



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SATS No. TX-065-FOR; Docket ID: OSM-2012-0019]

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 revisions to its regulations regarding: definitions; review of permit applications; criteria for permit approval or denial; commission review of

outstanding permits; challenge of ownership or control and applicant/violator system procedures; identification of interests and compliance information; mining in previously mined areas; conditions of permits; revegetation standards; cessation orders; alternative enforcement; application approval and notice; permit revisions; permit renewals; transfer, assignment or sale of permit rights; and requirements for new permits for persons succeeding to rights granted under a permit. Texas intends to revise its program to be no less effective than the Federal regulations and improve operational efficiency.

This document gives the times and locations that the Texas program and this 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 4:00 p.m., c.d.t., [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., c.d.t. on [Insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by SATS No. TX-065-FOR, by any of the following methods:

- Mail/Hand Delivery: Alfred L. Clayborne, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128-4629
- Fax: (918) 581-6419
- Federal eRulemaking Portal: 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 or going to www.regulations.gov.

Alfred L. Clayborne, Director
Tulsa Field Office

Office of Surface Mining Reclamation and Enforcement

1645 South 101st East Avenue, Suite 145

Tulsa, Oklahoma 74128-4629

Telephone: (918) 581-6430

E-mail: aclayborne@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

Capitol Station, P.O. Box 12967

Austin, Texas 78711-2967

Telephone: (512) 463-6900

FOR FURTHER INFORMATION CONTACT: Alfred L. Clayborne, Director, Tulsa Field Office. Telephone: (918) 581-6430. E-mail: aclayborne@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 e-mail dated February 14, 2012 (Administrative Record No. TX-701), Texas sent us

an amendment (TX-060-FOR) to its program under SMCRA (30 U.S.C. 1201 et seq.). Texas submitted the proposed amendment in response to a September 30, 2009, letter (Administrative Record No. TX-665) that OSM sent to Texas in accordance with 30 CFR 732.17(c) with additional changes submitted on its own initiative. The proposed rule was published, and its public comment period and opportunity for public hearing on the proposed amendment was announced in the Federal Register (77 FR 25949) on May 2, 2012. During our review of the amendment, we found several sections that were less effective than their counterpart Federal regulations. A list of the concerns was sent to Texas via a letter dated July 18, 2012 (Administrative Record No. TX-701.04). By letter dated August 09, 2012 (Administrative Record No. TX-702), Texas responded to the July 18, 2012, letter by withdrawing its amendment (TX-060-FOR) regarding ownership and control changes.

By letter dated August 09, 2012 (Administrative Record No. TX-702), Texas sent us a new amendment to its program under SMCRA (30 U.S.C. 1201 et seq.). This amendment was a corrected version of its withdrawn amendment (TX-060-FOR) as discussed in the previous paragraph. Texas submitted this proposed amendment in response to a September 30, 2009, letter (Administrative Record No. TX-665) that OSM sent to Texas in accordance with 30 CFR 732.17(c) with additional changes submitted on 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** or at www.regulations.gov.

Texas proposes to revise its regulation at 16 Texas Administrative Code (TAC) at the following sections:

A. §12.3 Definitions.

Texas proposes to modify this section by revising, adding, or deleting language for the definitions of Applicant/Violator System; Control or controller; Knowing or knowingly; Lands eligible for remining; Own, owner, or ownership; Owned or controlled and owns and controls; Remining; Violation; Violation, failure, or refusal; Violation notice; and Willful or willfully.

B. §12.100 Responsibilities.

Texas proposes to remove the word “renewal” from the provision that places the burden on the applicant to establish that an application is in compliance with all the Commission’s requirements.

C. §12.116 Identification of Interests and Compliance Information (Surface mining).

Texas proposes to delete language in this section regarding identification of interests and compliance information and replace it with new language regarding

certifying and updating existing permit information, permit applicant and operator information, permit history information, property interest information, violation information, and commission actions.

D. §12.155 Identification of Interests.

Texas proposes to delete this section and incorporate the language into § 12.156 for efficiency.

E. §12.156 Identification of Interest and Compliance Information (Underground mining).

Texas proposes to add language to this section regarding identification of interests, specifically: certifying and updating permit application information, permit applicant and operator information, permit history information, property interest information, violation information, and commission actions.

F. §12.206 Mining in Previously Mined Areas.

Texas proposes to add new language regarding application requirements for operations on lands eligible for re-mining.

G. §12.215 Review of Permit Applications.

Texas proposes to add language requiring the entry and updating of data into AVS. Additionally, language is being added regarding the review of permit history, review of compliance history, and making a permit eligibility determination based on this information.

H. §12.216 Criteria for Permit Approval or Denial.

Texas proposes to add language stating that permits related to remining must contain lands eligible for remining, an identification of potential environmental and safety problems, and mitigation plans that address any potential environmental or safety problems.

I. §12.225 Commission Review of Outstanding Permits.

Texas proposes to add language regarding written findings and preliminary findings for improvidently issued permits. Additionally, changes are proposed regarding permit suspension and rescission timeframes and appeal rights.

J. §12.234 Challenge of Ownership or Control, Information on Ownership and Control, and Violations, and Applicant/Violator System Procedures.

Texas proposes to renumber its §12.234 as §12.235 and add new language to create a new §12.234 regarding ownership and control challenges—specifically—the applicability, procedures, burden of proof, written agency decisions, and post-permit issuance information requirements.

- K. §12.395 Revegetation: Standards for Success (Surface Mining) and §12.560 Revegetation: Standards for Success (Underground Mining).

Texas proposes to delete language in this section regarding liability periods and replace it with new language that is no less effective than the Federal regulations.

- L. §12.676 Alternative Enforcement.

Texas proposes to add new language regarding alternative enforcement, specifically for general provisions, criminal penalties, and civil actions for relief.

- M. §12.677 Cessation Orders.

Texas proposes to add new language requiring written notification to the permittee, the operator, and anyone listed or identified as an owner or controller of an operation, within 60 days of issuing a cessation order.

N. §12.221 Conditions of Permits: Environment, Public Health, and Safety; §12.239 Application Approval and Notice; §12.226 Permit revisions; §12.228 Permit Renewals: Completed Applications; §12.232 Transfer, Assignment or Sale of Permit Rights: Obtaining Approval; and §12.233 Requirements for New Permits for Persons Succeeding to Rights Granted Under a Permit.

Texas proposes to make minor, nonsubstantial reference changes in these sections.

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 regulations 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, e-mail 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., c.d.t. 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

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

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM 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.

Ervin J. Barchenger, Regional Director
Mid-Continent Region

August 16, 2012_____

Date

[FR Doc. 2012-27086 Filed 11/05/2012 at 8:45 am; Publication Date: 11/06/2012]