



This document is scheduled to be published in the Federal Register on 02/14/2012 and available online at <http://federalregister.gov/a/2012-03418>, and on FDsys.gov

4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SATS Nos. TX-061-FOR; TX-062-FOR; TX-063-FOR; Docket No. OSM-2011-0007]

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 three amendments to the Texas regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas at its own initiative submitted three separate amendments to its program: SATS Nos. TX-061-FOR, TX-062-FOR, and TX-063-FOR. Texas proposed revisions in TX-061-FOR by adding language that no longer requires an operation with only reclamation activities ongoing to

renew their mining permit, to clarify the requirement to maintain public liability insurance for sites where the permit is not renewed because the only activities ongoing are reclamation, and to clarify midterm review times for sites where the permit is not renewed because the only ongoing activities are reclamation. Texas proposed revisions in TX-062-FOR by adding a new definition for “Previously mined land,” adding new language on the effects of previous mining violations from operations on previously mined lands in relation to permit application denials, and adding new language explaining performance standards for revegetation liability timeframes for coal mining and reclamation operations. Texas proposed revisions in TX-063-FOR by adding a new definition for “Director;” deleting old language, and adding new language clarifying the review periods for new permits, renewals, and significant revisions. Texas revised its program to improve operational efficiency.

EFFECTIVE DATE: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

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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 Amendment

By letter dated May 18, 2011, (Administrative Record No. TX-667) Texas sent us an

amendment to its Program under SMCRA (30 U.S.C. 1201 et seq.) at its own initiative. This amendment added language to no longer require an operation with only reclamation activities ongoing to renew their mining permit, to clarify the requirement to maintain public liability insurance for sites where the permit is not renewed because the only activities ongoing are reclamation, and to clarify midterm review times for sites where the permit is not renewed because the only ongoing activities are reclamation.

By letter dated May 26, 2011, (Administrative Record No. TX-668) Texas sent us an amendment to its Program under SMCRA (30 U.S.C. 1201 et seq.) at its own initiative. This amendment added a new definition for “Previously mined land,” added new language on the effects of previous mining violations from operations on previously mined lands in relation to permit application denials, and added new language explaining performance standards for revegetation liability timeframes for coal mining and reclamation operations.

By letter dated June 3, 2011, (Administrative Record No. TX-669) Texas sent us an amendment to its Program under SMCRA (30 U.S.C. 1201 et seq.) at its own initiative. This amendment added a new definition for “Director;” deleted old language, and added new language clarifying the review periods for new permits, renewals, and significant revisions.

Texas revised its program with these three amendments to improve operational efficiency.

We announced receipt of the proposed amendments in the August 16, 2011, Federal Register (75 FR 50708). 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 amendments. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on September 15, 2011. We did not receive any public comments.

III. OSM's Findings

We are approving the amendments as described below. The following are the findings we made concerning the amendments under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. The full text of the changes made can be found in the administrative record or online at Regulations.gov.

A. TX-061-FOR

1. 16 Texas Administrative Code Section 12.100. Responsibilities

Texas added new language allowing a permittee to not renew their mining permit if the activities on the site are solely for reclamation purposes.

We find that Texas' new language is substantively the same as the language of the

counterpart Federal regulations at 30 CFR 773.4(a) and will not make Texas' regulations less effective than the Federal counterpart. Therefore, we are approving it.

2. 16 Texas Administrative Code Section 12.225. Commission Review of Outstanding Permits

Texas added a new paragraph (a)(3) to clarify that midterm permit reviews will continue to be conducted when an existing permit is not renewed because the only ongoing activities within the permit area are for reclamation.

We find that this new paragraph is comparable to its Federal counterpart at 30 CFR 774.10(a)(2) and (3) and its addition does not make Texas' regulations less effective than the Federal regulation. Therefore, we are approving it.

3. 16 Texas Administrative Code Section 12.311. Terms and Conditions for Liability Insurance

Texas revised this section with minor language changes to paragraph (b).

We find that Texas' changes make this paragraph substantively the same as the counterpart Federal regulation 30 CFR 800.60(b). Therefore, we are approving them.

B. TX-062-FOR

1. Texas Surface Coal Mining and Reclamation Act Section 134.004. Definitions

Texas added a new definition for “previously mined land” in lieu of the definition of “lands eligible for re-mining” contained in SMCRA at §701(34).

We find that Texas’ new definition coincides with definitions found in the Federal regulations dealing with re-mining and is a suitable counterpart to the definition contained in SMCRA because it addresses all aspects of the SMCRA definition. Therefore, the addition of this new definition will make Texas’ statutes no less stringent than SMCRA and we are approving it.

2. Texas Surface Coal Mining and Reclamation Act Section 134.069. Effect of Past or Present Violation

Texas added a new paragraph (c) to incorporate equivalent statutory language found at SMCRA §510(e) with regard to the criteria for denial of a permit application due to permit violations during mining on previously mined land. Although Texas’ language is not identical to the Federal language, it is similar. SMCRA §510(e) is specific that the unanticipated event or condition is “at” a surface coal mine while Texas’ §134.069 uses the phrase “in connection with.”

We find that this difference in wording is allowable as long as Texas implements it with

the same intent of SMCRA §510(e) and the Federal regulations at 30 CFR 773.13. Based on this, we find that the addition of the new paragraph will make Texas' statutes no less stringent than the requirements of SMCRA. Therefore, we are approving it.

3. Texas Surface Coal Mining and Reclamation Act Section 134.092. Performance Standards

Texas added new language to (a)(20) to incorporate equivalent statutory language found at SMCRA §515(b)(20) with regard to the term of the extended responsibility period for mining of previously mined lands.

This new language creates a separate paragraph, (a)(20)(B), for lands that meet the new definition of "previously mined lands" which we have already found to be no less stringent than SMCRA. Texas' new provision requiring an operator to assume responsibility for 2 years on previously mined land is substantively the same as the Federal requirements at 515(b)(20)(B). However, this section does not address the period of responsibility for areas that receive an annual precipitation amount of 26 inches or less. This responsibility requirement is addressed in section 134.104 and is discussed below.

We find that this new language makes Texas' statutes no less stringent than the requirements of SMCRA. Therefore, we are approving it.

4. Texas Surface Coal Mining and Reclamation Act Section 134.104. Responsibility for Revegetation: Area of Low Precipitation

Texas added new language to this section to incorporate equivalent statutory language found at SMCRA §515(b)(20) with regard to the term of the extended responsibility period for mining of previously mined lands. The new language clarifies the liability periods for areas that receive an annual average precipitation amount of 26 inches or less as five years on previously mined lands and 10 years on lands not previously mined.

We find that this new language makes Texas' statutes no less stringent than the requirements of SMCRA. Therefore, we are approving it.

5. Texas Surface Coal Mining and Reclamation Act Section 134.105. Responsibility for Revegetation: Long-Term Intensive Agricultural Postmining Use

Texas deleted language in this section referring to the "five year or 10 year" period of responsibility. This deletion was made so the section coincides with other changes made to the statutes that were discussed above. This change allows the modified sentence to refer to whichever "applicable period" applies.

We find that this deletion makes Texas' statutes no less stringent than the requirements of SMCRA. Therefore, we are approving it.

C. TX-063-FOR

1. Texas Surface Coal Mining and Reclamation Act Section 134.004. Definitions

Texas added a definition for “Director,” defining it as the director of the Surface Mining and Reclamation Division of the Railroad Commission of Texas or the director’s representative.

We find that there is no Federal counterpart for the new definition and it does not make Texas’ statutes less stringent than the requirements of SMCRA. However, Texas’ current regulations at §12.3(54) currently define “director” as “the Director of the Office of Surface Mining Reclamation and Enforcement (OSM).” Once we approve this change to Texas’ statute, Texas will amend its approved program regulations. We are approving this change to Texas’ statutes.

2. Texas Surface Coal Mining and Reclamation Act Section 134.080. Approval of Permit Revision

Texas modified the section’s title and deleted paragraph (b), which required the Commission to approve or disapprove a permit revision within 90 days. Texas added a new section 134.085 that describes, in detail, the Commission’s requirements for processing new permits, renewals, and revisions, including processing and notification timeframes. SMCRA §511(a)(2) requires that revisions be approved or disapproved

“within a period of time established by the State or Federal Program.”

We find that these changes make Texas’ statutes no less stringent than the requirements of SMCRA. Therefore, we are approving them.

3. Texas Surface Coal Mining and Reclamation Act Section 134.085. Review Periods for New Permits, Renewals, and Revisions

Texas added this new section to codify application processing timeframes that have previously been in effect and to comply with SMCRA §511(a)(2) which requires States to establish such timeframes. Texas established a seven day application review period to determine application completeness followed by a 120 day review period for new permits, renewals, or significant revisions and a 90 day review period for applications considered to be non-significant departures.

We find that the addition of this new section makes Texas’ statutes no less stringent than the requirements of SMCRA. Therefore, we are approving it.

IV. Summary and Disposition of Comments

Public Comments

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

Federal Agency Comments

On June 27, 2011, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record Nos. TX-667.02, TX-668.02, and TX-669.02). 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 amendments 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 these amendments pertained to air or water quality standards. Therefore, we did not ask EPA to concur on the amendments. However, on June 27, 2011, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendments from the EPA (Administrative Record Nos. TX-667.02, TX-668.02, and TX-669.02). 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 27, 2011, we requested comments on Texas' amendments (Administrative Record Nos. TX-667.02, TX-668.02, and TX-669.02), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendments Texas sent us on May 18, 2011, May 26, 2011, and June 3, 2011.

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.

Ervin J. Barchenger, Regional Director
Mid-Continent Region

November 9, 2011

Date

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
* * * * * May 18, 2011, May 26, 2011, and June 3, 2011	* * <u>[Insert date of publication in the Federal Register]</u>	16 TAC 12.100(a); 12.225(a)(3); 12.311(b); TSCMRA 134.004 (7-a) and (15-a); 134.069(c); 134.080(a) and (b); 134.085; 134.092(20); 134.104(1) and (2); and 134.105(a).

[FR Doc. 2012-3418 Filed 02/13/2012 at 8:45 am; Publication Date: 02/14/2012]