



4310-05-P

## **DEPARTMENT OF THE INTERIOR**

### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 943**

**[SATS No. TX-068-FOR; Docket ID: OSM-2018-0002;  
S1D1S SS08011000 SX064A000 189S180110;  
S2D2S SS08011000 SX064A000 18XS501520]**

#### **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 (OSMRE), 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 revisions to its regulations regarding annual

permit fees for calendar years 2017 and 2018. Texas also proposes to remove a restriction in its rules that conflicts with the United States Bankruptcy Code.

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

**DATES:** We will accept written comments on this amendment until 4:00 p.m., CST, [Insert date 30 days after the date of publication in the FEDERAL REGISTER]. If requested, we will hold a public hearing on the amendment on [Insert date 25 days after date of publication in the FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4:00 p.m., CST on [Insert date 15 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by SATS No. TX-068-FOR, by any of the following methods:

- *Mail/Hand Delivery:* William Joseph, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101<sup>st</sup> East Avenue, Suite 145, Tulsa, Oklahoma 74128-4629.

- *Fax:* (918) 581-6419
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID OSM-2018-0002. If you would like to submit comments go to <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 OSMRE’s Tulsa Field Office, or the full text of the program amendment is available for you to review at [www.regulations.gov](http://www.regulations.gov).

William Joseph, Director

Tulsa Field Office

Office of Surface Mining Reclamation and Enforcement

1645 South 101<sup>st</sup> East Avenue, Suite 145

Tulsa, Oklahoma 74128-4629

Telephone: (918) 581-6430

Email: [bjoseph@osmre.gov](mailto:bjoseph@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

P.O. Box 12967

Austin, Texas 78711-2967

Telephone: (512) 463-6900

**FOR FURTHER INFORMATION CONTACT:** William Joseph, Director, Tulsa Field Office. Telephone: (918) 581-6430, email: [bjoseph@osmre.gov](mailto:bjoseph@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, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. 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 February 7, 2018 (Administrative Record No. TX-706), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) 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**.

§12.108. Permit Fees.

Texas proposes to revise its regulation at 16 Texas Administrative Code (TAC) section 12.108(b) regarding annual permit fees by:

- (1) Amending the calendar years specified in paragraph (b) to calendar year 2017 and 2018;
- (2) Decreasing the amount of the fee, from \$13.05 to \$12.85, for each acre of land within a permit area covered by a reclamation bond on December 31<sup>st</sup> of the year; and
- (3) Decreasing the amount of the fee, from \$6,600 to \$6,170, for each permit in effect on December 31<sup>st</sup> of the year.

Texas fully funds its share of costs to regulate the coal mining industry with fees paid by the coal industry. To meet these costs, Texas charges a permit application fee and two annual fees, as mentioned above. The proposed fee revisions are intended to provide adequate funding to pay the State's cost of operating its regulatory program, and provide incentives for industry to accomplish reclamation and achieve bond release as quickly as possible.

§12.309. Terms and Conditions of the Bond.

Texas proposes to revise its regulation at 16 Texas Administrative Code (TAC) section 12.309(j)(2)(B) by:

- (1) Removing the condition that self-bond applicants not have been subject to bankruptcy proceedings during the 5-year period immediately preceding the date of application.

Texas proposes this revision to conform with the United States Bankruptcy Code at 11 U.S.C. §525(a) and 30 CFR §800.23(b)(2).

### **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.

#### Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final program will be those that either involve personal experience or include

citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

#### Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., CST on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need

reasonable 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 12866—Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance and dated October 12, 1993, the approval of state program amendments is exempted from OMB review under Executive Order 12866.

##### Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 14, 2018.

Alfred L. Clayborne, Regional Director

Mid-Continent Region

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