

Dated: September 4, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 938 is amended as set forth below:

PART 938—PENNSYLVANIA

1. The authority citation for Part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 938.15 is amended in the table by adding a new entry in

chronological order by November 6, 2002 to read as follows:

§ 938.15 Approval of Pennsylvania regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * *	* * * * *	* * * * *
February 25, 2002	November 6, 2002	25 Pa. Code 86.37, 87.160, 88.138, 88.231, 88.335, 90.134, 87.160.

§ 938.16 [Amended]

3. Section 938.16 is amended by removing and reserving paragraph (gggg).

[FR Doc. 02-28200 Filed 11-5-02; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX-048-FOR]

Texas Regulatory Program

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 (OSM), are approving an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposed revisions to its regulations concerning valid existing rights. Texas intends to revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: November 6, 2002.

FOR FURTHER INFORMATION CONTACT:

Michael C. Wolf from, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6548. Telephone: (918) 581-6430. Internet: mwolf from@osmre.gov.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, “* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program on February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the February 27, 1980, **Federal Register** (45 FR 12998). You can find later actions concerning the Texas program at 30 CFR 943.10, 943.15, and 943.16.

II. Submission of the Proposed Amendment

By letter dated July 25, 2001 (Administrative Record No. TX-653.02), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment in response to our letter dated August 23, 2000 (Administrative Record No. TX-653), that we sent to Texas under 30 CFR 732.17(c). Texas proposed to amend Title 16 Texas Administrative Code Chapter 12.

We announced receipt of the amendment in the September 20, 2001, **Federal Register** (66 FR 48396). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on October 22,

2001. We did not receive any comments and did not hold a public hearing or meeting because no one requested one.

During our review of the amendment, we identified incorrect reference citations and concerns relating to the definition of “valid existing rights.” We notified Texas of these concerns by an e-mail dated September 24, 2001, and a letter dated June 14, 2002 (Administrative Record Nos. TX-653.04 and TX-653.07, respectively). By letters dated October 22, 2001, June 5, 2002, and June 18, 2002 (Administrative Record Nos. TX-653.05, TX-653.06, and TX-653.08, respectively), Texas sent us additional explanatory information and revisions to its program amendment.

Based upon Texas' additional explanatory information and revisions to its amendment, we reopened the public comment period in the August 13, 2002, **Federal Register** (67 FR 52664). The public comment period closed on August 28, 2002. We did not receive any comments.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Texas' Regulations That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

The State regulations listed below contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State regulations and the Federal regulations are minor.

Topic	State regulation	Federal counterpart regulation
Areas where surface coal mining operations are prohibited or limited.	Section 12.71(a), Section 12.71(b)	30 CFR 761.11, 30 CFR 761.12.
Procedures for compatibility findings, public road closures and relocations, buffer zones, and valid existing rights determinations.	Section 12.72(a), Section 12.72(b), Section 12.72(c).	30 CFR 761.14, 30 CFR 761.15, 30 CFR 761.16.
Commission obligations at time of permit application review.	Section 12.73	30 CFR 761.17.
Applicability and restrictions on exploration on land designated as unsuitable for surface coal mining operations.	Section 12.77(a), Section 12.77(b)	30 CFR 762.14, 30 CFR 762.15.
General requirements: Exploration that will remove more than 250 tons of coal or that will occur on lands designated as unsuitable for surface coal mining operations.	Section 12.111(1)(H)	30 CFR 772.12(b)(14).
Applications: Approval or disapproval of exploration of more than 250 tons of coal or that will occur on lands designated as unsuitable for surface coal mining operations.	Section 12.112(b)(4)	30 CFR 772.12(d)(2)(iv).
Applications: Notice and hearing for exploration of more than 250 tons.	Section 12.113(a)	30 CFR 772.12(e)(1).
Relationship to areas designated unsuitable for mining (surface mining).	Section 12.118(a) and (c)	30 CFR 778.16(a) and (c).
Protection of public parks and historic places (surface mining).	Section 12.151(a)(2)	30 CFR 780.31(a)(2).
Relationship to areas designated unsuitable for mining (underground mining).	Section 12.158(a) and (c)	30 CFR 778.16(a) and (c).
Protection of public parks and historic places (underground mining).	Section 12.191(a)(2)	30 CFR 784.17(a)(2).
Public notices of filing of permit applications	Section 12.207(a)(5)	30 CFR 773.13(a)(1)(v).
Criteria for permit approval or disapproval	Section 12.216(4)(A)	30 CFR 773.15(c)(3)(ii).

Because the above State regulations have the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations. Therefore, we are approving them.

*B. Texas Administrative Code (TAC)
Section 12.3 Definitions*

1. Texas proposed to remove its definition of "surface coal mining operations which exist on the date of enactment" found at TAC section 12.3(169). As a result of the removal of this definition, the State proposed to renumber the remaining definitions in this section. We are approving the removal of this definition and the subsequent renumbering of the remaining definitions because we removed the definition of "surface coal mining operations which exist on the date of enactment" from the Federal regulations at 30 CFR 761.5. Please see the **Federal Register** dated December 17, 1999 (64 FR 70831).

2. Texas proposed to revise its definition of "valid existing rights" found at TAC section 12.3(187) to be consistent with the corresponding Federal definition of "valid existing rights."

On December 17, 1999 (64 FR 70766), we published our final rule redefining the circumstances under which a person has valid existing rights to conduct surface coal mining operations on lands

listed in section 522(e) of SMCRA. This section prohibits or restricts surface coal mining operations on certain lands. Our final rule included a revised definition of valid existing rights found at 30 CFR 761.5. In paragraph (a) of this revised definition, we added a clause clarifying that the provisions requiring the use of state law to interpret documents does not apply if federal law provides otherwise. The clause reads, "unless Federal law provides otherwise." Texas' proposed definition of "valid existing rights" is substantively the same as the Federal definition, except that the State did not include this clause in its proposed definition. Though it is unlikely that Texas will have to make a determination of "valid existing rights" that will require the State to use applicable federal law to interpret documents relied upon to establish property rights, Texas sent us a letter dated June 18, 2002 (Administrative Record No. TX-653.08), clarifying that it will make any such determinations using the applicable federal law. Because Texas' proposed definition of "valid existing rights" is substantively the same as the Federal definition of "valid existing rights," we are approving it.

*C. TAC Section 12.74 Responsibility
(Formerly Section 12.73)*

Texas proposed to redesignate existing section 12.73 as new section

12.74. We are approving the redesignation because it does not change the content of the previously approved regulation in any way.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) of the Federal regulations and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record Nos. TX-653.03 and TX-653.10). We did not receive any comments.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued 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, we did not ask EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record Nos. TX-653.03 and TX-653.10). The EPA did not respond to our request.

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 6, 2001, we requested comments on Texas' amendment (Administrative Record Nos. TX-653.03 and TX-653.10), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment as sent to us by Texas on July 25, 2001, and as revised on October 22, 2001, and June 5, 2002.

We approve the regulations that Texas proposed with the provision that they be published in identical form to the regulations sent to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR part 943, which codify decisions concerning the Texas program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The taking implications assessment for the Federal valid existing rights rule appears in Part XXIX.E. of the preamble to that rule. See 64 FR 70766, 70822-27, December 17, 1999.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 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 because each 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.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, 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 expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because 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 the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies 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 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. 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.

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 upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or

tribal governments or the private sector cost of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 20, 2002.

Charles E. Sandberg,
*Acting 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 in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * *	* * * * *	* * * * *
July 25, 2001	November 6, 2002	Sections 12.3(169) definition of "surface coal mining operations which exist on the date of enactment [removed] and 12.3(187) definition of "valid existing rights;" 12.71-.74; 12.77; 12.111(1)(H); 12.112(b)(4); 12.113(a); 12.118(a) and (c); 12.151(a)(2); 12.158(a) and (c); 12.191(a)(2); 12.207(a)(5); and 12.216(4)(A).

[FR Doc. 02-28199 Filed 11-5-02; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SPATS No. UT-041-FOR]

Utah Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving a proposed amendment to the Utah regulatory program (the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Utah proposed revisions to and additions of rules about water replacement, blaster certification, standards for surety companies, and inspection and enforcement. Utah revised its program to be consistent with the corresponding Federal regulations, provide additional safeguards, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: November 6, 2002.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Chief, Denver Field Division, telephone: (303) 844-1400, extension 1242; Internet address: jfulton@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Utah Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act; * * * and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Utah program on January 21, 1981. You can find background information on the Utah program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Utah program in the January 21, 1981, **Federal Register** (46 FR 5899). You can also find later actions concerning Utah's program and program amendments at 30 CFR 944.15 and 944.30.

II. Submission of the Proposed Amendment

By letter dated March 28, 2002, Utah sent us an amendment to its program (UT-041-FOR, Administrative Record No. UT-1160) under SMCRA (30 U.S.C. 1201 *et seq.*). Utah's original submittal included two separate proposed amendments. In a telephone

conversation on April 2, 2002 (Administrative Record No. UT-1161), Utah agreed to our proposal to combine the two amendments into one amendment designated UT-041-FOR. Utah sent the amendment at its own initiative. The provisions of the Utah Administrative Rule (Utah Admin. R.) that Utah proposed to revise and add were: In its definitions at Utah Admin. R. 645-100-200, Utah proposed to remove the definition of "State-Appropriated Water Supply" and replace it with a new combined definition of the terms "Water Supply," "State-appropriated Water," and "State-appropriated Water Supply," all of which it intends to be synonymous and to mean "state appropriated water rights which are recognized by the Utah Constitution or Utah Code;" at Utah Admin. R. 645-105-314, Utah proposed to add a new blaster certification rule that would require candidates for certification to be twenty-one years of age or older; at Utah Admin. R. 645-301-525.130, Utah proposed to add a new provision requiring a permit applicant to give a copy of the pre-subsidence survey and any technical assessment or engineering evaluation to the water conservancy district, if any, where the mine is located; at Utah Admin. R. 645-301-525.700, the State proposed to add a new requirement that the underground mine operator mail a notification of proposed mining to the water conservancy district, if any, in which the mine is located; at Utah Admin. R. 645-301-728.350, the State proposed to revise its rule to require that determinations of probable hydrologic consequences include