

Proposed Rules

Federal Register

Vol. 70, No. 168

Wednesday, August 31, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[Docket No. TX-052-FOR]

Texas Regulatory Program

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

ACTION: Proposed rule; withdrawal of proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing the withdrawal of 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 to add a new policy document to its program that describes mine permit implementation actions that would not, in the opinion of the Railroad Commission of Texas (Commission), be considered permit revisions and as such would not be subject to Commission review and approval. Texas intended to revise its program to improve operational efficiency. Texas is withdrawing the amendment at its own initiative.

DATES: This withdrawal is made on August 31, 2005.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolf from, Director, Tulsa Field Office. Telephone: (918) 581-6430. E-mail: mwolf from@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Texas Program
- II. Submission of the Proposed Amendment

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 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 of the Texas program in the February 27, 1980, **Federal Register** (45 FR 12998). You can also find later actions concerning the Texas program and program amendments at 30 CFR 943.10, 943.15 and 943.16.

II. Submission of the Proposed Amendment

By letter dated December 23, 2003 (Administrative Record No. TX-657), 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. Texas proposed to add a new policy document to its program that describes mine permit implementation actions that would not, in the opinion of the Commission, be considered permit revisions and as such would not be subject to Commission review and approval. If approved, the implementation of this policy would impact the way current mine permit applications are prepared and how revisions are processed. We announced receipt of the proposed amendment in the February 9, 2004, **Federal Register** (69 FR 5942). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendments adequacy. We held a public meeting in Mount Pleasant, Texas, on March 11, 2004, and entered a summary of this meeting into the administrative record (Administrative Record No. TX-657.14). The public comment period ended on March 10, 2004. We received comments from one industry group and one private citizen.

During our review of the amendment, we identified concerns regarding incomplete permit renewal applications and the revision of these permits without regulatory authority review and approval. We notified Texas of these concerns by fax dated April 19, 2004, (Administrative Record No. TX-657.15).

In a letter dated July 12, 2005, (Administrative Record No. TX-657.17), Texas notified us that it was withdrawing the proposed amendment. Because the proposed amendment is not necessary to make the State's program consistent with SMCRA, we accepted the withdrawal. Therefore, the proposed amendment announced in the February 9, 2004, **Federal Register** is withdrawn.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 17, 2005.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Region.

[FR Doc. 05-17336 Filed 8-30-05; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[Docket No. TX-054-FOR]

Texas Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are 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 to revise its fish and wildlife habitat revegetation guidelines by adding technical standards for reclaiming mined land to habitat suitable for bobwhite quail and other grassland bird species and by making associated changes to existing guidelines. Texas intends to revise its program to encourage reclamation practices that are suitable for grassland bird species.

This document gives the times and locations that the Texas program and 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 on this amendment until 4 p.m., c.d.t., September 30, 2005. If requested, we will hold a public hearing on the amendment on September 26, 2005. We will accept requests to speak at a hearing until 4 p.m., c.d.t. on September 15, 2005.

ADDRESSES: You may submit comments, identified by Docket No. TX-054-FOR, by any of the following methods:

- E-mail: mwolfofrom@osmre.gov. Include "Docket No. TX-054-FOR" in the subject line of the message.
- Mail/Hand Delivery: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547.
- Fax: (918) 581-6419.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Texas program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address 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 Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547. Telephone: (918) 581-6430. E-mail: mwolfofrom@osmre.gov.

In addition, you may review a copy of the amendment during regular business hours at the following location:

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711-2967. Telephone: (512) 463-6900.

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

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. 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 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 of the Texas program in the February 27, 1980, **Federal Register** (45 FR 12998). You can also find later actions concerning the Texas program and program amendments at 30 CFR 943.10, 943.15 and 943.16.

II. Description of the Proposed Amendment

By letter dated July 26, 2005 (Administrative Record No. TX-659), 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. Below is a summary of the changes proposed by Texas. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

A. Section V. Revegetation Success Standards

At the request of the Texas Parks and Wildlife Department, Texas proposes to revise the following provisions in Section V of its April 1999 revegetation guidelines document entitled "Procedures and Standards for Determining Revegetation Success on Surface-Mined Lands in Texas":

1. D.1 Fish and Wildlife Habitat—Ground Cover

At Section V.D.1, Texas proposes to add a ground cover technical standard for bobwhite quail and other grassland bird species and other associated changes. Texas also proposed to make some minor clarifying changes to existing provisions.

a. Texas proposes to change the heading of the third paragraph from

"Use of Technical Standard" to "Use of General Technical Standard."

b. Texas proposes to add two new paragraphs concerning the technical standard for bobwhite quail and other grassland bird species. They read as follows:

Use of Bobwhite Quail and Other Grassland Bird Species Technical Standard. The technical standard is 70% ground cover.

Erosion of landscapes is a natural process dependent on relief, type of geologic material, precipitation, and vegetative cover. Appropriate reclamation land use planning takes these factors into account and should ensure that in all cases ground cover will be adequate to control erosion.

c. Texas proposes to revise the second sentence of the paragraph entitled "Statistical Comparison" to read as follows:

Obtain the lowest acceptable value by multiplying the appropriate technical standard (re: precipitation level) by 0.9 (*i.e.*, General: $78\% \times 0.9 = 70\%$ or Bobwhite Quail: $70\% \times 0.9 = 63\%$).

2. D.2 Fish and Wildlife Habitat—Woody-Plant Stocking

Texas proposes to add the following new paragraph under the heading "Use of Technical Standards."

Mottes locations planted to support Bobwhite Quail and other grassland bird species habitat shall be mapped at the time of planting. The success of woody plant stocking (stem count) will be based on meeting or exceeding the technical standard for motte density per acre and by counting the number of stems per motte.

B. Appendix B—Summary of Revegetation Success Standards—Fish and Wildlife Habitat Only

Texas proposes to revise revegetation parameters and performance standards for the ground cover and woody-plant stocking rate section of the table in Appendix B.

1. The first paragraph of the ground cover portion of the table is revised by adding the word "General." The revised paragraph reads as follows:

90% of the Following General Technical Standard: 78%

2. Texas proposes to add the following new paragraph:

90% of the Following Bobwhite Quail and Grassland Bird Species Technical Standard: 70%

3. The first paragraph of the Woody-Plant Stocking Rate portion of the table is revised by adding an exception to the 90% technical standard as follows:

90% of the Following Technical Standard except for mottes used to support Bobwhite Quail and Grassland Bird Species.

C. Attachment 2—Texas Parks and Wildlife Department (TPWD) Recommendations for the Development of Success Standards for Woody-Plant Stocking Rates

Texas proposes to make changes to the “Minimum Woody Vegetation Stocking Rates” table that is included in Attachment 2. The current table pertains to all fish and wildlife land use habitat categories. The revised table will include a general fish and wildlife land use habitat category and a specific fish and wildlife land use habitat category for bobwhite quail and other grassland bird species.

1. General Land Use Category and Planting Standards.

a. Texas added the headings “General Land Use Category” and “Planting Standards” to the existing table.

b. Under the “General Land Use Category” heading, Texas added the language “(See Note 1)” after the subheading of “Hardwood.” Texas added “Note 1” to the bottom of the revised table. It reads as follows: “Note 1: Up to 30% of the planting standard can be pine. Longleaf pine is preferred, with native warm season grasses interspersed.” Texas also removed the subheading of “Pine” along with the “Statewide” designation. Under the Planting Standards heading, Texas removed the language “0 stems per acre” for pine.

2. Fish & Wildlife Habitat—Bobwhite Quail and other Grassland Bird Species and Planting Standards

Texas added a new land use habitat category for bobwhite quail and other grassland bird species and the planting standards for the new habitat category to the existing table as shown below:

Fish and wildlife habitat—bobwhite quail and other grassland bird species	Planting standards
Native Brush: Statewide—Mottes	a. density of 2 mottes per acre. b. mottes 30–50 feet in diameter. c. 125 stems per motte or 250 stems per acre.
Hardwood or Pine Statewide.	0 to a maximum 20 stems per acre.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we

approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Tulsa Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include “Attn: Docket No. TX-054-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

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review 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 September 15, 2005. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible,

that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be 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 everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please 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 make a written summary of each meeting a part of the administrative record.

IV. 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 17, 2005.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Region.

[FR Doc. 05–17337 Filed 8–30–05; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Part 199**

RIN 0720–AA92

TRICARE; Revision of Participating Providers Reimbursement Rate; TRICARE Dental Program (TDP)

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: The Department is publishing this proposed rule to revise the requirements and procedures for the reimbursement of TRICARE Dental Program participating providers. Participating providers will no longer be reimbursed at the equivalent of a percentile of prevailing charges sufficiently above the 50th percentile of prevailing charges made for similar services in the same locality (region) or state, or the provider's actual charge, whichever is lower, less any cost-share amount due for authorized services. Specifically, the revision will require TRICARE Dental Program participating providers to be reimbursed in accordance with the contractor's network agreements, less any cost-share amount due for authorized services.

Public comments are invited and will be considered for possible revisions to the final rule.

DATES: Written comments received at the address indicated below by October 31, 2005 will be accepted.

ADDRESSES: Because of staff and resource limitations, we can only accept comments by mail or electronic bill (e-mail). We are unable to accept comments by facsimile (FAX) transmission. Send e-mail comments to TDP.rule@tma.osd.mil. Mail written comments to the following address only: TRICARE Management Activity, TRICARE Operations/Dental Division, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206; Attention: Col. Gary C. Martin, Director. Please allow sufficient time for mailed