3. Section 906.16 is amended by removing and reserving paragraphs (d) and (e).

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–047–FOR]

Texas Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposed revisions to and additions of regulations concerning remining, coal processing plants, and procedures for processing petitions to designate lands as unsuitable for mining. Texas intends to revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: November 24, 2000.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548. Telephone: (918) 581–6430. Internet: mwolfrom@tokgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the February 27, 1980, **Federal Register** (45 FR 12998). You can find later actions concerning the Texas program at 30 CFR 943.10, 943.15, and 943.16.

II. Submission of the Amendment

By letter dated August 24, 2000 (Administrative Record No. TX–650.01), Texas sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Texas sent the amendment in response to our letter dated November 22, 1999 (Administrative Record No. TX–650), that we sent to Texas under 30 CFR 732.17(c). The amendment also includes changes made at Texas' own initiative.

We announced receipt of the amendment in the September 12, 2000, **Federal Register** (65 FR 54982). In the same document, we 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 October 12, 2000. Because no one requested a public hearing or meeting, we did not hold one.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment to the Texas program.

Any revisions that we do not discuss below concern minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Texas' Regulations That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

The State regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State regulations and the Federal regulations are minor.

Topic	State regulation	Federal counterpart regulation
Initial processing procedures	TAC 12.80(a)(1)	30 CFR 764.15(a)(1)
Backfilling and grading: General grading requirements.	TAC 12.385(e)–(e)(2)(D) and TAC 12.552(e)–(e)(2)(D).	30 CFR 816.106(a)–(b)(4) and 30 CFR 817.106(a)–(b)(4)
Coal processing plants: Performance standards	TAC 12.651(13)	30 CFR 827.12(l)

Because the above State regulations have the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

B. Revisions to Texas' Regulations That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. TAC § 12.385(a) Backfilling and Grading: General Grading Requirements.

Texas proposed to remove the following language from this paragraph:

> The requirements of this section may be modified by the Commission where the surface mining activities are reaffecting previously mined lands that have not been restored to the standards of §§ 12.330–12.384, this section, and §§ 12.386–12.403 of this title (relating to Permanent Program Performance Standards—Surface Mining Activities) and sufficient spoil is not available to otherwise comply with this section.

We are approving the removal of this language because it is not as effective as the Federal regulations at 30 CFR 816.106 concerning the backfilling and grading of previously mined areas. Also, in this rulemaking, Texas proposed and we are approving an amendment to its regulations that include provisions for backfilling and grading of previously mined areas that are as effective as the Federal regulations. Please refer to the table listed in III. Director's Findings, A. Backfilling and grading: General grading requirements.

2. TAC § 12.552(a) Backfilling and Grading: General Grading Requirements.

Texas proposed to remove the following language from this paragraph:

> The requirements of this section may be modified by the Commission where the surface mining activities are reaffecting previously mined lands that have not been restored to the standards of §§ 12.500–12.551, this section, and §§ 12.553–12.572 of this title (relating to Permanent Program Performance Standards—Underground Mining Activities) and sufficient spoil is not available to otherwise comply with this section.

We are approving the removal of this language because it is not as effective as the Federal regulations at 30 CFR 817.106 concerning the backfilling and grading of previously mined areas. Also, in this rulemaking, Texas proposed and

we are approving an amendment to its regulations that include provisions for backfilling and grading of previously mined areas that are as effective as the Federal regulations. Please refer to the table listed in III. Director's Findings, A. Backfilling and grading: General grading requirements.

C. Revisions to Texas' Regulations With No Corresponding Federal Regulations

1. TAC § 12.80(a)(3)–(a)(7) Initial Processing Procedures

Texas proposed to remove paragraph (a)(3) which reads as follows:

(3) The Commission may reject petitions for designations or terminations of designations which are frivolous. Once the petition requirements for completeness are met, no party shall bear any burden of proof, but each accepted petition shall be considered and acted upon by the Commission pursuant to the procedures of this subchapter (relating to Lands Unsuitable for Mining).

As a result of this removal, Texas is redesignating paragraphs (a)(4) through (a)(7) as paragraphs (a)(3) through (a)(6). We are approving the removal and redesignations of the above regulations because there is no Federal counterpart regulation to paragraph (a)(3) and its removal and the subsequent redesignation of paragraphs (a)(4) through (a)(7) as paragraphs (a)(3) through (a)(6) will not make the Texas regulations less effective than the Federal regulations.

Also, Texas proposed to revise paragraph (a)(4) [redesignated as paragraph (a)(3)] by adding new language (shown in bold) to read as follows:

(3) If the Commission determines that the petition is incomplete, frivolous, or that the petitioner does not meet the requirement of § 12.79(a) of this title (relating to Procedures: Petitions), it shall return the petition to the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete. A frivolous petition is one in which the allegations of harm lack serious merit **or available information shows that either no mineable coal resources exist in the petitioned area or the petitioned area is not or could not be subject to related surface coal mining operations and surface impacts incident to an underground coal mine or an adjoining surface mine.**

There is no Federal counterpart regulation to the language that is added to the above paragraph. However, we are approving the addition of the new language because it is not inconsistent with the Federal regulations at 30 CFR 764.15 pertaining to initial processing, recordkeeping, and notification requirements for petitions concerning lands unsuitable for mining.

2. TAC § 12.80(b)(2) Public Notice and Hearing Procedures

Texas proposed to remove paragraph (b)(2) that allows the Commission to provide for a hearing or a period of written comments on the completeness of petitions for designating areas as unsuitable for surface coal mining operations. As a result of the removal of this paragraph, Texas is redesignating paragraph (b)(3) as (b)(2). We are approving the amendments because there is no counterpart Federal regulation to paragraph (b)(2) and the removal of this paragraph and the redesignation of paragraph (b)(3) as (b)(2) will not make the Texas regulations less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Federal Agency Comments

On September 6, 2000, under section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record No. TX–650.02). The Texas Parks and Wildlife Department Resource Protection Division responded on October 6, 2000 (Administrative Record No. TX–650.04), that its review of the proposed amendment indicates minimum impacts to fish and wildlife resources.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain the written concurrence of the EPA for those provisions of the program amendment that relate to air or water quality standards issued 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, we did not ask the EPA for its concurrence.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. TX–650.02) on September 6, 2000. The EPA did not respond to our request.

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On September 6, 2000, we requested comments on Texas' amendment (Administrative Record No. TX–650.02), but neither responded to our request.

Public Comments

We asked for public comments on the amendment, but did not receive any.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by Texas on August 24, 2000. We approve the regulations that Texas proposed with the provision that they be published in identical form to the regulations sent to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 943, which codify decisions concerning the Texas program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Texas to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary under SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and

has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

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: November 8, 2000.

Charles E. Sandberg,

Acting 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
*	*	* * * * *
August 24, 2000	November 24, 2000	TAC § 12.80(a)(1), (3)–(7); (b)(2)–(3); § 12.385(a); (e)–(e)(2)(D); § 12.552(a); (e)–(e)(2)(D); and § 12.651(13).

[FR Doc. 00–29969 Filed 11–24–00; 8:45 am]

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DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

RIN 0651–AB15

Simplification of Certain Requirements in Patent Interference Practice

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office amends its rules of practice in patent interferences to simplify certain requirements relating to the declaration of interferences and the presentation of evidence.

EFFECTIVE DATE: December 26, 2000.

FOR FURTHER INFORMATION CONTACT: Fred McKelvey or Richard Torczon at 703–308–9797.

SUPPLEMENTARY INFORMATION:

Background

An interim final version of this rulemaking was published at 65 FR 56792, Sept. 20, 2000, and also at U.S. Patent and Trademark Office, 1239 Off. Gaz. 125 (Oct. 17, 2000). The rationale for the rulemaking appears with the interim rule.

Comments

The interim rule elicited two comments. One comment notes a reference in 37 CFR 1.671(e) to a rule that was deleted. That reference is eliminated in this final rule. Any other references to deleted rules in subpart E of this title should be considered obsolete. They will be eliminated in a future rulemaking.