more light on these issues to guide future policies.

We are making this amendment effective November 2, 1994, the effective date of Title I of Pub. L. 103–446, in order to ensure that all Persian Gulf War veterans suffering from disabilities resulting from undiagnosed illnesses receive the benefits that Congress mandated when it enacted Pub. L. 103–446.

We also are amending the authority citation following 38 CFR 3.317 to cite 38 U.S.C. 1117 rather than the Public Law that added that section to the statute.

We are making this document effective on an emergency basis. We have found good cause for concluding that notice and public procedure