Original amendment submission date	Date of final publication	Citation/description
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June 13, 2018	September 20, 2023	OAC 1513–3–01 Definitions. Addition of definitions of ''Amicus curiae'', ''Ex parte communication'', ''In camera'', ''Pro hac vice'', ''Subpoena ad testificandum'', ''Subpoena duces tecum''. OAC 1513–3–06(A)(4) Computation and Extension of Time.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SATS No. TX–071–FOR; Docket No. OSM–2019–0011; S1D1S SS08011000 SX064A000 234S180110; S2D2S SS08011000 SX064A000 23XS501520]

Texas Abandoned Mine Land Reclamation Plan and Regulations

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 (OSMRE), are approving an amendment to the Texas abandoned mine land reclamation plan (Texas Plan) and regulations under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposed to revise its existing Plan and regulations in response to OSMRE's request to amend the Texas Plan and to improve the readability and efficiency of the document.

DATES: October 20, 2023.

FOR FURTHER INFORMATION CONTACT: Joe Maki, 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, Email: *jmaki@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program and Plan

The Abandoned Mine Land Reclamation (AML) Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded primarily by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit for approval to the Secretary of the Interior a program (often referred to as a plan) for the reclamation of coal mines abandoned or otherwise left in an inadequate reclamation status at the time SMCRA was enacted.

On June 23, 1980, the Secretary of the Interior approved the Texas Plan. You can find general background information on the Texas Plan, including the Secretary's findings and the disposition of comments, in the June 23, 1980, **Federal Register** (45 FR 41937). You can also find later actions concerning Texas's AML Program and Plan amendments at 30 CFR 943.25.

II. Submission of the Amendment

Under the authority of 30 CFR 884.15, OSMRE by letter dated March 8, 2019 (Administrative Record No. TX–0707), directed Texas to update the Texas Plan. In that letter, known as a Part 884 letter, OSMRE indicated that the Texas Plan required revisions to meet the requirements of SMCRA as revised on December 20, 2006, by the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432), and in response to changes made to the implementing Federal regulations as revised on November 14, 2008 (73 FR 67576), and February 5, 2015 (80 FR 6435). The letter required Texas to provide either ''(1) a proposed written Reclamation Plan amendment or, (2) a description of the Reclamation Plan amendments you will propose in response to the revised regulations or, (3) a detailed statement explaining why [Texas] believe[d] no amendment to [Texas's] Reclamation Plan is necessary.'' The letter further provided Texas with a summary of the changes to the Federal Program that might require amendments to the Texas Plan to ensure Texas's program was consistent with and no less effective than the Federal Program.

By letter dated December 3, 2019 (Administrative Record No. TX–708), Texas sent us amendments to the Texas Plan and conforming State regulations. The Texas amendments are intended to address all required amendments identified in OSMRE's letter dated March 8, 2019. Texas's amendments will revise the State's existing AML Plan and AML program regulations.

We announced receipt of the proposed amendments in the July 20, 2020, **Federal Register** (85 FR 43759). In the same document, we opened a public comment period and provided an opportunity for a public hearing or meeting on the amendment. We received three comments. We did not hold a public hearing or meeting because none were requested. The public comment period ended on August 19, 2020.

In compliance with 30 CFR 884.14, Texas also allowed public input on the Texas Plan and held a public comment period during the development of the State regulations. The comment period on the regulatory amendments was from August 23, 2019, to September 23, 2019 (Administrative Record No. TX–708.04). Texas received no comments. In addition, in November, 2019, the Railroad Commission of Texas provided public notice that it was considering adoption of the amended and restated Texas Plan and provided an opportunity for public input on the proposal.

III. OSMRE's Findings

A. Texas's Explanation for Not Amending Certain Provisions

In response to our Part 884 letter, Texas stated that several items mentioned in the Part 884 letter do not appear to be applicable or require regulatory or plan changes. We agree.

First, in our Part 884 letter, we advised that certified States such as Texas are no longer authorized to set aside AML funds for future reclamation. In response, Texas stated that it has not undertaken future reclamation set aside and is no longer eligible to do so.

Second, in our Part 884 letter, we advised of certain changes related to

requirements and restrictions of acid mine drainage treatment and abatement programs for certified States. In response, Texas stated that it has not undertaken an acid mine drainage program and does not intend to create one in the foreseeable future.

Third, in our Part 884 letter, we advised of changes to certain requirements for uncertified States. In response, Texas noted that these provisions are inapplicable to Texas as a certified State.

Fourth and finally, we advised that 30 CFR part 887 has been amended to clarify funding sources for subsidence insurance grants. In response, Texas stated that it does not operate a subsidence insurance program and does not intend to create one in the foreseeable future.

Texas's responses to these provisions of the Part 884 letter are appropriate.

B. Revisions to the Texas Plan

Our review of a proposed State Reclamation Plan amendment is governed by section 405 of SMCRA and 30 CFR part 884. Section 405(e) of SMCRA requires a State Reclamation Plan to ''generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the legal authority and programmatic capability to perform such work[.]'' Under 30 CFR 884.15(a), we follow the procedures of 30 CFR 884.14 if the State proposes a major amendment that changes the objectives, scope, or major policies followed by the State in the conduct of its reclamation program. Texas generally proposes to respond to our Part 884 letter, update the objectives, scope, and policies of its program to reflect its status as a certified state, and amend its plan consistent with the 2006 changes to SMCRA and the associated changes to the implementing Federal regulations. Accordingly, we are considering Texas's proposal as a major amendment and following the procedures set out in 30 CFR 884.14.

The rule at 30 CFR 884.14 requires: (1) public input, (2) solicitation and consideration of the views of interested Federal agencies, (3) a determination that the State has the legal authority, policies, and administrative structure necessary to carry out the proposed plan, (4) a determination that the proposed plan meets the requirements of 30 CFR Subchapter R, (5) a determination that the State has an approved regulatory program, and (6) a determination that the plan is in compliance with all applicable State and Federal laws and regulations. The rule at 30 CFR 884.13 describes the contents that each State Reclamation Plan must include.

We make the following findings concerning Texas's AML plan amendment under SMCRA and the Federal regulations at 30 CFR 884.13 and 884.14. We are approving the Texas Plan amendment, with an exception, as described below.

Before approving a State Reclamation Plan, we must ''h[o]ld a public hearing on the plan within the State which submitted it, or ma[k]e a finding that the State provided adequate notice and opportunity for public comment in the development of the plan.'' 30 CFR 884.14(a)(1).

We find that Texas provided adequate notice and opportunity for public comment in the development of the plan. A Railroad Commission of Texas Open Meeting Notice for November 19, 2019, provided notice to the public that the Railroad Commission (Commission) was considering adoption of the amended and restated Texas Plan. The notice stated that the Commission would provide an opportunity for public input on any matter under the jurisdiction of the Commission, in accordance with a policy adopted on September 7, 2005. The notice further provided opportunities for concerned individuals to view the open meeting via webcast and offered accommodations and auxiliary aids or services for persons with a disability.

Additionally, when Texas submitted the proposed Texas Plan, we announced receipt of the proposed amendment in the **Federal Register**, opened a 30-day public comment period, and provided an opportunity for a public hearing or meeting on the amendment. We did not hold a public hearing or meeting because none were requested.

Before approving a State Reclamation plan, we must solicit and consider the views of other Federal agencies having an interest in the plan. 30 CFR 884.14(a)(2). As discussed in Part IV below, we solicited the views of other Federal agencies and received no comments.

Before approving a State Reclamation plan, we must determine that the State has an approved State regulatory program. 30 CFR 884.14(a)(5). 30 CFR part 943 codifies the approval and amendments of Texas's state regulatory program.

Finally, before approving a State Reclamation plan, we must determine that the State has the legal authority, policies, and administrative structure necessary to carry out the proposed plan, that the plan meets the requirements of 30 CFR Part VII Subchapter R (''Abandoned Mine Land Reclamation''), and that the plan is in compliance with all applicable State and Federal laws and regulations. As discussed in detail below, we find that the proposed Texas Plan meets these requirements and the specific content requirements of 30 CFR 884.13.

Under 30 CFR 884.13(a)(1), a State Reclamation Plan must include a designation by the Governor of the State of the agency authorized to administer the State reclamation program and administer grants under Part 885 or 886. The revised Texas Plan includes a copy of the Governor's 1979 letter designating the Railroad Commission of Texas as the agency authorized to administer the State AML Program and to receive and administer grants. Texas has incorporated the Governor's letter designating the Railroad Commission as the agency authorized to administer the State AML Program and receive and administer grants in the Texas Plan as required under 30 CFR 884.13(a)(1). The 1979 designation remains current and provides adequate authority for the Railroad Commission to carry out the plan.

Under 30 CFR 884.13(a)(2), a State Reclamation Plan must include a legal opinion from the State Attorney General or the chief legal officer of the designated state agency that the agency has authority under State law to conduct the program in accordance with the requirements of Title IV of SMCRA. Texas provided a copy of the March 20, 1980, legal opinion from the State Assistant Attorney General indicating that the Railroad Commission is the designated agency with the authority to conduct the AML Program in accordance with all requirements of SMCRA Title IV. Texas has incorporated the Assistant Attorney General's letter in the Texas Plan as required under 30 CFR 884.13(a)(2). The 1980 legal opinion remains current, and there have not been any State constitutional or statutory developments that would impair the ability of the Railroad Commission to conduct its AML Program in accordance with the requirements of Title IV of the Act. Federal regulations at 30 CFR 884.13(a)(3) require a description of the policies and procedures of the State agency, including the purposes of the State AML Program. The Texas Plan includes a Policies and Procedures section that provides succinct descriptions of, and legal citations for, the purposes of its AML Program consistent with 30 CFR 884.13(a)(3).

Under 30 CFR 884.13(a)(3)(ii), a State Reclamation Plan must include the ''specific criteria, consistent with section 403 of the Act for ranking and identifying projects to be funded. . . .'' Section 403 of SMCRA provides that expenditures must reflect certain priorities except as provided for under section 411 of SMCRA. Section 411(c) of SMCRA provides that expenditures of moneys according to Section 411(b) of SMCRA must reflect the objectives and priorities of Section 411(c) in lieu of the priorities set forth in section 403. OSMRE's implementing regulations at 30 CFR 874.13 and 875.15 respectively list the priorities for coal and noncoal AML reclamation programs.

In our Part 884 letter, we advised Texas that certified States must comply with Parts 874 and 875 to maintain certification status. We further advised that the 2006 SMCRA amendments revised the reclamation priorities in section 403 by removing ''general welfare'' from Priorities 1 and 2, including an ''adjacent to'' provision in Priorities 1 and 2, and deleting Priorities 4 and 5.

The revised Texas Plan includes a section entitled ''Ranking and Selecting Sites'' that states that Texas will use the priority system as outlined in 30 CFR parts 874 or 875 and operate noncoal reclamation projects under 30 CFR part 875. The Plan also includes the prioritization matrix Texas uses to assess and prioritize potential project areas for reclamation. This section is consistent with the Plan content requirements of 30 CFR 884.13(a)(3)(ii), which requires specific criteria, consistent with SMCRA, for ranking and identifying projects to be funded; 30 CFR parts 874 and 875, which list priorities; and the direction in our Part 884 letter.

Reclamation projects will not be undertaken without first receiving an Authorization to Proceed from OSMRE. This is in accordance with section 405(l) of SMCRA and consistent with 30 CFR 874.15 and 875.19, which provide limited liability coverage to certified State coal and noncoal reclamation activities, unless the costs or damages were the result of gross negligence or intentional misconduct. The requirement to receive written authorization from OSMRE before the expenditure of construction funds on an individual project is documented as a grant condition under 30 CFR 885.16(e).

Under 30 CFR 844.13(a)(3)(iii), a State Reclamation Plan must include policies and procedures for ''coordination of reclamation work among the State reclamation program, the Rural Abandoned Mine Program administered by the Soil Conservation Service, the reclamation programs of any Indian tribes located within the States, and [OSMRE's] reclamation programs . . .'' The revised Texas Plan includes a section entitled ''Interagency Coordination'' that indicates that the State will coordinate with other agencies and offices including the Natural Resources Conservation Service and OSMRE, as required, as well as multiple other State and Federal entities. By indicating it will coordinate and work with all required agencies, Texas's proposed section is consistent with the requirements of 30 CFR 884.13(a)(3)(iii).

Under 30 CFR 884.13(a)(3)(iv), a State Reclamation Plan must include policies and procedures about land acquisition, management, and disposal under 30 CFR part 879. In our Part 884 letter, we notified Texas that it ''must comply with [30 CFR part 879] when expending funds awarded after October 1, 2007 . . .'' We further noted that all ''moneys received from the sale of property acquired under [section 407 of SMCRA] is disposed of as if it were unused funds under 30 CFR 886.20 . . .'' The revised Texas Plan includes a section entitled ''Land Acquisition, Management and Disposal'' that states that ''acquisition, management, and disposal of abandoned mine(s) land shall be in accordance with applicable provisions of 30 CFR part 879 and Texas Natural Resources Code Chapter 134 [(Texas Surface Coal Mining and Reclamation Act (TSCMARA))].'' By committing to act in accordance with 30 CFR part 879, Texas has taken action to address this issue on a plan level. *See* 30 CFR 879.15(h) (''You must return all moneys received from disposal of land under this part to us. We will handle all moneys received under this paragraph as unused funds in accordance with §§ 885.19 and 886.20 of this chapter.'').

Under 30 CFR 884.13(a)(3)(v), a State Reclamation Plan must include policies and procedures about reclamation on private land in accordance with 30 CFR part 882. The revised Texas Plan includes a section entitled ''Reclamation on Private Land'' that indicates that the State will carry out reclamation activities on private lands in accordance with 30 CFR part 882 and the provisions in Texas Natural Resources Code Chapter 134 about reclamation work on private land. This section of the Texas Plan provides the State's policies and procedures for reclamation on private lands and is therefore consistent with the State Reclamation Plan content requirements of 30 CFR 884.13(a)(3)(v). Furthermore, by committing to act in accordance with 30 CFR part 882 and the previously approved provisions of TSCMARA, Texas's proposal meets the requirements of Federal regulations.

Before the 2006 amendments to SMCRA, 30 U.S.C. 1238(a) provided that, ''[n]o lien shall be filed against the property of any person, in accordance with this subsection, who owned the surface prior to May 2, 1977, and who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed hereunder.'' In the 2006 amendments to SMCRA, the May 2, 1977, limitation was deleted. In our Part 884 letter, we notified Texas that this language was removed. Texas removed this language from State statute in June 2007, and the Texas Plan does not include the former language.

Under 30 CFR 884.13(a)(3)(vi), a State Reclamation Plan must include policies and procedures about rights of entry under 30 CFR part 877. Our Part 884 letter did not note any necessary changes to policies and procedures about rights of entry. The Texas Plan includes a section entitled ''Rights of Entry'' that indicates that the State will take all reasonable actions to obtain written voluntary permission from a landowner before conducting reclamation activities. The Texas Plan further outlines the authority under the provisions in Chapter 134 of TSCMARA and the conditions under which the State can execute reclamation activities if the landowner will not provide consent. This section of the Texas Plan is consistent with the State Reclamation Plan content requirements of 30 CFR 884.13(a)(3)(vi). Furthermore, the State's policies and procedures about rights of entry are consistent with 30 CFR part 877.

Under 30 CFR 884.13(a)(3)(vii), a State Reclamation Plan must include policies and procedures for public participation and involvement in the preparation of the State Reclamation Plan and in the State reclamation program. The revised Texas Plan does not meet this requirement. It states only that the Commission must conform to the Texas Administrative Procedure Act when it issues or amends rules, or issues permits under TSCMARA and allows opportunity for public comment on adoption or amendment of rules. The general citations in the revised Texas Plan to the Texas Administrative Procedure Act relate to rulemaking and permit issuance and do not clearly provide procedures for participation and involvement in the preparation of the Texas Plan or in activities under the State reclamation program. Therefore, we are not approving this portion of the amendment. Texas may continue to rely

on the public participation procedures established in its existing plan or, if desired, propose a new amendment to its public participation policies and procedures that also meets the requirements of 30 CFR 884.13(a)(3)(vii).

As discussed above, the revised Texas Plan includes sections responding to the requirements of 30 CFR 884.13(a)(3)(i) through (vii). These sections provide updated descriptions of the State's policies and procedures for conducting its AML Program including: the purposes of the AML Program; specific criteria for ranking and identifying projects to be funded; coordination of reclamation work between the State and all applicable State and Federal agencies; land acquisition; reclamation on private land; and right of entry. The revised Texas Plan, with the exception discussed above, is consistent with the State Reclamation Plan content requirements of 30 CFR 884.13(a)(3).

Federal regulations at 30 CFR 884.13(a)(4)(i) require a description of the designated agency's organization and relationship to other State entities that may participate in or augment the State's AML reclamation abilities. The Texas Plan includes a section entitled ''884.13 Administrative Framework, 884.13(a)(4)(i) Commission Structure and Relationships,'' that provides an organizational chart depicting the Railroad Commission of Texas, Surface Mining & Reclamation Division, and the Abandoned Mine Land and Reclamation Program's place within it.

Federal regulations at 30 CFR 884.13(a)(4)(ii) require a description of the personnel staffing policies that will govern assignments within the AML Program. The revised Texas Plan includes a section entitled ''Staffing and Personnel Policies'' that provides the information required under 30 CFR 884.13(a)(4)(ii).

Federal regulations at 30 CFR 884.13(a)(4)(iii) require State purchasing and procurement systems to meet the requirements of Office of Management and Budget Circular A–102, Attachment 0, relating to ''Grants and Cooperative Agreements with State and Local Governments.'' Federal grantmaking agencies were previously required to issue a grants management common rule to adopt governmentwide terms and conditions for grants to States and local governments. As a result, we notified Texas in our Part 884 letter that the attachments to Circular A–102, including Attachment 0 referenced in 30 CFR 884.13(a)(4)(iii), have been replaced by the grants management common rule at 2 CFR part 200. The Federal regulations have not yet been updated to reflect this change; however, it is reflected in the revised Texas Plan under the section entitled ''Purchasing and Procurement,'' which indicates its purchasing and procurement policies are consistent with 2 CFR part 200. Additionally, Texas revised its plan to acknowledge, effective September 1, 2019, that the Railroad Commission has delegated authority to enter in all purchasing functions related to procurement under TSCMARA. This section provides descriptions of purchasing and procurement systems consistent with the requirements of 30 CFR 884.13(a)(4)(iii).

Federal regulations at 30 CFR 884.13(a)(4)(iv) require a description of the accounting system to be used by the agency including specific procedures for operation of the State AML Fund. The revised Texas Plan includes a section entitled ''Accounting System'' that describes the Centralized Accounting and Payroll/Personnel System uniform statewide accounting system. Referenced Texas Government Code Title 10 Subtitle C provides the State accounting and auditing procedures. As a condition of its annual grant (and consistent with the obligations outlined in the previous paragraph), Texas is required to comply with all the conditions of 2 CFR part 200, which addresses administrative requirements, cost principles, and audit requirements for Federal awards.

As discussed above, the revised Texas Plan includes four sections providing revised descriptions of the State's administrative and management structure, staffing and personnel Policies, purchasing and procurement; and accounting system. By providing all required descriptions of the administrative and management structure of the State AML agency, the revised Texas Plan is consistent with all State Reclamation Plan content requirements under 30 CFR 884.13(a)(4).

Under 30 CFR 884.13(a)(5), a State Reclamation Plan must include a general description, derived from available data, of the reclamation activities to be conducted under the State Reclamation Plan. The revised Texas Plan includes a section entitled ''Description of Reclamation Activities.'' Texas provided general descriptions derived from available data of the reclamation activities to be conducted under the State Reclamation Plan including: a map showing the general location of known or suspected eligible lands and waters; a description of the problems occurring on those lands and waters; and how the Texas Plan proposes to address each of the problems. Because Texas is certified, the State has already completed reclamation of all known high priority coal hazards. Individual project approval and funding are appropriately handled through the Authorization to Proceed process under 30 CFR 885.16(e). The revised Texas Plan sections entitled ''Description of Reclamation Activities,'' ''Map of Eligible Reclamation Locations,'' ''Description of Problems,'' and ''How Reclamation Activities Address Problems'' are consistent with the State Reclamation Plan content requirements of 30 CFR 884.13(a)(5) in providing general descriptions of reclamation activities to be conducted, including maps, descriptions of AML problems, and descriptions of hazard abatement strategies.

Under 30 CFR 884.13(a)(6), a State Reclamation Plan must include a general description, derived from available data, of the conditions prevailing in the different geographic areas of the State where reclamation is planned. The revised Texas Plan includes sections entitled: ''Conditions in Geographic Areas''; ''Economic Base''; ''Significant Esthetic, Historic or Cultural, and Recreational Values''; and ''Endangered and Threatened Plant, Fish, and Wildlife and Their Habitat'' that provide general descriptions on each subject derived from available data on the conditions prevailing in the areas of the State where reclamation may occur. The revised Texas Plan provides descriptions of the prevailing conditions consistent with the requirements of 30 CFR 884.13(a)(6).

Under 30 CFR 884.13(b), a certified State Reclamation Plan must include a commitment to address eligible coal problems found or occurring after certification. In our Part 884 letter, we reiterated this requirement. The revised Texas Plan includes a section entitled ''Commitment to Address Eligible Coal Problems'' that provides a commitment to address all eligible coal problems found or occurring after certification as required under 30 CFR 875.13(a)(3) and 875.14(b). Texas has indicated it will prioritize coal hazards over noncoal. As a condition of certification on May 21, 1992 (57 FR 21640), Texas agreed: ''If a coal problem occurs or is identified sometime in the future, Texas must seek immediate funding for reclaiming the coal-related problem. In the event of concurrence with certification by the Secretary, Texas has agreed to this condition.'' In section 884.13(a)(3)(ii) of the amendment, Texas commits to compliance with the priority systems outlined in 30 CFR part 874 or 30 CFR part 875. By committing to give priority to addressing eligible coal problems found or occurring after certification as

required in 30 CFR 875.13(a)(3) and 875.14(b), the revised Texas Plan is consistent with the State Reclamation Plan content requirements of 30 CFR 884.13(b).

In our Part 884 letter, we notified Texas that the State Reclamation Plan for a certified State may provide for construction of specific public facilities related to coal or minerals development in accordance with 30 CFR 884.17. Texas declined to include this provision.

In our Part 884 letter, we notified Texas that ''[c]ertified States . . . are covered by the limited liability provision when they are performing'' coal reclamation and certain noncoal reclamation. As background, in 2015, we issued the rule *Abandoned Mine Land Reclamation Program; Limited Liability for Noncoal Reclamation by Certified States and Indian Tribes,* 80 FR 6435 (Feb. 5, 2015). The rule gave certified states two options for conducting noncoal reclamation projects. First, a certified State could expend its prior balance replacement funds and certified in lieu funds on projects outside the scope of a SMCRA noncoal AML reclamation program but without limited liability protection. Second, a certified State can receive limited liability protection if it voluntarily uses its prior balance replacement funds and certified in lieu funds to conduct noncoal reclamation projects pursuant to a SMCRA noncoal AML reclamation program under the provisions of section 411(b)–(g) of SMCRA, 30 CFR part 875, and other applicable regulations. The rule placed additional administrative requirements on States that voluntarily choose to conduct noncoal reclamation projects under the second option because OSMRE must verify that such projects meet applicable statutory and regulatory requirements. 80 FR at 6438–39. The Texas Plan states that noncoal reclamation projects will be operated under 30 CFR part 875 to receive the limited liability protections of SMCRA. Additionally, as discussed in more detail below, Texas retains previously approved regulatory language corresponding to the Federal statutory and regulatory limited liability provisions.

In the 2015 rule, we revised Part 875 to ''set forth the procedures that certified states must follow if they voluntarily choose to use their Title IV funding for noncoal reclamation projects under Part 875 . . . pursuant to an approved SMCRA noncoal AML reclamation plan.'' 80 FR at 6439. Those procedures included the contractor eligibility requirements set forth in 30 CFR 875.20. In our Part 884 letter, citing section 405(l) of SMCRA and 30 CFR 875.20, we notified Texas that a certified State must comply with contractor eligibility requirements when they are voluntarily conducting noncoal reclamation. Texas's existing regulation at 16 Texas Administrative Code (TAC) section 12.807 requires every successful bidder for an AML contract to be eligible under section 12.215 (Review of Permit Applications) at the time of contract award to receive a permit or conditional permit and requires that bidder eligibility be confirmed by OSMRE's Applicant/Violator System for each contract to be awarded. Accordingly, Texas's program meets the contractor eligibility requirements set forth in 30 CFR 875.20 and our Part 884 letter.

Thus, we find that the revised Texas Plan, with the one exception noted above, meets all content requirements stipulated under 30 CFR 884.13 while also updating the State Reclamation Plan and regulations consistent with changes made to the Federal program in 2006, 2008, and 2015. The revised Texas Plan, therefore, meets the requirements of OSMRE's March 6, 2019, letter, and we approve it.

B. Revisions to Texas's AML Regulations

Texas proposes amendments to regulations governing its AML program at 16 TAC sections 12.801–12.809, 12.811, 12.812, 12.814–12.816, and 12.818–12.823. Generally, the changes align Railroad Commission rules with SMCRA and the corresponding Federal regulations.

Non-substantive changes can be found in sections 16 TAC sections 12.801, 12.802, 12.806, 12.807, 12.809, 12.811, 12.812, 12.814, 12.816, 12.818, 12.820, 12.821, and 12.822. These changes define terms used throughout the regulations, capitalize ''Commission,'' correct rule citations and cross-references, and clarify existing language. These changes have no substantive impact on the effectiveness of the regulation.

Texas proposes to amend 16 TAC section12.803(a)(3) to add ''or any prior balance replacement funds may be used.'' to the end of the paragraph. This allows Texas to use prior balance replacement funds where a forfeited bond is not sufficient to pay the cost of reclamation. This is consistent with 30 CFR 874.12.

Texas's previously approved regulations at 16 TAC section 12.804 state that reclamation project expenditures ''shall reflect the priorities of Section 403(a) of the Federal Act.'' In our Part 884 letter, we notified Texas that the 2006 amendments to SMCRA removed the phrase ''general welfare'' from Priorities 1 and 2; added an ''adjacent to'' provision to Priorities 1 and 2, defining that term as ''geographically contiguous''; and eliminated Priorities 4 and 5. In response, Texas proposes to amend 16 TAC section 12.804 to state that projects shall reflect the priorities of Section 403(a) ''in the order stated'' and list the priorities from 30 CFR 874.13(a) in the text of 16 TAC section 12.804. Texas also proposes to provide an updated reference to OSMRE's ''Final Guidelines for Reclamation Programs and Projects.'' The amended language of 16 TAC section 12.804 is in accordance with section 403(a) of SMCRA, consistent with 30 CFR 874.13(a), and meets the requirements of our Part 884 letter.

In our Part 884 letter, we further notified Texas that stand-alone Priority 3 reclamation is restricted to projects using prior balance replacement funds, projects undertaken after the completion of Priority 1 and 2 sites, and projects completed ''in conjunction with'' Priority 1 or 2 reclamation projects. We noted that projects ''in conjunction with'' Priority 1 and 2 projects must either facilitate Priority 1 or 2 reclamation or provide reasonable savings toward reclaiming all Priority 3 coal problems. Texas is retaining previously approved language in 16 TAC § 12.804(c) that addresses these aspects of our Part 884 letter.

The 2006 amendments removed section 403(a)(4) of SMCRA. In 2008, we amended 30 CFR 874.14 to change the section heading and revise paragraph (a) related to water supply restoration. In response, Texas proposes to amend 16 TAC § 12.805 to match the 2008 revision to the Federal regulation. The revised language is consistent with 30 CFR 874.14.

As discussed in the Texas Plan section above, in our Part 884 letter, we notified Texas that its State Reclamation Plan must include a commitment to address eligible coal problems found after certification as required in 30 CFR 875.13(a)(3) and 875.14(b). Previously, 16 TAC section 12.808 stated that if eligible coal problems were found or occurred after certification, Texas would ''address the coal problem utilizing state share funds no later than the next grant cycle, subject to the availability of funds distributed to the commission in the cycle.'' As amended, 16 TAC section 12.808 states that Texas will ''submit to OSMRE a plan that describes the approach and funds that will be used to address those problems in a timely manner.'' The amended language is in accordance with the statute, consistent

with the requirements of 30 CFR 875.14(b), and meets the requirements of our Part 884 letter.

Unrelated to our Part 884 letter, Texas amended the appraisal valuation method in 16 TAC section 12.815 to add: ''The appraisal shall state the estimated fair market value of the land as adversely affected by past mining and the estimated fair market value of the property as reclaimed.'' This edit is consistent with the Federal counterpart at 30 CFR 882.12.

Previously, 16 TAC section 12.819(a)(2)(C) stated that Texas could acquire coal refuse disposal sites if it made certain written findings, including a finding that acquisition of coal refuse disposal sites and the coal refuse on those sites would serve the purposes of Texas's program. The regulation at 16 TAC section 12.819 also provided that OSMRE must approve acquisitions in advance. The Federal regulation at 30 CFR 879.11(b), as amended, states that a certified State conducting noncoal reclamation projects under Part 875, if approved in advance, may acquire coal refuse disposal sites with moneys from the Abandoned Mine Reclamation Fund and with prior balance replacement funds and certified in lieu funds. Texas proposes to remove the discussion of coal refuse disposal sites from 16 TAC section 12.819(a)(2)(C) and add a new paragraph § 12.819(c) that is identical to the language of 30 CFR 879.11(b). The proposed amendment is consistent with the Federal counterpart at 30 CFR 879.11.

Previously, 16 TAC section 12.823(f) stated that all moneys received from disposal of land would be deposited in the Texas Abandoned Mine Reclamation Fund. In our Part 884 letter, we notified Texas that all ''moneys received from the sale of property acquired under [section 407 of SMCRA] is disposed of as if it were unused funds under 30 CFR 886.20 . . .'' In response, Texas proposes to amend 16 TAC section 12.823(f) to state that all moneys received will be returned to OSMRE. The proposed amendment is consistent with the Federal counterpart at 30 CFR 879.15.

We find that the proposed regulations are in accordance with SMCRA and consistent with Federal regulation. Therefore, we approve the amendments.

IV. Summary and Disposition of Comments

Public Comments

During our public comment period on the amendments, we received two anonymous public comments and one named comment. One anonymous comment expressed the recommendation that the state of Texas be held liable for all the extractive industry damage not covered by the entity responsible for the damage and cleanup. We did not take any action based on this comment as it was outside the scope of this review. The other anonymous comment and the named comment did not contain any substantive feedback on the proposed rule.

None of the comments asked for any changes to the Texas Plan or regulations, and no further action by us is required. These comments are available in their entirety at *www.regulations.gov.*

Federal Agency Comments

Pursuant to 30 CFR 884.15(a) and 884.14(a)(2), on December 11, 2019, OSMRE solicited comments on the proposed amendments from various Federal agencies with an actual or potential interest in the Texas Plan (Administrative Record No. TX–0708.01). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

OSMRE solicited EPA's comments on the proposed amendments (Administrative Record No. TX–0708.01) on December 11, 2019. The EPA did not respond to our request.

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

OSMRE solicited comments on the proposed amendments from the SHPO (Administrative Record No. TX–0708.01) and ACHP (Administrative Record No. TX–0708) on December 11, 2019. Neither responded to our request.

V. OSMRE's Decision

Based on the above findings, we are approving Texas's AML Plan and Reclamation Program amendments that were submitted on December 3, 2019 (Administrative Record No. TX–0708), with the exception described above.

To implement this decision, we are amending the Federal regulations at 30 CFR part 943, which codify decisions concerning the Texas Plan. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication.

VI. Procedural Determinations

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule would not affect a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Orders 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review

Executive Order (E.O.) 12866, as amended by E.O. 14094, provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by Section 3(a) of Executive Order 12988. The Department has determined that this **Federal Register** notice meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and regulations to minimize litigation, and that the agency's legislation and regulations provide a clear legal standard for affected conduct, rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** notice and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the Texas Plan or to the Plan amendment that the State of Texas submitted.

Executive Order 13132—Federalism

This rule is not a ''[p]olicy that [has] Federalism implications'' as defined by Section 1(a) of Executive Order 13132 because it does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government.'' Instead, this rule approves an amendment to the Texas Plan submitted and drafted by that State. OSMRE reviewed the submission with fundamental federalism principles in mind as set forth in Section 2 and 3 of the Executive Order and with the principles of cooperative federalism as set forth in SMCRA. *See, e.g.,* 30 U.S.C. 1201(f). As such, pursuant to the provisions in section 503(a)(1) and (7) (30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed the revised Texas Plan to ensure that it is ''in accordance with'' the requirements of SMCRA and ''consistent with'' the regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal government and Tribes. Therefore, consultation under the Department's Tribal consultation policy is not required. The basis for this determination is that our decision is on the Texas program, which does not include Indian lands or regulation of activities on Indian lands. AML reclamation on Indian lands is regulated independently under the applicable, approved Federal program or a Tribal AML program.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, as amended by E.O. 14094, 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 significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. We are not required to provide a detailed statement under the National Environmental Policy Act of 1969 because this rule qualifies for a categorical exclusion under the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(B)(29).

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA; 15 U.S.C. 3701 *et seq.*) directs OSMRE to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. OMB Circular A–119 at p. 14. This action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA.

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

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. 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.

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 on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

William L. Joseph,

Acting Regional Director, OSMRE IR 3, 4 and 6.

For the reasons set out in the preamble, 30 CFR part 943 is amended as follows:

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 943.25 is amended in the table by adding an entry for ''December 3, 2019'' at the end of the table to read as follows:

§ 943.25 Approval of Texas abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * * * *
December 3, 2019	September 20, 2023	Replace AML Plan in response to OSMRE 884 Letter. Updates AML Plan to be consistent with changes to Federal program and extends limited liability protection for certain coal and noncoal reclamation projects. 16 TAC Texas Administrative Code Sections: 12.801; 12.802; 12.803; 12.804; 12.805; 12.806; 12.807; 12.808; 12.809; 12.811; 12.812; 12.814; 12.815; 12.815; 12.816; 12.818; 12.819; 12.820; 12.821; 12.822; 12.823.

[FR Doc. 2023–20018 Filed 9–19–23; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0004]

RIN 1625–AA00

Safety Zone; Pacific Ocean; Santa Catalina Island, California

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard is establishing a temporary safety zone for the navigable waters in the Pacific Ocean on the East end of Santa Catalina Island, California. This safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by ongoing recovery operations relating to the grounding of the 62-foot F/V PACIFIC KNIGHT. Entry of persons or vessels into this safety zone is prohibited unless specifically authorized by the Captain of the Port Los Angeles-Long Beach, or his designated representative.

DATES: This rule is effective without actual notice from September 20, 2023, through September 22, 2023. For the purposes of enforcement, actual notice will be used from September 15, 2022, through September 20, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0004 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LCDR Kevin Kinsella, Waterways Management Division, U.S. Coast Guard Sector Los Angeles-Long Beach; telephone (310) 467–2099, email *D11-SMB-SectorLALB-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Los Angeles-Long Beach
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because this is an emergency response to a vessel grounding that occurred today, and immediate action is needed to respond to potential safety hazards associated with the emergency recovery operations. It is impracticable to publish an NPRM because we must establish this safety zone by September 15, 2023.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to ensure the safety of persons, vessels, and the marine environment in the vicinity of the East end of Santa Catalina Island during emergency recovery operations.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Los Angeles-Long Beach (COTP) has determined that potential hazards associated with emergency recovery operations starting September 15, 2023, will be a safety concern for anyone within a 300-yard radius of the grounded fishing vessel in the vicinity of the East end of Santa Catalina Island. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while recovery operations take place.

IV. Discussion of the Rule

This rule establishes a safety zone from September 15, 2023, until September 22, 2023. The safety zone will cover all navigable waters from the surface to the sea floor in and around the Pacific Ocean at the East end of Santa Catalina Island from the vessel's location at 33°18.923′ N, 118°21.985′ W and extending out along a 300-yard radius from that point. These coordinates are based on North American Datum of 1983. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or his designated representative. Sector Los Angeles-Long Beach may be contacted on VHF–FM Channel 16 or (310) 521–3801. The marine public will be notified of the safety zone via Broadcast Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory