**30 CFR Part 943**

**[SPATS No. TX–031–FOR]**

## Texas 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 Texas regulatory program (hereinafter referred to as the ''Texas program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposed revisions to its regulations pertaining to backfilling and grading performance standards for area strip mining operations. The amendment is intended to revise the Texas program to clarify time and distance standards for rough backfilling and grading.

**EFFECTIVE DATE:** December 20, 1996.

**FOR FURTHER INFORMATION CONTACT:** Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548, Telephone: (918) 581–6430.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Texas Program
II. Submission of the 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. Background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, Federal Register (45 FR 12998). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 943.10, 943.15, and 943.16.

### II. Submission of the Proposed Amendment

By letter dated July 11, 1996 (Administrative Record No. TX–617), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. Texas proposed to revise Texas Coal Mining Regulations (TCMR) 816.384, general requirements for backfilling and grading, by providing rough backfilling and grading time and/or distance standards for two types of area strip mining operations, cyclic excavation and continuous excavation.

OSM announced receipt of the proposed amendment in the July 24, 1996, Federal Register (61 FR 38420), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on August 23, 1996.

On September 12, 1996, OSM called Texas and requested a clarification of the terms ''cyclic excavation'' and ''continuous excavation.'' On September 13, 1996 (Administrative Record No. TX–617.09), Texas responded that its interpretations of these terms are described and discussed in the 1973 and 1992 editions of the ''SME Mining Engineering Handbook,'' Society of Mining Engineers of the American Institute of Mining, Metallurgical, and Petroleum Engineers, Inc.

### III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

*TCMR 816.384 (a)(3) and (a)(4) Backfilling and Grading Time and/or Distance Standards for Cyclic Excavation and Continuous Excavation Area Strip Mining Operations*

*TCMR 816.384(a)(3)* Texas revised TCMR 816.384(a)(3) by limiting its provisions to the ''cyclic excavation'' method of area strip mining and by adding a distance variance provision. According to the ''SME Mining Engineering Handbook,'' swing-type excavating units such as power shovels, draglines, clamshells, and backhoes are considered to be cyclical excavators. The cycle functions of these excavators include loading, raising, swinging, dumping, lowering, and positioning. In Texas, draglines are used for most cyclic excavation coal mining operations.

Texas' proposed revision allows it to grant additional distance for completion of rough backfilling and grading for cyclic excavation area strip mining operations if the permittee can demonstrate that such additional distance is necessary. The existing provision allows the State to grant additional time for completion of rough backfilling and grading, but it must be completed within a specified distance limitation off our spoil ridges with no exceptions. The proposed revision will allow Texas to extend the distance limit of four spoil ridges, as well as the time limit of 180 days, upon approval of a detailed analysis submitted by the permittee in the permit application reclamation plan under TCMR 780.145(b)(3).

In the August 6, 1996, Texas Register (21 TexReg 7309), Texas explained that ''[d]ue to the nature of surface coal mining operations active in Texas, the commission believes that more flexibility in meeting backfilling and grading distance requirements should be available to surface mine operators. Factors that may bear on the need for a distance extension, in addition to or in the absence of a time extension, include: The amount of overburden, the length of the pit, the number of coal seams, the weather, the type of equipment used, and the need for lignite.''

*TCMR 816.384(a)(4)* Texas also proposed a new provision concerning rough backfilling and grading standards for ''continuous excavation'' area strip mining operations at TCMR 816.384(a)(4). According to the ''SME Mining Engineering Handbook,'' a continuous excavator digs and discharges material simultaneously. The two most common continuous excavators used in coal mining are the bucket chain excavator and the bucket wheel excavator. In Texas, bucket wheel excavators are used for most continuous excavation coal mining operations.

Rough backfilling and grading for continuous excavation operations must be completed in accordance with the time schedule approved in the permit application reclamation plan under TCMR 780.145(b)(3). The time schedule is based on a detailed written analysis by the permittee and any additional information required by Texas.

*Federal requirements and decision* The Federal time and distance standards for specific types of mining, including area mining, at 30 CFR 816.101 were suspended effective August 31, 1992 (57 FR 33875, July 31, 1992). Therefore, OSM must evaluate State time and distance requirements against the general contemporaneous reclamation requirements of section 515(b)(16) of SMCRA and 30 CFR 816.100. Section 515(b)(16) of SMCRA requires that surface coal mining and reclamation operations be conducted so as to insure that all reclamation efforts proceed as contemporaneously as practicable with the surface coal mining operations. The Federal regulation at 30 CFR 816.100 similarly provides that backfilling and grading on all land that is disturbed by surface mining activities occur as contemporaneously as practicable with mining operations.

The effect of the suspension of 30 CFR 816.101 is that regulatory authorities may adopt backfilling and grading time and distance standards for various types

of mining operations that are specific to the coal mining conditions in their states, as long as the standards result in contemporaneously mining and reclamation as required by section 515(b)(16) of SMCRA and 30 CFR 816.100. It is noted that Texas' regulation at TCMR 816.383 requires that backfilling and grading of all land disturbed by surface mining activities occur as contemporaneously as practicable with mining operations.

Since permittees are required to submit a detailed analysis in support of the time and/or distance standards included in their permit application reclamation plans, Texas' proposed distance variance provision at TCMR 816.384(a)(3) for cyclic excavation area strip mining operations and its proposed time schedule provision at TCMR 816.384(a)(4) for continuous excavation area strip mining operations appear to be reasonable and provide additional specificity to Texas' general contemporaneous reclamation requirements at TCMR 816.383. Therefore, based upon the above discussions, the Director finds the proposed revisions at TCMR 816.384 (a)(3) and (a)(4) are not inconsistent with the Federal requirements for contemporaneous reclamation for surface mining activities at section 515(b)(16) of SMCRA and 30 CFR 816.100.

## IV. Summary and Disposition of Comments

### *Public Comments*

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. Because no one requested an opportunity to speak at a public hearing, no hearing was held.

Comments supporting the proposed amendment were received from the Aluminum Company of America and Texas Utilities Services, Inc. (Administrative Record Nos. TX–617.08 and TX–617.06, respectively). Both commenters supported the Railroad Commission of Texas in its effort to clarify that both time and distance variances may be approved when the permittee demonstrates that additional time and/or distance is necessary for reclamation.

### *Federal Agency Comments*

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Texas program. On August 9, 1996 (Administrative Record No. TX–617.07), the U.S. Army Corps of Engineers responded that its review found the changes to be satisfactory.

### *Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the 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 this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. TX–617.02). EPA did not respond to OSM's request.

### *State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. TX–617.03). Neither SHPO nor ACHP responded to OSM's request.

## V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Texas on July 11, 1996.

The Director approves TCMR 816.384(a)(3), concerning rough backfilling and grading time and distance standards for cyclic excavation area strip mining operations, and TCMR 816.384(a)(4) concerning rough backfilling and grading time standards for continuous excavation area strip mining operations.

The Director approves the regulations as proposed by Texas with the provision that they be fully promulgated in identical form to the rules 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

### *Executive Order 12866*

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

### *Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, 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 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.

### *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)).

### *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 has determined 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 corresponding 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. Accordingly, 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 corresponding Federal regulations.

*Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 2, 1996.

Brent Wahlquist,

*Regional Director, Mid-Continent Regional Coordinating Center.*

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 by adding paragraph (o) to read as follows:

**§ 943.15 Approval of regulatory program amendments.**

* * * * *

(o) Revisions to and/or the addition of Texas' regulations at TCMR 816.384(a)(3) and TCMR 816.384(a)(4), as submitted to OSM on July 11, 1996, are approved effective December 20, 1996.

[FR Doc. 96–32320 Filed 12–19–96; 8:45 am]

BILLING CODE 4310–05–M

## POSTAL SERVICE

## 39 CFR Part 111

## Domestic Mail Manual; Miscellaneous Amendments

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule describes the amendments consolidated in the transmittal letters for issues 44, 45, 46, 47, 48, and 49 of the Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1). This final rule constitutes a historic record of changes, presented in chronological sequence by issue date of the DMM. As such, any amendment shown in this final rule may have been rescinded or superseded by a later amendment to the same requirement or rule.

**EFFECTIVE DATES:** DMM issue 44, September 20, 1992; DMM issue 45, December 20, 1992; DMM issue 46, July 1, 1993; DMM issue 47, April 10, 1994; DMM issue 48, January 1, 1995; and DMM issue 49, September 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Neil Berger, (202) 268–2859.

**SUPPLEMENTARY INFORMATION:** The Domestic Mail Manual (DMM), incorporated by reference in title 39, Code of Federal Regulations, part 111, contains the basic standards of the U.S. Postal Service governing its domestic mail services; describes the mail classes and special services and conditions governing their use; and provides detailed instructions on the standards for rate eligibility and mail preparation. The DMM is amended and republished about every 6 months, with each issue sequentially numbered.

This final rule shows in historic sequence the amendments to DMM issues 44, 45, 46, 47, 48, and 49. These amendments reflect changes in mail preparation standards and other miscellaneous mailing requirements that occurred during a 4-year interval. These changes were previously announced in the Postal Bulletin, a biweekly document issued to post office personnel and to public subscribers through a service administered by the U.S. Government Printing Office. The Postal Service temporarily ceased publication in the Federal Register of the transmittals for the DMM because any significant amendment or revision to a rate or fee was also issued as a final rule in the Federal Register. With the publication of DMM issue 46 on July 1, 1993, the Postal Service introduced a thoroughly revised document that was reorganized using a new alphanumeric codification system. That issue also introduced a transmittal summary of changes organized by topic.

DMM issue 50, the current edition of the DMM, was released on July 1, 1996. That issue contains substantive changes to mail preparation standards and mail classification as published in the Federal Register on March 12, 1996 (61 FR 10068–10217). These standards were approved on March 4, 1996, by the Postal Service to implement the Decision of the Governors of the Postal Service in Postal Rate Commission Docket No. MC95–1, Classification Reform I. These standards took effect at 12:01 a.m., July 1, 1996.

DMM issue 51, the next edition of the DMM, is scheduled for release on January 1, 1997. That issue will contain substantive changes to mail preparation standards and mail classification for nonprofit rate categories for Periodicals and Nonprofit Standard Mail. These standards were published on August 15, 1996, in the Federal Register (61 FR 42478–42489), as approved on August 6, 1996, by the USPS to implement the Decision of the Governors of the Postal Service in Postal Rate Commission Docket No. MC96–2, Classification Reform II. Those standards took effect at 12:01 a.m., October 6, 1996, aligning the preparation rules adopted on July 1 for commercial mail with those for nonprofit mail.

The following excerpts from the Summary of Changes sections of the transmittals for DMM issues 44, 45, 46, 47, 48, and 49 generally cover the minor changes not previously described in other interim or final rules published in the Federal Register. These changes were first announced in notices in various issues of the Postal Bulletin published by the Postal Service to state or to revise policy and procedure for certain mailing standards.

DMM Issue 44 (September 20, 1992)

Section 111.54 reminds mailers and employees that changes to the Domestic Mail Manual are published not only in the Federal Register but also in the Postal Bulletin. No notice of this revision was published.

Section 119.22 tells customers where and how they can buy Publication 65, National Five-Digit ZIP Code and Post Office Directory. No notice of this revision was published.

Subchapters 120, 310, 320, 340, 350, 360, 380, 410, 420, 440, 510, 520, 530, 550, 570, 610, 620, 640, and 660 provide rules and guidelines for the lower rates for First-, second-, and third-class barcoded flat-size mail. On June 21, 1991, under 39 U.S.C. 3622 and 3623, the Postal Service asked the Postal Rate Commission (PRC) for a recommended decision on these postage discounts. The PRC issued its recommendation on the filing (Docket MC91–1) on March 19, 1992. On May 4, 1992, the Governors of the Postal Service approved the PRC's recommended rate and classification changes to take effect September 20, 1992. The Postal Service published its proposed rules for public comment in the Federal Register on April 21, 1992 (57 FR 14525–14551), and June 1, 1992 (57 FR 23072). (Postal Bulletin (PB) 21819A (7–16–92).)

Exhibits 121.5 and 121.56 are reduced to save space. No notice of these changes was published.