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

[Docket No. TX-053-FOR]

**Texas Regulatory Program****AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposed revisions to its regulations regarding annual permit fees. Texas intends to revise its program to improve operational efficiency.

**EFFECTIVE DATE:** September 14, 2004.

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

**SUPPLEMENTARY INFORMATION:**

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

**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 State 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 this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this 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 effective 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 on the Texas program at 30 CFR 943.10, 943.15, and 943.16.

**II. Submission of the Amendment**

By letter dated June 4, 2004 (Administrative Record No. TX-658), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment at its own initiative.

We announced receipt of the proposed amendment in the July 19, 2004, **Federal Register** (69 FR 42948). 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 amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on August 18, 2004. We did not receive any public comments.

During our review of the amendment, we identified a concern about the proposed annual fee. We notified Texas of the concern by letter dated July 26, 2004 (Administrative Record No. TX-658.03). By letter dated August 3, 2004 (Administrative Record No. TX-658.04), Texas sent us additional explanatory information to its proposed program amendment. Because the additional information merely clarified certain provisions of Texas' amendment, we did not reopen the public comment period.

**III. OSM's Findings**

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

*16 Texas Administrative Code (TAC) Section 12.108 Permit Fees*

In paragraph (b), Texas proposed to increase the annual permit fee from \$300.00 per acre to \$390.00 per acre. Permittees must pay the fee to the Railroad Commission of Texas for each acre of land within the permit area on which the permittees actually conducted operations for the removal of coal and lignite during the calendar year. Because this increased fee has an effective date of September 1, 2004, Texas also proposed how it is to be calculated for calendar year 2004 only. For the period January 1, 2004, through August 31, 2004, the annual permit fee is \$300.00 per acre and for the period September 1, 2004, through December 31, 2004, the fee is \$390.00 per acre.

The Federal regulations at 30 CFR 777.17, concerning permit fees, provide

that applications for surface coal mining permits must be accompanied by a fee determined by the regulatory authority. The Federal regulations also provide that the fees may be less than, but not more than the actual or anticipated cost of reviewing, administering, and enforcing the permit. In its letter dated August 3, 2004 (Administrative Record No. TX-658.04), Texas advised us that the proposed fee increase complies with the requirements of 30 CFR 777.17. We find that Texas' proposed annual permit fees are reasonable and consistent with the discretionary authority provided by the regulations at 30 CFR 777.17.

**IV. Summary and Disposition of Comments***Public Comments*

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

*Federal Agency Comments*

On June 10, 2004, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record No. TX-658.01). We did not receive any comments.

*Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from 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 EPA to concur on the amendment. However, on June 10, 2004, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. TX-658.01). 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 June 10, 2004, we requested comments on Texas' amendment (Administrative Record No. TX-658.01), but neither responded to our request.

## V. OSM's Decision

Based on the above findings, we approve the amendment Texas sent us on June 4, 2004.

To implement this decision, we are amending the Federal regulations at 30 CFR part 943, which codify decisions concerning the Texas program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

## VI. Procedural Determinations

### *Executive Order 12630—Takings*

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

### *Executive Order 12866—Regulatory Planning and Review*

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

### *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 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 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.

### *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 pursuant to SMCRA.

### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Texas program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Texas program has no effect on Federally-recognized Indian tribes.

### *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*

This rule does not require an environmental impact statement because 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)).

### *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 certifies 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. 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; and (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 an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. 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 did not impose an unfunded mandate.

### **List of Subjects in 30 CFR Part 943**

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 26, 2004.  
**Charles E. Sandberg,**  
*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
* * * * *	* * * * *	* * * * *
June 4, 2004 .....	September 14, 2004 .....	16 TAC 12.108(b).

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 199**

**RIN 0720-AA85**

**TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2003 (NDAA–03)**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final addresses eliminating the requirement for TRICARE preauthorization of inpatient mental health care for TRICARE/Medicare eligible beneficiaries where Medicare is primary payer and has already authorized the care; approving a physician or other health care practitioner who is eligible to receive reimbursement for services provided under Medicare as a TRICARE provider if the provider is also a TRICARE authorized provider; and, expanding the TRICARE Dental Program (TDP) eligibility for dependents of deceased members.

**DATES:** This rule is effective September 14, 2004 except that the effective date for the amendment to 32 CFR 199.4(a)(12)(ii)(E)(2) is October 1, 2004, and the effective date for the amendment to 32 CFR 199.13(c)(13)(ii)(E)(2) is December 2, 2002. The applicability date for the amendment to 32 CFR 199.6(c)(2)(v) is for any TRICARE contract entered into on or after December 2, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ann N. Fazzini, (303) 676–3803 (The sections of this rule regarding elimination of mental health preauthorization and Medicare providers as TRICARE providers) or Major Shannon Lynch, (303) 676–3496 (The section of this rule regarding the

TRICARE Dental Program). Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of November 19, 2003, (68 FR 65172), the Office of the Secretary of Defense published for public comment an interim final rule regarding the following three changes found in the the Bob Stump NDAA 03 (Pub. L. 107–314). We received no public comments.

**I. Elimination of Mental Health Pre-Authorization**

Section 701 of the Bob Stump NDAA–03 states that:

(B) Preadmission authorization for inpatient mental health services is not required under subparagraph (A) in the following cases:

- (i) In the case of an emergency.
- (ii) In a case in which any benefits are payable for such services under Part A of title XVIII of the Social Security act (42 U.S.C. 1395c *et seq.*) subject of subparagraph (C).
- (C) In a case of inpatient mental health services to which subparagraph (B)(ii) applies, the Secretary shall require advance authorization for a continuation of the provision of such benefits after benefits cease to be payable for such services under such part A.

This language eliminates the preauthorization requirement for inpatient mental health care where Medicare is primary payer. Currently, in situations where a Medicare beneficiary, who is also TRICARE eligible, receives inpatient mental health care, TRICARE applies its rules for preauthorization even though TRICARE is not the primary payer. The language found in Section 701 of the Bob Stump NDAA–03 changes the way we currently operate. Once this change is implemented, Medicare beneficiaries who are also TRICARE eligible, will follow Medicare’s rules until their Medicare benefit is exhausted. Once the Medicare benefit is exhausted, TRICARE’s rules regarding preauthorization will apply.

Section 701 of the Bob Stump NDAA–03 also continues our current policy that pre-authorization is not required in the case of an emergency.

**II. Medicare Provider Certification Applicable to TRICARE Individual Professional Providers**

Section 705 of the Bob Stump NDAA–03 states that:

Subject to subsection (a), a physician or other health care practitioner who is eligible to receive reimbursement for services provided under Medicare (as defined in section 1086(d)(3)(C) of this title) shall be considered approved to provide medical care authorized under this section and section 1086 of this title unless the administering Secretaries have information indicating Medicare, TRICARE, or other Federal health care program integrity violations by the physician or other health care practitioner.

This language provides that a physician or other health care practitioner who is eligible to receive reimbursement for services provided under Medicare (as defined in section 1086(d)(3)(C) of title U.S.C., chapter 55) shall be considered approved to provide medical care authorized under section 1079 and section 1086 of title 10, U.S.C., chapter 55 unless the administering Secretaries have information indicating Medicare, TRICARE, or other Federal health care program integrity violations by the physician or other health care practitioner. Approval is limited to those providers who are currently considered TRICARE authorized providers as outlined in 32 CFR 199.6. Services and supplies rendered by those providers not currently considered authorized providers shall be denied.

Our contractors are currently in compliance with this provision, but this final rule is necessary to add the statutory language to our regulation.

Section 705 continues the current TRICARE policy of excluding providers who are sanctioned or who have program integrity violations under