

List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 16, 2001.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

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DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 943**

[SPATS No. TX-048-FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposes revisions to regulations concerning valid existing rights. Texas intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Texas program and the proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., c.d.t., October 22, 2001. If requested, we will hold a public hearing on the amendment on October 15, 2001. We will accept requests to speak at the hearing until 4 p.m., c.d.t. on October 5, 2001.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

You may review copies of the Texas program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy

of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 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, Capitol Station, P.O. Box 12967, Austin, Texas 78711-2967, Telephone: (512) 463-6900.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581-6430. Internet: *mwolfrom@osmre.gov*.

SUPPLEMENTARY INFORMATION:**I. Background on the Texas Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, " * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program on February 16, 1980. 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. Description of the Proposed Amendment

By letter dated July 25, 2001 (Administrative Record No. TX-653.02), 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 August 23, 2000 (Administrative Record No. TX-653), that we sent to Texas under 30 CFR 732.17(c). Texas proposes to amend Title 16 Texas Administrative Code Chapter 12. Below is a summary of the changes proposed by Texas. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES**.

A. Section 12.3 Definitions

Texas proposes to:

1. Renumber the definitions in this section starting with the definition numbered (169),

2. Delete the definition of "surface coal mining operations which exist on the date of enactment," and

3. Replace the definition of "valid existing rights" with a new definition of "valid existing rights."

B. Section 12.71 Areas Where Mining Is Prohibited or Limited

Texas proposes to revise the section title to read, "Areas where surface coal mining operations are prohibited or limited." Texas also proposes to delete the existing language in this section and replace it with new language.

C. Section 12.72 Procedures

Texas proposes to revise the section title to read, "Procedures for compatibility findings, public road closures and relocations, buffer zones, and valid existing rights determinations." Texas also proposes to delete the existing language in this section and replace it with new language.

D. Section 12.73 Responsibility

1. Texas proposes to redesignate this section as new Section 12.74 Responsibility.

2. Texas proposes to revise the title of existing section 12.73 to read, "Commission obligations at time of permit application review." Texas also proposes to add language in this section that establishes criteria for rejecting any portion of an application that would locate surface coal mining operations on protected lands and that establishes procedures for joint approval of mining operations that will adversely affect publicly owned parks or historic places.

E. Section 12.77 Exploration on Land Designated as Unsuitable for Surface Coal Mining Operations

1. Texas proposes to revise the section title to read, "Applicability and restrictions on exploration on land designated as unsuitable for surface coal mining operations."

2. Texas proposes to designate the existing paragraph in this section as paragraph (b) Exploration restrictions.

3. Texas proposes to add a new paragraph (a) to read as follows:

(a) Applicability. Pursuant to appropriate petitions, lands listed in § 12.71(a) of this title (relating to Areas Where Surface Coal Mining Operations Are Prohibited Or Limited) are subject to designation as unsuitable for all or certain types of surface coal mining operations under this Division and Division 4 of Subchapter F (relating to Lands Unsuitable for Mining).

F. Section 12.111 General Requirements: Exploration of More Than 250 Tons

1. Texas proposes to revise the section title to read, "General requirements: Exploration that will remove more than 250 tons of coal or that will occur on lands designated as unsuitable for surface coal mining operations."

2. Texas proposes to add new paragraph (1)(H) to read as follows:

(H) for any lands listed in § 12.71(a) of this title (relating to Areas Where Surface Coal Mining Operations Are Prohibited or Limited), a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of § 12.71(a) of this title, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of § 12.71(a) of this title.

G. Section 12.112 Applications: Approval or Disapproval of Exploration of More Than 250 Tons

1. Texas proposes to revise the section title to read, "Applications: Approval or disapproval of exploration of more than 250 tons of coal or that will occur on lands designated as unsuitable for surface coal mining operations."

2. Texas proposes to add new paragraph (b)(4) that reads as follows:

(4) with respect to exploration activities on any lands protected under § 12.71(a) of this title (relating to Areas Where Surface Coal Mining Operations Are Prohibited or Limited), minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the Commission must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of § 12.71(a) of this title, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of § 12.71(a) of this title, to comment on whether the finding is appropriate.

H. Section 12.113 Applications: Notice and Hearing for Exploration of More Than 250 Tons

Texas proposes to add a phrase to paragraph (a) that requires the Commission to notify those who comment on the exploration permit application of the Commission's decision to approve or disapprove the application.

I. Section 12.118 Relationship to Areas Designated Unsuitable for Mining

1. Texas proposes to revise paragraph (a) to read as follows:

(a) Each application shall contain available information on whether the proposed permit area is within an area designated unsuitable for surface coal mining and reclamation or is within an area under study for designation in an administrative proceeding under §§ 12.74–12.77 of this title (relating to Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations) and §§ 12.78–12.85 of this title (relating to Process for Designating Areas as Unsuitable for Surface Coal Mining Operations).

2. Texas proposes to revise paragraph (c) to read as follows:

(c) If an applicant proposes to conduct surface coal mining activities within 100 feet of a public road or within 300 feet of an occupied dwelling, the application must meet the requirements of § 12.72(a) or (b) of this title (relating to Procedures For Compatibility Findings, Public Road Closures and Relocations, Buffer Zones, And Valid Existing Rights Determinations), respectively.

J. Section 12.151 and Section 12.191 Protection of Public Parks and Historic Places

Texas proposes to delete the existing language in paragraphs (a)(2) and replace it with the following language:

(2) If a person has valid existing rights, as determined under § 12.72(c) of this title (relating to Procedures For Compatibility Findings, Public Road Closures and Relocations, Buffer Zones, And Valid Existing Rights Determinations), or if joint agency approval is to be obtained under § 12.73(d) of this title (relating to Commission Obligations at Time of Permit Application Review), to minimize adverse impacts.

K. Section 12.152 and Section 12.192 Relocation or Use of Public Roads

Texas proposes to revise the existing language in the introductory paragraphs to read as follows:

Each application shall describe, with appropriate maps and cross sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under § 12.72(a) of this title (relating to Procedures For Compatibility Findings, Public Road Closures and Relocations, Buffer Zones, And Valid Existing Rights Determinations), the applicant seeks to have the Commission approve:

L. Section 12.158 Relationship to Areas Designated Unsuitable for Mining

1. Texas proposes to revise paragraph (a) to read as follows:

(a) Each application shall contain available information on whether the proposed permit area is within an area designated unsuitable for surface coal mining and reclamation or is

within an area under study for designation in an administrative proceeding under §§ 12.73–12.77 of this title (relating to Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations) and §§ 12.78–12.85 of this title (relating to Process for Designating Areas as Unsuitable for Surface Coal Mining Operations).

2. Texas proposes to revise paragraph (c) to read as follows:

(c) A application that proposes to conduct surface coal mining activities within 100 feet of a public road or within 300 feet of an occupied dwelling must meet the requirements of § 12.72(a) or (b) of this title (relating to Procedures For Compatibility Findings, Public Road Closures and Relocations, Buffer Zones, And Valid Existing Rights Determinations), respectively.

M. Section 12.207 Public Notices of Filing of Permit Applications

Texas proposes to revise paragraph (a)(5) to read as follows:

(5) if an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with § 12.72(a) of this title (relating to Procedures For Compatibility Findings, Public Road Closures and Relocations, Buffer Zones, And Valid Existing Rights Determinations), a concise statement describing the public road, the particular part to be relocated or closed, where the relocation or closure is to occur, and the duration of the relocation or closure.

N. Section 12.216 Criteria for Permit Approval or Denial

Texas proposes to revise paragraphs (4)(A)–(E) and paragraph (5) to read as follows:

(4) the proposed permit area is:
 (A) not included within an area designated unsuitable for surface coal mining operations under §§ 12.74–12.77 of this title (relating to Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations) and § 12.78–12.85 of this title (relating to Process for Designating Areas as Unsuitable for Surface Coal Mining Operations) or within an area subject to the prohibitions of § 12.71(a) of this title (relating to Areas Where Surface Coal Mining Operations Are Prohibited Or Limited); or
 (B) not within an area under study for designation as unsuitable for surface coal mining operations or in an administrative proceeding begun under §§ 12.78–12.85 of this title (relating to Process for Designating Areas as Unsuitable for Surface Coal Mining Operations), unless the applicant demonstrates that, before January 4, 1977, he or she made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit; or
 (C) not on any lands subject to the prohibitions or limitations of § 12.71(a)(1), (a)(6) or (a)(7) of this title; or
 (D) not within 100 feet of the outside right-of-way line of any public road, except as

provided for in § 12.72(a) of this title (relating to Procedures For Compatibility Findings, Public Road Closures and Relocations, Buffer Zones, And Valid Existing Rights Determinations); or

(E) not within 300 feet from any occupied dwelling, except as provided for in § 12.71(a)(5) of this title;

(5) the proposed operations will not adversely affect any properties listed on and eligible for listing on the National Register of Historic Places, except as provided for in § 12.71(a)(3) of this title. This finding may be supported in part by inclusion of appropriate permit conditions, revisions in the operation plan, or a documented decision by the Commission that no additional protection measures are required under the National Historic Preservation Act;

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Texas program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments: Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. TX-048-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581-6430.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Tulsa Field Office (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from

organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing: If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on October 5, 2001. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

If you are disabled and need a special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting: If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will also make a written summary of each meeting a part of the Administrative Record.

IV. 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 this section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not 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.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866 and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

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 (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. Therefore, 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: August 10, 2001.

Malcolm Ahrens,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 01-23504 Filed 9-19-01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA246-0286; FRL-7058-4]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District portion of the California State Implementation Plan (SIP). These revisions concern recordkeeping requirements as well as volatile organic compound (VOC) emissions from spray coating operations, metal parts and products coating operations, coating and ink manufacturing, surfactant manufacturing, and polyester resin operations. We are proposing to approve local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by October 22, 2001.

ADDRESSES: Mail comments to Andrew Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; and,

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 744-1185.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the SCAQMD and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

| Local agency | Rule # | Rule title | Adopted | Submitted |
|--------------|--------|--|----------|-----------|
| SCAQMD | 109 | Record Keeping for Volatile Organic Compound Emissions | 11/17/00 | 3/14/01 |
| SCAQMD | 481 | Spray Coating Operations | 11/17/00 | 3/14/01 |
| SCAQMD | 1107 | Coating of Metal Parts & Products | 11/17/00 | 3/14/01 |
| SCAQMD | 1141.1 | Coating and Ink Manufacturing | 11/17/00 | 3/14/01 |
| SCAQMD | 1141.2 | Surfactant Manufacturing | 11/17/00 | 3/14/01 |
| SCAQMD | 1162 | Polyester Resin Operations | 11/17/00 | 3/14/01 |