

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 914**

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 24, 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 918**

[SPATS No. LA-021-FOR]

#### **Louisiana 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 Louisiana regulatory program (Louisiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Louisiana proposes revisions to and additions of regulations concerning valid existing rights. Louisiana intends to revise the Louisiana program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Louisiana 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 Louisiana 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.

Louisiana Department of Natural Resources, Office of Conservation, Injection and Mining Division, 625 N.

4th Street, PO Box 94275, Baton Rouge, LA 70804, Telephone: (225) 342-5540.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background on the Louisiana 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 this criteria, the Secretary of the Interior approved the Louisiana program on October 10, 1980. You can find background information on the Louisiana program, including the Secretary's findings and the disposition of comments in the October 10, 1980, **Federal Register** (45 FR 67340). You can find later actions concerning the Louisiana program at 30 CFR 918.15 and 918.16.

##### **II. Description of the Proposed Amendment**

By letter dated August 3, 2001 (Administrative Record No. LA-366.04), Louisiana sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Louisiana sent the amendment in response to our letters dated August 23, 2000, and March 14, 2001 (Administrative Record Nos. LA-366 and LA-366.03, respectively), that we sent to Louisiana under 30 CFR 732.17(c). Louisiana proposes to amend the Louisiana Surface Mining Regulations to be consistent with the corresponding Federal regulations on valid existing rights that were published on December 17, 1999 (64 FR 70766). Below is a summary of the changes proposed by Louisiana. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES**.

##### *A. Section 105 Definition of Valid Existing Rights*

Louisiana proposes to replace its currently approved definition of “valid existing rights” with a new definition that sets out the circumstances under which a person may, subject to the

Office of Conservation's (office) approval, conduct surface coal mining operations on lands where it would otherwise be prohibited by section 922.D of the Louisiana Surface Mining and Reclamation Act or section 1105 of the Louisiana Surface Mining Regulations. Section 105.a provides that a person claiming valid existing rights for any type of surface coal mining operations other than roads must make a property rights demonstration. It includes provisions for the type of documents needed and interpretation of the documents used for the demonstration. Section 105.b provides that a person claiming valid existing rights also must demonstrate compliance with either a good faith/all permits standard or a needed for and adjacent standard. Section 105.b.i contains provisions for the good faith/all permits standard, and section 105.b.ii includes provisions for the needed for and adjacent standard. Section 105.c provides that a person who claims valid existing rights to use or construct a road across the surface of protected lands must demonstrate that one or more of the circumstances listed in paragraphs c.i through c.iii exist if the road is included within the definition of surface coal mining operations in section 105. The circumstances listed in paragraphs c.i through c.iii include provisions specifying that: (1) The road existed when the land upon which it is located came under protection and the person has a legal right to use the road, (2) a properly recorded right-of-way or easement for a road in that location existed when the land came under protection, and (3) a valid permit for use or construction of a road in that location existed when the land came under protection.

#### *B. Section 2323 Valid Existing Rights Determination*

Louisiana proposes to add provisions concerning submission and processing of requests for valid existing rights determinations. Section A requires submission of a request for a valid existing rights determination if surface coal mining operations will be conducted on the basis of valid existing rights under section 1105. Section A.1 includes provisions for requesting a determination for roads. Section B includes procedures for an initial review of a request for a determination that valid existing rights have been demonstrated. Section C includes requirements and procedures for public notice and comment. Section D contains procedures and criteria for making a final decision on the request for a

determination that valid existing rights have been demonstrated. Section E specifies that a determination of an applicant having or not having valid existing rights is subject to administrative and judicial review. Section F requires Louisiana to make a copy of the request for a valid existing rights determination and records associated with the request available to the public.

#### *C. Section 1107 Procedures*

Louisiana is proposing to revise section 1107.B by removing the existing first sentence and adding the following provisions:

B. The office shall reject any portion of the application that would locate surface coal mining operations on land protected under § 1105 unless:

1. A person has valid existing rights for the land, as determined under § 2323;
2. The applicant obtains a waiver or exception from the prohibitions of § 1105 in accordance with §§ 1107.C or D; or
3. For lands protected by § 1105.A.3, both the office and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with § 1107.E.

The remaining existing sentences will be added to the end of the new provision in section 1107.B.3.

#### *D. Section 2111 General Requirements: Development Operations Involving Removal of More than 250 Tons*

At section 2111.A.8, Louisiana is proposing that the application for a development operation involving removal of more than 250 tons of coal must contain the following additional information:

8. For any lands listed in § 1105, 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] § 1105, 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 § 1105.

#### *E. Section 2113 Applications: Approval or Disapproval of Development of More Than 250 Tons*

At section 2113.B.4, Louisiana is proposing the following new finding that must be made before the Commissioner of the Office of Conservation approves a complete application for a development operation involving removal of more than 250 tons of coal:

4. Will, with respect to exploration activities on any lands protected under § 1105, 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 office will provide reasonable opportunity to the owner of the feature causing the land to come under the protection of § 1105, 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 § 1105, to comment on whether the finding is appropriate.

### **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 Louisiana 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. LA-021-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 that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each 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.

##### *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 (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 918**

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 16, 2001.

**Charles E. Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

[FR Doc. 01-23505 Filed 9-19-01; 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-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).