**§ 0.161 Acceptance of certain offers by the Deputy Attorney General or Associate Attorney General, as appropriate.**

(a) In all cases in which the acceptance of a proposed offer in compromise would exceed the authority delegated by § 0.160, the Assistant Attorney General concerned shall, when he is of the opinion that the proposed offer should be accepted, transmit his recommendation to that effect to the Deputy Attorney General or the Associate Attorney General, as appropriate.

(b) The Deputy Attorney General or the Associate Attorney General, as appropriate, is authorized to exercise the settlement authority of the Attorney General as to all claims asserted by or against the United States.

4. Section 0.164 is revised to read as follows:

**§ 0.164 Civil claims that may be closed by Assistant Attorneys General.**

Assistant Attorneys General are authorized, with respect to matters assigned to their respective divisions, to close (other than by compromise or by entry of judgment) claims asserted by the United States in all cases in which they would have authority to accept offers in compromise of such claims under § 0.160(a), except:

(a) When for any reason, the closing of a particular claim would, as a practical matter, control or adversely influence the disposition of other claims and the closing of all the claims taken together would exceed the authority delegated by this section; or

(b) When the Assistant Attorney General concerned is of the opinion that because of a question of law or policy presented, or because of opposition to the proposed closing by the department or agency involved, or for any other reason, the proposed closing should receive the personal attention of the Attorney General, the Deputy Attorney General or the Associate Attorney General, as appropriate.

5. Section 0.165 is revised to read as follows:

**§ 0.165 Recommendations to the Deputy Attorney General or Associate Attorney General, as appropriate, that certain claims be closed.**

In all cases in which the closing of a claim asserted by the United States would exceed the authority delegated by §§ 0.160(a) and 0.164, the Assistant Attorney General concerned shall, when he is of the opinion that the claim should be closed, transmit his recommendation to that effect, together with a report on the matter, to the Deputy Attorney General or the Associate Attorney General, as appropriate, for review and final action. Such report shall be in such form as the Deputy Attorney General or the Associate Attorney General may require.

6. Section 0.168 is revised to read as follows:

**§ 0.168 Redelegation by Assistant Attorneys General.**

(a) Assistant Attorneys General are authorized, with respect to matters assigned to their respective divisions, to redelegate to subordinate division officials and United States Attorneys any of the authority delegated by §§ 0.160 (a) and (b), 0.162, 0.164, and 0.172(b), except that any disagreement between a United States Attorney or other Department attorney and a client agency over a proposed settlement that cannot be resolved below the Assistant Attorney General level must be presented to the Assistant Attorney General for resolution.

(b) Redelegations of authority under this section shall be in writing and shall be approved by the Deputy Attorney General or the Associate Attorney General, as appropriate, before taking effect.

(c) Existing delegations and redelegations of authority to subordinate division officials and United States Attorneys to compromise or close civil claims shall continue in effect until modified or revoked by the respective Assistant Attorneys General.

(d) Subject to the limitations set forth in § 0.160(c) and paragraph (a) of this section, redelegations by the Assistant Attorneys General to United States Attorneys may include the authority to:

(1) Accept offers in compromise of claims asserted by the United States in all cases in which the gross amount of the original claim does not exceed $5,000,000 and in which the difference between the original claim and the proposed settlement does not exceed $1,000,000; and

(2) Accept offers in compromise of, or settle administratively, claims against the United States in all cases in which the principal amount of the proposed settlement does not exceed $1,000,000.

Dated: March 21, 1995.

**Janet Reno,**

*Attorney General.*

[FR Doc. 95–07460 Filed 3–24–95; 8:45 am]

BILLING CODE 4410–01–M

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 943

## Texas Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of proposed amendment.

**SUMMARY:** OSM is announcing its decision to approve, with certain additional requirements, a proposed amendment to the Texas permanent regulatory program (hereinafter, the Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consisted of changes to Texas' existing rules pertaining to identification of interests and compliance information, review of permit applications, criteria for permit approval or denial, and Railroad Commission of Texas (Commission) review of outstanding permits. The amendment was intended to revise the Texas program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** March 27, 1995.

**FOR FURTHER INFORMATION CONTACT:** James H. Moncrief, telephone: (918) 581–6430.

**SUPPLEMENTARY INFORMATION:**

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

### I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning the Texas program and program amendments are codified at 30 CFR 943.15 and 943.16.

### II. Proposed Amendment

By letter dated May 24, 1994 (Administrative Record No. TX–576), Texas submitted to OSM a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to the required amendments codified at 30 CFR 943.16

(c) (1) and (2), (d), (f), (j) (1), (2), (3), and (4), (r), and (s) (59 FR 13200, March 21, 1994). The provisions of the Texas Coal Mining Regulations (TCMR) at 16 Texas Administrative Code (TAC) 11.221 and of the Texas Surface Coal Mining and Reclamation Act (TSCMRA) at Article 5920–11 of the Texas Revised Civil Statutes Annotated that Texas proposed to amend were: TCMR 778.116(m), identification of interests and compliance information; TCMR 786.215 (e)(1) and (f), review of permit applications; TCMR 786.216 (i) through (o), criteria for permit approval or denial; TCMR 788.225 (f) through (i), commission review of outstanding permits; and section 21(c) of TSCMRA, reporting notices of violations in permit applications.

OSM announced receipt of the proposed amendment in the June 30, 1994, **Federal Register** (59 FR 33705), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. TX–576.07). Because no one requested a public hearing or meeting, none was held.

The public comment period ended August 1, 1994.

During its review of the amendment, OSM identified concerns relating to the provisions of Texas' regulations and statute at TCMR 778.116(m), identification of interests and compliance information; TCMR 786.215(e)(1), review of permit applications; TCMR 788.225(g), Commission review of outstanding permits; and section 21(c) of TSCMRA, reporting notices of violations in permit applications. OSM notified Texas of the concerns by letter dated August 11, 1994 (Administrative Record No. TX–576.12).

Texas responded in a letter dated October 6, 1994, by submitting a revised amendment (Administrative Record No. TX–576.13). Texas proposed further revisions to TCMR 778.116(m), identification of interests and compliance information; TCMR 786.215(e)(1), review of permit applications; and TCMR 788.225(g), Commission review of outstanding permits. Texas also proposed to recodify previously proposed TCMR 788.225 (h) and (i), respectively, as TCMR 788.226(g)(2) and (h). Texas also stated that it was not, at this time, proposing any formal program amendment pertaining to section 21(c) of TSCMRA. Therefore, OSM considers section 21(c) of TSCMRA to be withdrawn from consideration in this amendment, and the required amendment at 30 CFR 943.16(r) remains outstanding.

Based upon the revisions to the proposed program amendment submitted by Texas, OSM reopened the public comment period in the October 27, 1994, **Federal Register** (59 FR 53949, Administrative Record No. TX–576.20). The public comment period ended November 14, 1994.

## III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with two additional requirements, that the proposed regulation revisions submitted by Texas on May 24, 1994, and as further revised on October 6, 1994, are consistent with the corresponding provisions of the Federal regulations. Accordingly, the Director approves the proposed regulation revisions.

In taking this action, the Director notes that, effective November 28, 1994, OSM revised the Federal regulations at 30 CFR Parts 701, 773, 778, 840, and 843 pertaining to the applicant/violator computer system (AVS) and procedures for ownership and control determinations (59 FR 54306, October 28, 1994). Also, effective November 28, 1994, the Office of Hearings and Appeals revised related Federal regulations at 43 CFR part 4, subpart L, pertaining to special rules applicable to surface coal mining hearings and appeals (59 FR 54356, October 28, 1994). By letter dated January 18, 1995, OSM notified Texas of these revisions to the Federal regulations (Administrative Record No. TX–585). The Director's action in this amendment does not relieve Texas from the need to further amend its regulations to comply with other provisions in the revised Federal regulations. When OSM determines which Texas regulation provisions pertaining to AVS and ownership and control must be amended to be no less effective than the revised Federal regulations, it will notify Texas in accordance with 30 CFR 732.17(d).

### *1. Nonsubstantive Revisions to Texas' Regulations*

Texas proposed to recodify its previously-approved right of appeal regulation at TCMR 788.225(g) (corresponding Federal regulation at 30 CFR 773.21) as TCMR 788.225(h).

Because the proposed recodification of this previously-approved regulation is nonsubstantive in nature, the Director finds that this proposed recodification is not inconsistent with SMCRA or the Federal regulations. The Director approves this proposed recodification.

### *2. Substantive Revisions to Texas' Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations*

In response to the required amendments at 30 CFR 943.16(j)(1) through (3) (finding No. 4(b), 59 FR 13200, 13205, March 21, 1994), Texas proposed revisions to the following regulations that are substantive in nature and contain language that is substantively identical to the corresponding Federal regulation provisions (listed in parentheses).

TCMR 788.225(f) (3) and (4) (30 CFR 773.20(c)(1)(iii) and (iv)), remedial measures,

TCMR 788.225(g) and (g)(1) (i) through (iv) (30 CFR 773.21 and 773.21(a)(1) through (4)), rescission procedures, and

TCMR 788.225(g)(2) (30 CFR 773.21(b), cessation of operations.

Because these proposed revisions to Texas' regulations are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective in meeting SMCRA's requirements than the corresponding provisions of the Federal regulations. The Director approves these regulation revisions and removes the required amendments at 30 CFR 943.16(j)(1) through (3).

### *3. TCMR 778.116(m), Identification of Interests and Compliance Information*

In response to the required amendments at 30 CFR 943.16(c)(1) and (2) (finding No. 2, 59 FR 13200, 13201–13203, March 21, 1994), Texas proposed to revise TCMR 778.116(m) to require that a permit application must include,

> For any violations of a provision of the Act, Federal Act *and its implementing Federal regulations and all Federal and state programs under the Federal Act,* or of any law, rule or regulation of the United States, or of any [State] *state* law, rule or regulation enacted pursuant to Federal law, rule, or regulation pertaining to air or water environmental protection * * * a list of all violation notices received by the applicant during the three year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application * * *.

Texas proposed to add the italicized language and to delete the bracketed language.

The corresponding Federal regulations at 30 CFR 778.14(c), through the Federal definition of ''violation notice'' at 30 CFR 773.5, require that a permit application must include information on violation notices received pursuant to SMCRA, SMCRA's implementing Federal regulations, a

State program, or any Federal or State law, rule, or regulation pertaining to air or water environmental protection.

At TCMR 700.003(1), Texas defines the term ''Act'' to mean the ''Texas Surface Coal Mining Control and Reclamation Act'' and at TCMR 700.003(10) defines the term ''Federal Act'' to mean the ''Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87).'' Therefore, when Texas requires, at proposed TCMR 778.116(m), that a permit application include information ''for any violations of a provision of the Act, Federal Act and its implementing Federal regulations and all Federal * * * programs approved under the Federal Act,'' it requires a permit application to include information regarding violations of TSCMRA, SMCRA, SMCRA's implementing regulations, and SMCRA-approved Federal programs (OSM–administered Indian lands program and Federal programs for States).

Furthermore, in a previously proposed and approved amendment (Administrative Record No. TX–562), Texas stated that the word ''State,'' when capitalized, refers to Texas and, when uncapitalized, refers to all States within the United States of America. Therefore, where Texas requires, at proposed TCMR 778.116(m), information for ''violations of a provision of * * * all * * * state programs approved under the Federal Act,'' it requires a permit application to include information regarding violations of all SMCRA-approved State programs, not just the Texas program.

Likewise, where proposed TCMR 778.116(m) requires information on violations ''of any state law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection,'' it requires a permit application to include information regarding violations of a law, rule or regulation of any State, including Texas, enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection. However, the corresponding Federal regulations at 30 CFR 778.14(c), through the definition of ''violation notice'' at 30 CFR 773.5, require information on violation notices of all State laws, rules, and regulations pertaining to air or water environmental protection, not just those enacted pursuant to Federal law, rule, or regulation.

Because proposed TCMR 778.116(m) limits the information about violation notices required in a permit applications to violations of those State laws, rules, and regulations pertaining to air or water environmental protection that are enacted pursuant to Federal law, rule, or regulation, the Director finds that proposed TCMR 778.116(m) is less effective in meeting SMCRA's requirements than the corresponding provisions of the Federal regulation at 30 CFR 778.14(c). Therefore, the Director requires Texas to further revise TCMR 778.116(m) to require a permit application to include information on all violations of any State law, rule or regulation that pertains to air or water environmental protection, not just those violations that were enacted pursuant to Federal law, rule, or regulation. Otherwise, for the reasons discussed above, the Director approves the proposed addition of the phrase ''and its implementing Federal regulations and all Federal and state programs under the Federal Act'' and the use of the word ''state,'' uncapitalized, in place of the word ''State'' capitalized, and removes the required amendments at 30 CFR 943.16(c) (1) and (2).

*4. TCMR 786.215 (e)(1), and (f), and 786.216(i), Review of Permit Application*

(a) *TCMR 786.215(e)(1).* In response to the required amendment at 30 CFR 943.16(d), Texas proposed to revise TCMR 786.215(e)(1) to require the Commission to consider, as a basis for permit denial, information on ''state'' failure-to-abate cessation orders and unabated imminent harm cessation orders (finding No. 3(a), 59 FR 13200, 13202, March 21, 1994).

Texas proposed to revise TCMR 786.215(e)(1) by inserting the word ''state,'' uncapitalized, in place of ''State,'' capitalized. As discussed in finding No. 3, Texas stated in a previously proposed and approved amendment (Administrative Record No. TX–562) that the word ''State,'' when capitalized, refers to Texas and, when uncapitalized, refers to all States within the United States of America. Thus, where proposed TCMR 786.215(e)(1) requires the Commission to consider information on ''state'' failure-to-abate cessation orders and unabated ''state'' imminent harm cessation orders, it means cessation order and violation notices incurred in all States, including those incurred in Texas.

The corresponding Federal regulations at 30 CFR 773.15(b)(1), through the definition of ''violation notice'' at 30 CFR 773.5, require, in part, that the regulatory authority consider information on State failure-to-abate cessation orders and unabated State imminent harm cessation orders incurred in all States, not just those incurred in the State where the application is submitted.

Because revised TCMR 786.215(e)(1) requires, as does the Federal regulation at 30 CFR 773.15(b)(1), that the State regulatory authority consider, as a basis for permit denial, cessation orders incurred by a permit applicant in all States, the Director finds that the proposed revisions to TCMR 786.215(e)(1) are no less effective in meeting SMCRA's requirements than the corresponding provisions of the Federal regulation at 30 CFR 773.15(b)(1). The Director approves the proposed use of the word ''state,'' uncapitalized, in place of the word ''State,'' capitalized, at TCMR 786.215(e)(1) and removes the required amendment at 30 CFR 943.16(d).

(b) *TCMR 786.215(f).* In response to the required amendment at 30 CFR 943.16(f) (finding No. 3(b), 59 FR 13200, 13203, March 21, 1994), Texas proposed to revise TCMR 786.215(f) to require, in part, that,

> Before any final determination by the Commission that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violation of the Act *or Federal Act and its implementing Federal regulations and all Federal and state programs approved under the Federal Act or Federal or state laws as used in 30 CFR 773.15(b)* of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of the Act *or Federal Act and its implementing Federal regulations and all Federal and state programs approved under the Federal Act or Federal or state laws as used in 30 CFR 773.15(b),* no permit shall be issued *and* [before] a hearing *shall be held* [and a final determination that no pattern of willful violations exists]. * * * *The Commission shall deny an application after a determination has been made that a pattern of willful violations exists.*

Texas proposed to add the italicized language and to delete the bracketed language. The proposed regulation further provides that the applicant or operator shall be afforded the opportunity for an adjudicatory hearing in accordance with TCMR 787.222.

Section 510(c) of SMCRA and the Federal regulation at 30 CFR 773.15(b)(3) prohibit issuance of a permit when the regulatory authority makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration, and with resulting irreparable damage to the environment, as to

indicate an intent not to comply with the Act. The term ''Act,'' as used in section 510(c) of SMCRA and 30 CFR 773.15(b)(3), includes SMCRA, its implementing Federal regulations, and all Federal and State programs approved under SMCRA (48 FR 44344, 44389, September 28, 1983). The Federal regulation also requires that the applicant or operator be given an opportunity for an adjudicatory hearing on the determination, as provided for at 30 CFR 775.11, before such a finding becomes final.

As discussed in finding No. 3, Texas defines the term ''Act'' to mean the ''Texas Surface Coal Mining Control and Reclamation Act'' and defines the term ''Federal Act'' to mean the ''Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87).'' Therefore, where proposed TCMR 786.215(f) requires the Commission to consider as a demonstrated pattern of willful violation of or as an intent not to comply with the provisions of ''the Act or Federal Act and its implementing Federal regulations and all Federal * * * programs approved under the Federal Act,'' it refers to violations of provisions of TSCMRA, SMCRA, SMCRA's implementing regulations, and SMCRA-approved Federal programs (OSM-administered Indian lands program and Federal programs for States).

As also discussed in finding No. 3, Texas stated in a previously proposed and approved amendment (Administrative Record No. TX–562) that the word ''State,'' when capitalized, refers to Texas and, when uncapitalized, refers to all States within the United States of America. Therefore, where proposed TCMR 786.215(f) requires the Commission to consider ''state programs approved under the Federal Act'' it means the SMCRA programs of any State within the United States of America, not just the Texas program. Proposed TCMR 786.215(f) also requires the Commission, when determining whether a pattern of violations exists, to consider, in part, violations of ''Federal or state laws as used in 30 CFR 773.15(b).'' The Federal regulations at 30 CFR 773.15(b)(1) require the regulatory authority to consider, as a basis for permit denial, information concerning, among other things, violations of SMCRA, any Federal rule or regulation promulgated pursuant to SMCRA, a State program, and any Federal or State law, rule, or regulation pertaining to air or water environmental protection. Because the State provision already specifically encompasses violations of TSCMRA, SMCRA, SMCRA's implementing regulations, and SMCRA-approved Federal and State programs, the proposed phrase ''Federal or state laws as used in 30 CFR 773.15(b)'' must refer only to Federal and State laws, rules, and regulations pertaining to air or water environmental protection.

However, the provision of the Federal regulations dealing with pattern of willful violation determinations, 30 CFR 773.15(b)(3), does not require the regulatory authority to consider non-SMCRA violations of Federal and State laws, rules, or regulations pertaining to air or water environmental protection. The regulatory authority is required to consider only violations of SMCRA, its implementing Federal regulations, and SMCRA-approved Federal and State programs. Thus, the proposed phrase would require the Commission to consider, when determining whether a pattern of violation exists, a larger set of violations than is required by the Federal regulations at 30 CFR 773.15(b)(3), thereby increasing the possibility that a pattern of willful violations exists.

In accordance with section 505(b) of SMCRA and 30 CFR 730.11(b), a State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations that are more stringent than those imposed under SMCRA and the Federal regulations or for which no Federal counterpart exists. Section 505(b) of SMCRA and 30 CFR 730.11(b) provisions dictate that such State provisions shall not be construed to be inconsistent with SMCRA or the Federal regulations. Therefore, the Director approves the proposed revisions at TCMR 786.215(f) and removes the required amendment at 30 CFR 943.16(f).

(c) *TCMR 786.216(i).* In response to the required amendment at 30 CFR 943.16(s) (finding No. 3(b), 59 FR 13200, 13203, March 21, 1994), Texas proposed to delete existing TCMR 786.216(i) and recodify existing paragraphs (j) through (o), respectively, as paragraphs (i) through (n). Existing TCMR 786.216 sets forth criteria for permit approval or denial, and TCMR 786.216(i) provides that the Commission shall not approve an application for a permit or permit revision unless the application affirmatively demonstrates and the Commission finds, in writing, that a pattern of willful violations of TSCMRA does not exist.

The Federal regulations at 30 CFR 773.15(c) pertain to written findings required for permit application approval. These regulations do not require the regulatory authority to make, as a condition for permit approval, a written finding that a demonstrated pattern of willful violations of the Act does not exist. However, the Federal regulation at 30 CFR 773.15(b)(3) prohibits issuance of a permit if the regulatory authority finds that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of SMCRA of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with SMCRA. As discussed in finding No. 4(b), Texas has proposed at TCMR 786.215(f) requirements for patterns of willful violations of SMCRA and TSCMRA that are no less effective than the Federal regulations at 30 CFR 773.15(b)(3).

Because the Federal regulations do not require the regulatory authority to make, as a condition for permit approval, a written finding that a demonstrated pattern of willful violations of the Act does not exist and because Texas has proposed at TCMR 786.215(f) requirements concerning the existence of a pattern of willful violations of SMCRA and TSCMRA that are no less effective than the Federal regulation at 30 CFR 773.15(b)(3), the Director finds that the provisions of deleted TCMR 786.216(i) are duplicative and unnecessary. Also, because recodification does not alter the content or meaning of the recodified regulations, the Director finds that the proposed recodification of TCMR 786.216 (j) through (o) as (i) through (n) is not inconsistent with any Federal requirements. Therefore, the Director (1) approves the deletion of TCMR 786.216(i) and the recodification of the remaining paragraphs of section .216 and (2) removes the required amendment at 30 CFR 943.16(s).

*5. TCMR 788.225(g)(1), Automatic Suspension and Rescission*

In response to the required amendment at 30 CFR 943.16(j)(4), Texas proposed to revise TCMR 788.225(g)(1) to require that, after a specified period of time not to exceed 90 days after the Commission has served on the permittee a notice of a proposed suspension and rescission, the permit will automatically become suspended and, after a subsequent period not to exceed 90 days, the permit will automatically be rescinded, unless the permittee submits adequate proof for the Commission to find that the permit should not be suspended or rescinded.

The corresponding Federal regulation at 30 CFR 773.21(a) provides that,

After a specified period of time not to exceed 90 days the permit automatically will become suspended, and not to exceed 90 days thereafter rescinded, unless within those periods the permittee submits proof, and the regulatory authority finds, consistent with the provisions of § 773.25 of this part, that * * *.''

With one exception, proposed TCMR 788.225(g)(1) is substantively identical the corresponding Federal regulations at 30 CFR 773.21(a). The exception is that proposed TCMR 788.225(g)(1) does not include provisions equivalent to those provided by the Federal phrase ''consistent with the provisions of § 773.25.'' 30 CFR 773.25 specifies standards for challenging ownership and control links and the status of violations. The Texas program does not have a direct counterpart to the Federal standards for challenging ownership and control links and the status of violations at 30 CFR 773.25 or to other requirements referred to at 30 CFR 773.25.

Therefore, the Director finds that the proposed revisions to TCMR 788.225(g)(1) are less effective than the corresponding Federal provisions at 30 CFR 773.21(a). The Director approves the proposed revisions to TCMR 788.225(g)(1) and removes the required amendment at 30 CFR 743.16(j)(4). However, the Director requires Texas to further revise TCMR 788.225(g)(1), or otherwise revise the Texas program, to require that the Commission's findings with regard to a permittee's challenge of the Commission's decision to suspend and rescind an improvidently issued permit must be consistent with the provisions of the Federal requirements at 30 CFR 773.25.

## IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

### *1. Public Comments*

OSM invited public comments on the proposed amendment. In response to OSM's invitation, the Texas Natural Resource Conservation Commission responded on July 5, 1994, that it supported the proposed changes and on November 7, 1994, that it had no comment on the proposed changes (Administrative Record Nos. TX–576.08 and TX–576.21).

The Texas Department of Health responded on June 16, 1994, that it supported the proposed changes to the Railroad Commission of Texas' coal mining and reclamation regulatory program (Administrative Record No. TX–576.05).

### *2. Federal Agency Comments*

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Texas program.

The Bureau of Land Management responded on October 31, 1994, that it had no comments on the revised submittal (Administrative Record No. TX–576.18).

The Bureau of Mines responded on June 14, 1994, and October 31, 1994, that it had no comments (Administrative Record Nos. TX–576.03 and TX–576.19).

The Forest Service responded on June 15, 1994, that it had no comments to offer and on October 20, 1994, that it had no additions or corrections to offer (Administrative Record Nos. TX–576.04 and TX–576.15).

The Soil Conservation Service responded on June 22, 1994, that the proposed amendment should have no adverse effect on the technical aspects of reconstruction or reclamation and on October 20, 1994, that it had no comments on the proposal (Administrative Record Nos. TX–576.06 and TX–576.16).

The U.S. Army Corps of Engineers responded on June 8, 1994, and October 25, 1994, that it found the amendment satisfactory to that agency (Administrative Record Nos. TX–576.02 and TX–576.17).

### *3. Environmental Protection Agency (EPA) Concurrence and Comments*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated 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 its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA, Region VI (Administrative Record No. TX–576.14). EPA did not respond to OSM's request.

### *4. State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP) Comments*

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. TX–576.14). Neither responded to OSM's request.

## V. Director's Decision

Based on the above findings, the Director approves, with two additional requirements, the proposed revisions as submitted by Texas on May 24, 1994, and as further revised by it on October 6, 1994.

The Director approves (1) as discussed in finding No. 1, the recodification of existing TCMR 788.225(g) as paragraph (h), concerning right of appeal and (2) as discussed in finding No. 2, the proposed revisions to TCMR 788.225(f) (3) and (4), (g), (g)(1) (i) through (iv), and (g)(2), concerning Commission review of outstanding permits; finding No. 4a, the proposed use of the word ''state,'' uncapitalized, in place of the word ''State,'' capitalized, at TCMR 786.215(e)(1), review of permit applications; finding No. 4b, the proposed revisions to TCMR 786.215(f) concerning patterns of willful violations; and finding No. 4c, the deletion of TCMR 786.216(i) and the recodification of existing TCMR 786.216 (j) through (o), respectively, as TCMR 786.216 (i) through (n), concerning criteria for permit approval or denial.

With the requirement that Texas further revise its rules, the Director approves, as discussed in finding No. 3, the proposed addition of the phrase ''and its implementing Federal regulations and all Federal and state programs under the Federal Act'' and the use of the word ''state,'' uncapitalized, in place of the word ''State'' capitalized, at TCMR 778.116(m), concerning identification of interests and compliance information; and finding No. 5, the proposed revisions to TCMR 788.225(g)(1), concerning Commission review of outstanding reports.

The Director approves the revisions proposed by Texas with the provision that they be fully promulgated in identical form to the revisions submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 943, codifying decisions concerning the Texas program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into

conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

## VI. Procedural Determinations

*1. Executive Order 12866*

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

*2. Executive Order 12778*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) 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 since each such 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 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.

*3. National Environmental Policy Act*

No environmental impact statement is required for this rule since 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)).

*4. 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.*).

*5. Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of a small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The State submittal that 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. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. 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.

### List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 21, 1995.

**Charles E. Sandberg,**

*Acting Assistant Director, Western Support Center.*

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations 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 by adding a new paragraph (j) as follows:

**§ 943.15 Approval of amendments to the Texas regulatory program.**

* * * * *

(j) The revisions to 16 Texas Administrative Code 11.221, the Coal Mining Regulations of the Railroad Commission of Texas, as submitted on May 24, 1994, and as further revised on October 6, 1994, are approved effective March 27, 1995.

Revisions to the following regulations are approved:

TCMR 778.116(m), identification of interests and compliance information.
TCMR 786.215(e)(1), review of violations.
TCMR 786.215(f), patterns of willful violations.
TCMR 786.216(i), existing paragraph deleted.
TCMR 786.216(j) through (o), recodified as (i) through (n).
TCMR 786.225(f)(3) and (4), Commission review of outstanding permits: remedial measures.
TCMR 786.225(g), (g)(1), (g)(1) (i) through (iv), rescission procedures.
TCMR 786.225(g)(2), cessation of operations.
TCMR 786.225(h), recodification.

3. Section 943.16 is amended by removing and reserving paragraphs (c), (d), (f), (j), and (s), and adding paragraphs (t) and (u) to read as follows:

**§ 943.16 Requried program amendments.**

* * * * *

(a)–(j) [Reserved]

* * * * *

(s) [Reserved]

(t) By September 25, 1995, Texas shall formally propose an amendment to OSM for TCMR 778.116(m) to require a permit application to include information on all violations of any State law, rule, or regulation that pertains to air or water environmental protection, not just those violations that were enacted pursuant to Federal law, rule, or regulation.

(u) By September 25, 1995, Texas shall formally propose an amendment to OSM for TCMR 788.225(g)(1) or otherwise revise the Texas program to require that the Commission's findings with regard to the permittee's challenge of the Commission's decision to suspend and rescind an improvidently issued permit must be consistent with the provisions of the Federal requirements at 30 CFR 773.25.

[FR Doc. 95–7440 Filed 3–24–95; 8:45 am]

BILLING CODE 4310–05–M

---

## 30 CFR Part 944

## Utah Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving a proposed amendment to the Utah permanent regulatory program (hereinafter referred to as the ''Utah program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA, 30 U.S.C. 1201 *et seq.*). Utah proposed revisions to its rules pertaining to the confidentiality of coal exploration information. The amendment is intended to revise the Utah program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** March 27, 1995.

**FOR FURTHER INFORMATION CONTACT:** Thomas E. Ehmett, Telephone: (505) 766–1486.

**SUPPLEMENTARY INFORMATION:**

### I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program for the regulation of coal exploration and coal mining and reclamation operations on non-Federal and non-Indian lands. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and an explanation of the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal**