

Original amendment submission date	Date of final publication	Citation/Description
March 19, 1996 .....	March 26, 1997 .....	Revisions to the Ohio Abandoned Mine Land Reclamation Plan to provide for the reclamation of areas causing acid mine drainage AMD and to revise the project selection process.

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### 30 CFR Part 943

[SPATS No. TX-017-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 and additions of rules pertaining to authority, responsibility and applicability; definitions; restrictions of financial interests of State employees; exemption for coal extraction incident to government-financed construction; exemption for coal extraction incidental to the extraction of other minerals; lands unsuitable for mining; coal exploration; geologic and hydrologic permit information; blasting plans; maps and plans; protection of the hydrologic balance; ponds, impoundments, banks, dams, and embankments; prime farmland; alluvial valley floors; public availability of permit information; approval and conditions of permits; transfer, assignment or sale of permit rights; bonding requirements; liability insurance; bond release; signs and markers; water quality standards; diversions; siltation structures; permanent and temporary impoundments; surface and ground water monitoring; stream buffer zones; use of explosives; coal mine waste; protection of fish and wildlife and related environmental values; backfilling and grading; revegetation; water discharge into underground mines; enforcement; suspension and revocation of permits; assessment of civil penalties; individual civil penalties; and blaster certification and training. Texas also proposed minor changes in wording, numbering, and punctuation of its rules. The amendment is intended to revise the

Texas program to be consistent with the corresponding Federal regulations and SMCRA and to incorporate the additional flexibility afforded by the revised Federal regulations.

**EFFECTIVE DATE:** March 26, 1997.

#### FOR FURTHER INFORMATION CONTACT:

Ervin J. Barchenger, 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
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#### 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 May 13, 1993 (Administrative Record No. TX-551), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to May 20, 1985, June 9, 1987, October 20, 1988, February 7, 1990, and February 21, 1990, letters (Administrative Record Nos. TX-358, TX-388, TX-417, TX-472, and TX-476) that OSM sent to Texas in accordance with 30 CFR 732.17(c), in response to the required program amendments at 30 CFR 943.16 (k) through (q), and at its own initiative.

OSM announced receipt of the proposed amendment in the June 21, 1993, **Federal Register** (58 FR 33785), 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 would have closed on July 21, 1993. However, by letter dated July 16, 1993, the Texas Mining and Reclamation Association requested a 30-day extension of time in which to review and provide comments on the proposed amendment. OSM announced receipt of the extension request and reopened the comment period in the August 16, 1993, **Federal Register** (58 FR 43308). The extended comment period ended August 20, 1993.

During its review of the amendment, OSM identified several concerns relating to the proposed amendment. OSM notified Texas of these concerns by letter dated July 25, 1994 (Administrative Record No. TX-578). OSM provided Texas with further clarification of its concerns by letters dated November 4, 1994, November 21, 1994, and January 18, 1995 (Administrative Record Nos. TX-581, TX-589, and TX-585).

By letter dated September 18, 1995 (Administrative Record No. TX-598), Texas responded to OSM's concerns by submitting a revised program amendment package. OSM reopened the public comment period in the October 25, 1995, **Federal Register** (60 FR 54620) and provided an opportunity for a public hearing on the adequacy of the revised amendment. The public comment period closed on November 9, 1995. By letter dated December 15, 1995 (Administrative Record No. TX-634), Texas submitted documents to clarify and supplement its September 18, 1995, revised amendment. By letter dated March 1, 1996 (Administrative Record No. TX-612), Texas provided information to supplement the revegetation success portion of its September 18, 1995, revised amendment.

By letter dated January 29, 1996 (Administrative Record No. TX-610), Texas withdrew portions of its September 18, 1995, revised amendment. Texas withdrew the roads and transportation system portion of the amendment because it had submitted a formal amendment on December 20, 1995, titled "Transportation System, Utilities, and Support System," which superseded the changes in this amendment. During its review of the September 18, 1995, revised amendment and supplemental information, OSM

identified several concerns relating to the proposed amendment. OSM notified Texas of these concerns by letter dated June 18, 1996 (Administrative Record No. TX-614).

By letter dated July 31, 1996 (Administrative Record No. TX-621), Texas responded to OSM's concerns by submitting a revised program amendment package. Texas proposed to revise the Texas Coal Mining Regulations (TCMR) at: Subchapter A—General, parts 700, 701, 705, and 707; subchapter F—Lands Unsuitable for Mining, parts 760, 761, 762, and 764; subchapter G—Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures Systems, parts 770, 776, 779, 780, 783, 784, 785, 786, 787, and 788; subchapter J—Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations, parts 800, 806, and 807; subchapter K—Permanent Program Performance Standards, parts 805, 816, 817, and 823; subchapter L—Permanent Program Inspection and Enforcement Procedures, parts 843, 845, and 846; and subchapter M—Training, Examination, and Certification of Blasters, part 850. In addition, Texas withdrew the revegetation success guidelines from this amendment and indicated they would be submitted as a separate amendment at a later time. By letter dated September 12, 1996, (Administrative Record No. TX-635), Texas provided its Administrative Procedures Act to supplement its July 31, 1996 revised amendment.

OSM reopened the public comment period in the August 28, 1996, **Federal Register** (61 FR 44260). The public comment period closed on September 27, 1996.

During its review of the July 31, 1996, revised amendment, OSM identified concerns relating to a proposed change to the effective date of TCMR 762.076 regarding designating lands unsuitable for mining, a cross-reference in TCMR 780.148(c)(3) and 784.190(c)(3), proposed self-insurance provisions at TCMR 806.311(d), and revised administrative procedures at TCMR 787.222 and 787.223. OSM notified Texas of these concerns by letter dated December 2, 1996 (Administrative Record No. TX-630).

By letter dated December 31, 1996, (Administrative Record No. TX-631), Texas responded to OSM's concerns by submitting information to supplement and correct cross-reference errors in its July 31, 1996, revised amendment. In addition, Texas withdrew the proposed changes to TCMR 787.222 and 787.223 regarding administrative procedures, and indicated it would submit changes

to these procedures in a separate amendment. By letter dated February 4, 1997 (Administrative Record No. TX-636), Texas submitted information to correct a cross-reference error in its December 31, 1996, submittal.

### III. Director's Findings

After a thorough review, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds that the proposed amendment, as submitted by Texas on May 13, 1993, and as revised and/or supplemented with explanatory information on September 18, 1995, December 15, 1995, March 1, 1996, July 31, 1996, September 12, 1996, December 31, 1996, and February 4, 1997, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations.

#### A. Nonsubstantive Revisions to Texas' Regulations

Texas proposed nonsubstantive changes to make editorial corrections and recodify previously approved regulations because of new regulations. Revisions that are not discussed concern substantive wording changes that are not inconsistent with SMCRA or the Federal regulations. The Director approves these changes.

#### B. Substantive Revisions to Texas' Regulations That Are Substantially Identical to the Corresponding Federal Regulations

##### 1. New and Revised Texas Regulations

Texas proposed the following new regulations and revisions to existing regulations that are substantive in nature and contain language that is substantially identical to the corresponding Federal regulations (listed in brackets):

TCMR 700.002 (b)(4), (b)(5), and (f), authority, responsibility, and applicability [30 CFR 700.11 (a)(4), (a)(5) and (d)];

TCMR 701.008 (5), (18), (19), (21), (26), (55), (67), (82), (84), (95), (102), and (107), definitions for affected area, coal mine waste, coal preparation, coal processing waste, cumulative impact area, other treatment facility, prime farmland, siltation structure, soil survey, topsoil, unwarranted failure to comply, and willful violation [30 CFR 701.5, 843.5];

TCMR 705.010 (a)(3) and (c), 705.011 (2), (3), (5), and (9), 705.013(a), 705.014, 705.015(a), and 705.016(a), restrictions of financial interests of state employees [30 CFR 705.4 (a)(3) and (d), 705.5, 705.11(a), 705.13, 705.15, and 705.17(a)];

TCMR 709.025, 709.026 (a)(1) and (b)–(e), 709.027(c)–(e), 709.028,

709.029(b)–(c), 709.030, 709.031(a), (b), and (d)–(f), 709.032, 709.033 (a), (b), (c)(1), and (d), 709.034, exemption for coal extraction incidental to the extraction of other minerals [30 CFR 702.1, 702.5(a)(1), 702.11(c)–(e), 702.12, 702.13(b)–(c), 702.14, 702.15(a), (b), and (d)–(f), 702.16, 702.17 (a), (b), (c)(1), and (d), and 702.18];

TCMR 760.069, areas designated unsuitable for mining by Congress [30 CFR 761.1];

TCMR 760.070 (6), (7), (9), and (11), definitions of public building, public park, publicly-owned park, and significant recreational, timber, economic, or other values incompatible with surface coal mining operations [30 CFR 761.5];

TCMR 761.071 (b), (c), and (e), and 761.072 (b)(1), (b)(2), (c), (d), (d) (1)–(4), (e) (1)–(2), (e)(3) (A)–(B), (f)(2), (g), and (h), areas where mining is prohibited or limited [30 CFR 761.11 and 761.12];

TCMR 762.074 (4) and (5), definitions of renewable resource lands and substantial legal and financial commitments in a surface coal mining operation [30 CFR 762.5];

TCMR 762.075(a), 762.075(b), and 762.077, designating lands unsuitable for surface coal mining operations [30 CFR 762.11(a), 762.11(b), and 762.14];

TCMR 764.079 (a), (b), (b)(1), (b)(1) (A)–(B), (b)(1) (D)–(F), (b)(2), (c), (c)(1), (c)(1) (A)–(B), (c)(1) (D)–(E), and (c)(2), 764.080 (a) (4)–(7), (b)(1), (b)(3), (c), and (d), 764.081 (a) and (b)(2), 764.082 (b) and (c), 764.084(a), and 764.085(b), process for designating lands unsuitable for surface coal mining operations [30 CFR 764.13, 764.15, 764.17, 764.19 (b) and (c), 764.23(a), and 764.25(b)];

TCMR 776.111(a)(3)(E), application requirements for coal exploration of more than 250 tons [30 CFR 772.12(b)(10)];

TCMR 779.126(d) and 783.172(d), surface and underground mine permit requirements—description of hydrology and geology [30 CFR 780.21(a) and 784.14(a)];

TCMR 779.128 (a), (a) (3)–(4), and (b), and 783.174 (a), (a) (3)–(4), and (b), surface and underground mine permit requirements—ground water information [30 CFR 780.21(b)(1) and 784.14(b)(1)];

TCMR 779.129, .129 (a), (b), (b)(1), and (b)(3), and 783.175, .175 (a), (b), (b)(1), and (b)(3), surface and underground mine permit requirements—surface water information [30 CFR 780.21(b)(2) and 784.14(b)(2)];

TCMR 780.141 (g) and (h), surface mine permit requirements—blasting plans [30 CFR 780.13(a)];

TCMR 780.142(b)(11), surface mine permit requirements—maps and plans [30 CFR 780.14(b)(11)];

TCMR 780.142(d) and 784.197(d), surface and underground permit requirements—support facilities [30 CFR 780.38 and 784.30];

TCMR 780.146(b), 780.146(c), 780.146(d)(1)–(4), 780.146(e), 784.188(b), 784.188(c), and 784.188(e), protection of the hydrologic balance [30 CFR 780.21(i), 780.21(j), 780.21(f), 780.21(g), 784.14(h), 784.14(i), and 784.14(f)];

TCMR 785.201(b)(1), (b)(1)(B), (b)(2)–(4), (c)(1)–(2), and (d)(2), prime farmland permit application requirements [30 CFR 785.17(c)–(e)];

TCMR 785.202(b)(1)(i), (2), and (3)(i)–(iv), application requirements—alluvial valley floors [30 CFR 785.19(d)(2)(i)];

TCMR 786.210, public availability of applications [30 CFR 773.13(d)];

TCMR 786.216(c) and (e), criteria for permit approval or denial [30 CFR 773.15(c)(5) and (11)];

TCMR 786.220(d), conditions of permits [30 CFR 773.17(g)];

TCMR 800.301(b)(2), requirements to file a bond [30 CFR 800.11(b)(4)];

TCMR 807.312(a)–(c), bond release procedures [30 CFR 800.40(a) and (b)];

TCMR 807.313(a)(2), criteria and schedule for bond release [30 CFR 800.40(c)(2)];

TCMR 815.327(a), performance standards for coal exploration [30 CFR 815.15(a)];

TCMR 815.328, performance standards for coal exploration [30 CFR 772.14];

TCMR 816.340 and 817.510, water quality standards and effluent limitations [30 CFR 816.42 and 817.42];

TCMR 816.341(a)(1)–(3), (b), and (c), and 817.511(a)(1)–(3), (b), and (c), hydrologic balance: diversions [30 CFR 816.43(a)(1)–(3), (b), and (c), and 817.43(a)(1)–(3), (b), and (c)];

TCMR 816.344(a), (b), (d), and (e), and 817.514(a), (b), (d), and (e), hydrologic balance: siltation structures [30 CFR 816.46(a), (b), (d), and (e), and 817.46(a), (b), (d), and (e)];

TCMR 816.347(a)(1)–(2), (a)(4)–(10), (a)(12)–(13), (b), and (c)(1), and 817.517(a)(1)–(2), (a)(4)–(10), (a)(12)–(13), (b), and (c)(1), performance standards—permanent and temporary impoundments [30 CFR 816.49(a)(1)–(2), (a)(4)–(10), (a)(12)–(13), (b), and (c)(1), and 817.49(a)(1)–(2), (a)(4)–(10), (a)(12)–(13), (b), and (c)(1)];

TCMR 816.348, hydrologic balance: ground water protection [30 CFR 816.41(b)];

TCMR 816.349, hydrologic balance: surface water protection [30 CFR 816.41(d)];

TCMR 816.350(a) and (b), and 817.519(a)(1), (a)(2), (a)(4), (b)(1), (b)(2), and (b)(4), hydrologic balance: surface and ground water monitoring [30 CFR 816.41(c) and (e), and 817.41(c)(1), (c)(2), (c)(4), (e)(1), (e)(2), and (e)(4)];

TCMR 816.355 and 817.524, hydrologic balance: stream buffer zones [30 CFR 816.57 and 817.57];

TCMR 816.357(a) and (c), and 817.526(b) and (c), use of explosives [30 CFR 816.61(a) and (c), and 817.61(b) and (c)];

TCMR 816.358(a)–(d) and 817.527(a)–(d), use of explosives—preblasting surveys [30 CFR 816.62(a)–(e) and 817.62(a)–(e)];

TCMR 816.362(d), 817.530, and 817.530(c), (d), (e), (g), (j), (s)(1)–(5), and (t), use of explosives—records of blasting operations [30 CFR 816.68(d), 817.68, and 817.68(d), (e), (j), (o)(1)–(5), and (p)];

TCMR 816.376(a), (b), and (c), and 817.543(a), (b), and (c), general requirements for coal mine waste dams and embankments [30 CFR 816.84, 816.84(a) and (b)(1), 817.84, and 817.84(a) and (b)(1)];

TCMR 816.377 and 817.544, coal mine waste dams and embankments site preparation [30 CFR 816.84 and 817.84];

TCMR 816.378(a) and (c), and 817.545(a) and (c), design and construction of coal mine waste dams and embankments [30 CFR 816.84(b)(1) and (f), and 817.84(b)(1) and (f)];

TCMR 816.380(e)(10) and 817.547(e)(10), protection of fish, wildlife and related environmental values [30 CFR 816.97(h) and 817.97(h)];

TCMR 816.385(b)(3) and 817.552(b)(3), backfilling and grading requirements [30 CFR 816.83(c)(2) and 817.83(c)(2)];

TCMR 816.390 and 817.555, revegetation: general requirements [30 CFR 816.111 and 817.111];

TCMR 817.509(a), hydrologic balance requirements [30 CFR 817.41(a)];

TCMR 817.535(c), general requirements for coal mine waste banks [30 CFR 816.81(c)(1)];

TCMR 823.620(a), prime farmland applicability [30 CFR 823.11(a) and (c)];

TCMR 823.621(a)–(b) and 823.622(a)–(c), prime farmland soil removal and stockpiling [30 CFR 823.12];

TCMR 823.624(a)–(b) and (d)–(f), prime farmland soil replacement [30 CFR 823.14];

TCMR 823.625, prime farmland revegetation and restoration of soil productivity [30 CFR 823.15];

TCMR 843.681(c) and (f)–(j), notice of violation abatement period extensions [30 CFR 843.12];

TCMR 843.682(a)(1), suspension or revocation of permits [30 CFR 843.13(a)(1)];

TCMR 845.695(b)(1), procedures for assessment of civil penalties [30 CFR 845.17(b)(1)];

TCMR 846.002 and 846.003, individual civil penalties assessed and amount [30 CFR 846.12 and 14].

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, shown in brackets, the Director finds that Texas' proposed regulations are no less effective than the Federal regulations.

## 2. Deletion of Existing Texas Regulations

Texas proposed to delete the following regulations because of OSM's repeal of the Federal counterpart regulations (shown in brackets) or because of the reasons stated:

TCMR 770.101, definitions [definitions are moved, revised and adopted at TCMR 701.008];

TCMR 740.146(b) and (c), and 784.188(b) and (c), protection of the hydrologic balance [30 CFR 780.21(b) and (c), 48 FR 43985, September 26, 1983];

TCMR 785.201(b)(3), (5), (6), and (8), prime farmland application requirements [30 CFR 785.17(b)(3), (5), (6), and (8), 48 FR 47722, September 29, 1983];

TCMR 816.340 and 817.510, water quality standards and effluent limitations [30 CFR 816.42 and 817.42, 48 FR 44051, September 26, 1983];

TCMR 816.341, 816.342, 817.511, and 817.512, diversions [30 CFR 816.43, 816.44, 817.43, and 817.44, 48 FR 43991, September 26, 1983];

TCMR 816.344 and 817.515, sedimentation ponds [30 CFR 816.46 and 817.46, 48 FR 44051, September 26, 1983];

TCMR 816.347 and 817.517, permanent and temporary impoundments [30 CFR 816.49 and 817.49, 48 FR 44004, September 26, 1983];

TCMR 816.348 and 816.349, ground water protection and protection of ground water recharge capacity [30 CFR 816.50 and 816.51, 48 FR 43992, September 26, 1983];

TCMR 816.350 and 817.519, surface and ground water monitoring [30 CFR 816.52 and 817.52, 48 FR 43992, September 26, 1983];

TCMR 816.355 and 817.524, stream buffer zones [30 CFR 816.57 and 817.57, 48 FR 30327, June 30, 1983];

TCMR 816.390, 816.395, 816.396, 817.555, 817.560, and 817.561, revegetation: general requirements,

standards for success, and tree and shrub stocking for forest land [30 CFR 816.111, 816.116, 816.117, 817.111, 817.116, and 817.117, 48 FR 40160, September 2, 1983];

TCMR 817.528 (a), (c), and (d)–(1), surface blasting requirements [30 CFR 817.65, 48 FR 9810, March 8, 1983];

TCMR 817.529, seismograph measurements [30 CFR 817.67, 48 FR 9810, March 8, 1983];

TCMR 817.538(c)(3), coal processing waste banks construction requirements [30 CFR 817.85, 48 FR 44030, September 26, 1983];

TCMR 823.620(c), prime farmland special requirements [30 CFR 823.11(c), 48 FR 21463, May 12, 1983];

TCMR 823.623, prime farmland alternative to separate soil horizon removal and stockpiling [No Federal counterpart, its removal does not effect the State program].

Because the above proposed deletions are consistent with OSM's repeal of the Federal counterpart regulations or are proposed to be removed for other appropriate reasons, the Director finds that the proposed deletions will not render the Texas regulations less effective than the Federal regulations.

### *C. New Regulations and Revisions to Existing Texas' Regulations That Are Substantive in Nature*

#### 1. TCMR 700.003 (1) and (3), Definitions of Act and APA

At TCMR 700.003(1), Texas defines "Act" to mean the Texas Surface Coal Mining Control and Reclamation Act. The State proposed to revise its definition by deleting the word "control" to reflect the actual title of the State surface coal mining and reclamation act as it is stated in the Texas statute. Texas also proposed to add a reference to the code citation. The proposed definition states: "Act" means the "Texas Surface Coal Mining and Reclamation Act" (TEX. NAT. RES. CODE Ch. 134).

Texas proposed to revise the definition of "APTRA" at TCMR 700.003(3) to "APA" and to add a reference to the code citation of the APA. The APA is the successor code to the APTRA for the State's administrative procedures act. The proposed definition states: "APA" means the "Administrative Procedure Act" (Chapter 2001, TEX. GOV'T CODE). The Federal regulations do not contain a counterpart definition.

The Director finds the proposed changes do not make the State's definitions of "Act" or "APA" inconsistent with any requirement of SMCRA or with the Federal regulations.

The Director approves the proposed changes to the Texas regulations.

#### 2. TCMR 701.008(25), Definition of Cropland

Texas proposed to revise its definition of cropland by adding the phrase "but does not include quick growing cover crops grown primarily for erosion control" to the end of the existing definition. The corresponding Federal definition does not include the proposed State language. Texas proposed the change to make it clear that the definition of cropland is to identify lands used for the production of crops. It should not include lands that are not used for the production of crops, but where a cover crop is planted for erosion control practices. The Director finds that the proposed revision to the definition of cropland is not inconsistent with any requirement of SMCRA or the Federal regulations. The Director is approving the proposed definition.

#### 3. TCMR 701.008, Definitions of Administratively Complete Application, Applicant, Application, Complete and Accurate Application, Principal Shareholder, and Property To be Mined

OSM required Texas, at 30 CFR 943.16(k) to submit an amendment that includes definitions for complete application, applicant, application, principal shareholder, and property to be mined. Instead of submitting a definition of complete application, Texas submitted proposed definitions of administratively complete application and complete and accurate application. Because the Federal regulations do not contain a definition for complete application, Texas is not required to include this specific definition in its program. Texas also submitted proposed definitions of applicant, application, principal shareholder, and property to be mined. The proposed State definitions are the same as the counterpart Federal definitions at 30 CFR 701.5. The Director finds the proposed definitions at TCMR 701.008(4) administratively complete application, (9) applicant, (10) application, (24) complete and accurate application, (68) principal shareholder, and (70) property to be mined are no less effective than the corresponding Federal regulations at 30 CFR 701.5 and approves them. In addition, the Director is removing the required amendment at 30 CFR 943.16(k).

#### 4. TCMR 701.008(34), Definition of Experimental Practice

Texas proposed to add at TCMR 701.008(34) a definition for

"experimental practices." The proposed definition is that experimental practice means the use of alternative surface coal mining and reclamation operation practices for experimental or research purposes. The Federal regulations do not contain a counterpart definition. However, the original Federal permanent program regulations published on March 13, 1979 (44 FR 15371) contained a definition for experimental practices. In 1983, OSM determined this definition was not needed and revised its regulations at 30 CFR 785.13(c) to delete the definition (48 FR 9478, March 4, 1983). Texas' proposed definition of experimental practice is the same as the previous Federal definition. The proposed Texas definition of experimental practice at TCMR 701.008(34) is not inconsistent with any requirement of SMCRA or the Federal regulations. The Director is approving the proposed definition.

#### 5. TCMR 701.008 (69) and (76), Definitions of Professional Specialist and Registered Professional Engineer

Texas proposed to add a definition for professional specialist at TCMR 701.008(69) and a definition of registered professional engineer at TCMR 701.008(76). The proposed definition of professional specialist means a person whose training, experience, and professional certification or licensing are acceptable to the Commission for the limited purpose of performing certain specified duties under this Chapter. Texas proposed to use the term at TCMR 816.347(a)(11) and 817.517(a)(11) in the following context " \* \* \* a qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer \* \* \*".

The proposed definition of registered professional engineer means a person who is duly licensed by the Texas State Board of Registration of Professional Engineers to engage in the practice of engineering in this state. Texas proposed to use the term throughout its regulations regarding review and certification of engineering designs.

The Federal regulations do not contain corresponding definitions. However, the Federal regulations use the terms in the same manner as proposed by Texas. The Director finds the proposed Texas definitions of professional specialist at TCMR 701.008(69) and registered professional engineer at TCMR 701.008(76) are not inconsistent with any requirement of SMCRA or the Federal regulations. Therefore, the Director is approving the proposed definitions.

**6. TCMR 707.022, Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction—Information to be Maintained on Site**

The Federal regulation at 30 CFR 707.12 requires that if coal extraction incidental to government financed construction extracts more than 250 tons or affects more than two acres, certain requirements must be met for maintaining information on site. At TCMR 707.022, Texas proposed to delete the reference to "or effects more than two acres" from its regulations. Texas made this change to its regulations in 1988; however, OSM has not approved it as an amendment to the Texas program. Texas indicated that it made this change as part of its removal of the two-acre exemption requirements from its program. OSM did not revise this regulation when it removed the two acre exemption provisions from its regulations.

The effect of the regulation in question is limited. It addresses when documents must be maintained on site; it does not address or have any effect on whether coal extraction incidental to government-financed construction is allowable. Although the Federal regulation contains two limits, tonnage and acreage, the tonnage limit as it applies in Texas is so restrictive that it renders the acreage limit superfluous. The only coal mined in Texas is lignite, which averages 1,750 tons per acre-foot in weight according to DOE Coal Data. This means that removal of just two inches of coal from one acre would result in 290 tons removed, exceeding the 250 ton limit. The possibility of coal removal incidental to government financed construction affecting more than two acres without the removal of more than 250 tons is extremely remote. Additionally, Texas has not used this provision of its program since its approval in 1980. It deleted the two acre provision from its regulations over eight years ago and it has not presented a problem in the field. Therefore, the Director finds that the proposed Texas regulation revision at TCMR 707.022 is no less effective than the corresponding Federal regulation at 30 CFR 707.12 and is no less stringent than SMCRA, and approves the regulation.

**7. TCMR 709.026(a)(2), Definition of Cumulative Measurement Period**

Texas Proposed to define the cumulative measurement period as it applies to an exemption for coal extraction incidental to the extraction of other minerals. The proposed definition of cumulative measurement period at

TCMR 709.026(a)(2) is substantively identical to the counterpart Federal definition at 30 CFR 702.5(a)(2), except that Texas proposed to insert the effective date of TCMR Part 709 of its regulations for the end date of the cumulative measurement period, and an anniversary date that is one day prior to the effective date. The Federal definition contains an end date of April 1, 1990, which is the effective date of the Federal regulation, and an anniversary date of March 31. OSM intended for primacy States to base the end date of the cumulative measurement period on the effective date of the counterpart provisions of the State's regulatory program (54 FR 52094, December 20, 1989). OSM stated that its regulations "were not intended [to] retroactively bring under this Act [SMCRA] activities that occurred prior to the effective date of this rule or the effective date of the counter part provisions of the State regulatory programs." The Director finds the proposed Texas definition of cumulative measurement period at TCMR 709.026(a)(2) is no less effective than the corresponding Federal definition at 30 CFR 702.5(a)(2), and approves it.

**8. TCMR 709.027 (a) and (b), Application Requirements and Procedures for an Exemption for Coal Extraction Incident to the Extraction of Other Minerals**

Texas proposed to use the effective date of TCMR Part 709 at TCMR 709.027(a) to establish who must file an application for an exemption for incidental coal extraction and at TCMR 709.027(b) to establish a date for when existing operations must file an application. The Federal requirements at 30 CFR 702.11 (a) and (b) use the effective date of the Federal regulations. For the same reasons as discussed in Finding III.C.7. for the definition of "cumulative measurement period," the use of the State's effective date is also appropriate for these subsections.

In addition, at TCMR 709.027(b), Texas proposed to specify what constitutes an administratively complete application for an incidental mining exemption application. The Federal requirements do not contain a determination of when an application for an incidental mining exemption is administratively complete. The Federal definition of administratively complete application at 30 CFR 701.5 is specific to permit applications and coal exploration applications; it does not include incidental mining exemption applications. However, the addition of this requirement in the Texas program is not inconsistent with any requirement

of SMCRA or the Federal regulations. The Director finds that Texas' proposed regulations at TCMR 709.027 (a) and (b) are no less effective than the corresponding Federal requirements, and approves them.

**9. TCMR 709.027(F) and 709.033(c) (2) and (3), Administrative Review of Determinations for an Exemption and Revocation of an Exemption for Coal Extraction Incident to the Extraction of Other Minerals**

The Federal regulations at 30 CFR 702.11(f) and 702.17(c) (2) and (3) state that any adversely affected person may request administrative review in accordance with 30 CFR 4.1280 or the corresponding State procedures when a State is the regulatory authority, and that a petition for administrative review shall not suspend the determination for an exemption or the effect of a decision on the revocation of an exemption Texas proposed at 709.027(f) and 709.033(c)(2), that an adversely affected person may request administrative review of determinations and decisions in accordance with Section 787.222. TCMR 787.222 contains the corresponding State procedures in the Texas program. The Director finds that Texas' proposed regulations at TCMR 709.027(f) and 709.033(c)(2) are no less effective than the corresponding Federal requirements and approves them.

Texas did not propose corresponding regulations to the Federal regulations at 30 CFR 702.11(f)(2) and 702.17(c)(3), which state that a petition for administrative review filed under 43 CFR 4.1280 or under corresponding State procedures shall not suspend the effect of either a determination under 702.11(e) or a decision whether to revoke an exemption. As stated in the preamble to the final Federal rule (54 FR 52114, December 20, 1989), this provision was added to the Federal rule in order to clarify the effect of the decision on revocation. Therefore, because the intent of the Federal regulations was only to clarify other regulations, the Director finds that Texas' omission of corresponding requirements to 30 CFR 702.11(f)(2) and 702.17(c)(3) does not render its program less stringent with SMCRA or less effective than the Federal regulations.

**10. TCMR 709.029(a), Public Availability of Information for an Exemption for Coal Extraction Incident to the Extraction of Other Minerals**

The Federal regulation at 30 CFR 702.13(a) states that all information submitted under 30 CFR Part 702 shall be available for public inspection and

copying at the local offices of the regulatory authority. Texas proposed at TCMR 709.029(a) that all information submitted to the Commission under Part 709 shall be available for public inspection and copying at the Division's central and local offices closest to the mining operation. The Director finds that Texas' inclusion of the central office, in addition to the local offices, does not render its proposed regulation at TCMR 709.029(a) less effective than the counterpart Federal requirement at 30 CFR 702.13(a) and approves it.

11. TCMR 760.070(5), Definition of Owner of Record or Ownership Interest of Record

Texas proposed to add a definition of owner of record or ownership interest of record at TCMR 760.070(5). The proposed definition states that owner of record or ownership interest of record means the owner and address as shown in the tax records of the Texas Assessor-Collector of Taxes for the county where the property is located. Texas uses these terms throughout TCMR Subchapter F—Lands Unsuitable for Mining. The Federal regulations do not contain a corresponding definition. However, the Federal regulations use the term in the same manner as Texas. The Director finds the proposed Texas definition of owner of record or ownership interest of record at TCMR 760.070(5) is not inconsistent with any requirement of SMCRA or the Federal regulations. Therefore, the Director is approving the proposed definition.

12. TCMR 761.072(f)(1), Agency Notice of Adverse Affects on Protected Parks and Places

Texas proposed to revise TCMR 761.072(f)(1) to be substantially identical to the corresponding Federal requirements at 30 CFR 761.12(f)(1), with one exception. The Federal regulations includes a provision which states that "[t]he regulatory authority, upon request by the appropriate agency, may grant an extension to the 30-day period of an additional 30 days." The Federal regulation provides that granting a 30-day extension for agencies to comment is discretionary to the regulatory authority. The proposed Texas regulation does not include provisions to grant a 30 day extension. By omitting this option, Texas has determined on a programmatic basis that it will not grant extensions. The Director finds this determination is not inconsistent with SMCRA or the Federal regulations and the proposed Texas regulation at TCMR 761.072(f)(1) is no less effective than the corresponding Federal requirement at 30 CFR

761.12(f)(1). The Director approves the regulation revisions.

13. TCMR 762.076(a), Lands Exempt From Designation as Unsuitable for Surface Coal Mining Operations

The Federal regulations at 30 CFR 762.13 identify lands exempt from designation as unsuitable for surface coal mining operations by stating "The requirements of this part do not apply to—(a) Lands upon which surface coal mining operations were being conducted on the date of enactment of the Act". In a previous State rulemaking, Texas revised its requirements at TCMR 7652.076(a) by adding "on the date of enactment of the Act" and deleting "August 3, 1977". The Federal regulations at 30 CFR 700.5 define "Act" as SMCRA, which has an effective date of August 3, 1977. The Texas regulations at TCMR 700.003(1) defines "Act" to mean the Texas Surface Coal Mining and Reclamation Act, which has an effective date of May 9, 1979. The result of the Texas rule revision was to extend the time frame from August 3, 1977, to May 9, 1979, for which lands being affected by mining are programmatically exempt from designation as unsuitable. In response to an issue letter, Texas proposed to revise its regulations to reinsert the August 3, 1977, date. This proposed change restores the Texas regulations at TCMR 762.076(a) back to that which OSM had previously approved. Therefore, the proposed change is the same as previously approved in the Texas program and no action is needed by the Director.

14. TCMR 764.079 (b)(1)(C) and (c)(1)(C), 764.080 (a)(1) and (b)(2), and 764.081(b)(1)(C), Process for Designating Lands as Unsuitable for Surface Coal Mining Operations

(a) *TCMR 764.079 (b)(1)(C) and (c)(1)(C), Requirements for Complete Petition.* Texas proposed to add new requirements at TCMR 764.079(b)(1)(C) to what is required for complete petitions for designation of lands unsuitable, and at TCMR 764.079(c)(1)(C) for complete petitions to terminate a designation. The proposed requirements state that complete petitions shall include the names and mailing addresses of persons with an ownership interest of record in the petitioned area. The Federal regulations do not have requirements that correspond to the proposed State regulations. The Federal regulations at 30 CFR 764.13 (b)(2) and (c)(2) allow that the regulatory authority may request that the petitioner provide other supplementary information that is

readily available. The name and mailing address of each person with an ownership interest of record in the petition area is information that is available to the petitioners. The Director finds the proposed State requirements at TCMR 764.079(b)(1)(C) and 764.079(c)(1)(C) are not inconsistent with any requirements of SMCRA or the Federal regulations and approves them.

(b) *Notification Requirements of Completeness Decision.* At TCMR 764.080(a)(1), Texas proposed revisions to its regulations that, with one exception, are substantially the same as the corresponding Federal requirements at 30 CFR 764.15(a)(1). The Federal regulations provide that within 30 days of receipt of a petition, the regulatory authority shall notify the petitioner by certified mail whether or not the petition is complete. Texas proposed to provide this notification within 60 days. As discussed in Finding III.C.14(c), Texas proposed an option, not contained in the Federal regulations, to provide an opportunity for a hearing and period of written comments on the completeness decision. To accommodate the additional time needed for a hearing and period of written comments on completeness, Texas added 30 days to the schedule for a completeness determination. The Director finds the proposed regulation at TCMR 764.080(a)(1) is no less effective than the corresponding Federal regulation at 30 CFR 764.15(a)(1) and approves it.

(c) *Hearing and Period of Written Comment for Completeness Determination.* Texas proposed to add a new requirement at TCMR 764.080(b)(2) that allows the Commission to provide a hearing or a period of written comments on completeness of petitions. The proposed requirements identifies who the Commission shall inform of the opportunity of a hearing or period of written comments, how the different entities will be notified, and where a notice will published. The Federal regulations do not have a requirement that corresponds to the proposed State regulation. The proposed State provision will provide greater opportunity for interested agencies, interveners, persons with ownership interest in the petition area, and the public to participate in the petition process and to make their views known to the Commission. The Director finds the proposed Texas regulation at TCMR 764.080(b)(2) is not inconsistent with any requirement of SMCRA or the Federal regulations and approves it.

(d) *Notice of a Hearing for a Complete Petition.* The Federal regulations at 30 CFR 764.17(b)(1)(iii) require that proper

notice of a hearing for a complete petition to designate lands unsuitable for mining to persons with an ownership interest of record shall comply with applicable State law. AT TCMR 764.081(b)(1)(C), Texas proposed that proper notice shall be accomplished by placing a postage paid notice, addressed as shown in the public record, in the U.S. Mail. The use of the U.S. Mail is a reasonable method for providing notice of a hearing. The Director finds the proposed regulation at TCMR 764.081(b)(1)(C) is no less effective than the corresponding Federal regulation at 30 CFR 764.17(b)(1)(iii) and approves it.

15. TCMR 779.127 and 783.173, Geology Description

Texas proposed to revise TCMR 779.127 and 783.173 to specify in greater detail the geologic information that must be submitted in a permit application. In addition, OSM placed a required amendment on the Texas program at 57 FR 37447 (August 19, 1992) which states that: "Texas shall submit to OSM a proposed amendment for the geologic description requirements at TCMR 779.127 (a) and (b) to require that the geologic description must be based, in part, on analysis of samples of geologic materials collected from the proposed permit area." Texas proposed at TCMR 779.127(b) to specifically require that "[t]he geologic description shall include analysis of samples \* \* \* from the permit area." With one exception, proposed TCMR 779.127 and 783.173 are substantially identical to corresponding Federal regulations at 30 CFR 780.22 (b) and (c), and 784.22 (b) and (c).

The exception is that Texas' proposed TCMR 779.127(a) does not include the information sources listed by the Federal regulations at 30 CFR 780.22(b)(1) (i) through (iii). However, lack of these information sources does not relieve applicants from providing, or prevent Texas from requiring, a complete and adequate description of the geology of the permit and adjacent areas as specified at proposed TCMR 779.127(a). Therefore, the Director finds that the omission of these information sources does not render the proposed regulations at TCMR 779.127 and 783.173 less effective than the Federal regulations at 30 CFR 780.22 (b) and (c), and 784.22 (b) and (c). The Director approves the proposed regulations. In addition, the Director is removing the required amendment at 30 CFR 943.16(l).

16. TCMR 780.142(c) and 784.197(c), Surface and Underground Mine Permit Requirements—Operation Plan: Maps and Plans

OSM placed a required amendment on the Texas program at 57 FR 37447 (August 19, 1992) which states that: "Texas shall submit to OSM a proposed amendment for the permit operation maps and plans requirements at TCMR 779.142(c) to require that qualified registered professional engineers (not professional geologist) prepare and certify cross sections, maps, and plans for sedimentation ponds, water impoundments; coal processing waste banks, dams, and embankments; excess spoil fills; durable rock fills; and coal mine waste disposal facilities." Texas proposed to revise TCMR 780.142(c) to address this required amendment. Texas proposed similar changes to the underground mining requirements at 784.197(c). The proposed revisions to the Texas regulations are substantially the same as the counterpart Federal requirements. Also, Texas does not propose a cross-reference counterpart to 30 CFR 816.74(c)—disposal of excess spoil on existing benches, because Texas does not have a State counterpart to this Federal requirement. This omission was previously approved as part of the Texas program. The Director finds that proposed Texas regulations at TCMR 780.142(c) and 784.197(c) are no less effective than the corresponding Federal requirements at 30 CFR 780.14(c) and 784.23(c) and approves them. In addition, the Director is removing the required amendment at 30 CFR 943.16(m).

17. TCMR 780.142(c) and 784.197(c), TCMR 780.148(a)(3)(i) and 784.190(a)(3)(i), TCMR 816.344(b)(3) and 817.514(b)(3), and TCMR 816.347(a)(3), (a)(11), and (c)(2), and 817.517(a)(3), (a)(11), and (c)(2), Land Surveyor Maps and Plans Preparation, Inspections and Certifications

The Federal regulations at 30 CFR 780.14(c) and 784.23(c) allow qualified, registered, professional land surveyors to prepare and certify maps and plans; however, Texas does not propose to adopt provisions at TCMR 780.142(c) and 784.197(c) to allow land surveyors to prepare and certify maps and plans. Texas, at TCMR 780.148(a)(3)(i) and 784.190(a)(3)(i), proposed to delete provisions that allow land surveyors to prepare and certify plans prepared under TCMR 780.148(a)(3) and 784.190(a)(3). The Federal regulations at 30 CFR 816.46(b)(3) and 817.46(b)(3) allow qualified land surveyors to certify siltation structures; however, Texas

does not propose to adopt provisions that allow land surveyors to certify siltation structures at TCMR 816.344(b)(3) and 817.514(b)(3). The Federal regulations at 30 CFR 816.49(a)(3), (a)(11), and (c)(2), and 817.49(a)(3), (a)(11), and (c)(2) allow a qualified registered professional land surveyor to inspect and certify certain permanent and temporary impoundments. Texas does not propose to adopt provisions that allow land surveyors to certify designs at TCMR 816.347(a)(3) and 817.517(a)(3), to conduct inspections of impoundments under TCMR 816.347(a)(11) and 817.517(a)(11), or to certify designs at TCMR 816.347(c)(2) and 817.517(c)(2). At 57 FR 37450 (August 19, 1992), OSM previously approved Texas' omission of land surveyors from other sections of the Texas program. The Director finds that Texas' proposed changes to remove previously adopted provisions and to omit other provisions that allow land surveyors to prepare and certify certain plans does not render the Texas regulations less effective than the corresponding Federal regulations. Therefore, the Director approves these regulations.

18. TCMR 780.146 (a) and (d), and 784.188 (a) and (d), Hydrologic Information

(a) *TCMR 780.146(a) and 784.188(a), Hydrologic Reclamation Plan.* Texas proposed to revise its hydrologic reclamation plan requirements at TCMR 780.146(a) and TCMR 784.188(a). Except for the requirements at TCMR 780.146(a) (1) and (3), and 784.188(a) (1), (3), and (9), the proposed regulations contain language that is substantially the same as the corresponding Federal requirements for hydrologic reclamation plan at 30 CFR 780.21(h) and 30 CFR 784.14(g). Texas proposed to add language to TCMR 780.146(a)(1) and 784.188(a)(1) to ensure that the hydrologic reclamation plan include alternative sources of water where the protection of the quality cannot be ensured. These proposed requirements and the existing requirements at TCMR 780.146(a)(3) and 784.188(a)(3), which require that the hydrologic reclamation plan include alternative sources of water where the protection of the quantity cannot be ensured, supplement Texas' permit application requirements for alternative water supply information at TCMR 779.130 and 783.176. At TCMR 780.146(a)(3) and 784.188(a) (3) and (9), Texas proposed nonsubstantive wording changes that are not inconsistent with SMCRA or the Federal regulations. The Director finds the proposed regulations



at TCMR 780.146(a) and 784.188(a) are no less effective than the corresponding Federal requirements and approves them.

(b) *TCMR 784.188(d) (1)–(4), Determination of Probable Hydrologic Consequences—Underground Mining.* Texas proposed to delete its existing requirements for the determination of probable hydrologic consequences (PHC) from TCMR 784.188(c) and replace them with more detailed PHC requirements at proposed TCMR 784.188(d). With one exception, the proposed PHC determination requirements at proposed 784.188(d) (1)–(4) are substantially the same as the corresponding Federal requirements at 30 CFR 784.14(e). The Federal regulations at 30 CFR 784.14(e)(3)(iv) require that PHC determinations include findings on whether underground mining activities conducted after October 24, 1992, may result in contamination, diminution or interruption of a well or spring in existence at the time the permit application is submitted and used for domestic, drinking, or residential purposes within the permit or adjacent areas. At proposed TCMR 784.188(d)(3)(C), Texas is adding a requirement that the PHC must include a finding on whether the proposed operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, or other legitimate use. Proposed TCMR 784.188(d)(3)(c) requires a PHC determination if any legitimate use of water may be affected, whereas the Federal requirement for underground mining is limited to requiring the PHC to address impacts to domestic, drinking or residential uses. In addition, the Federal regulation effective date of October 22, 1992, for this requirement does not have any actual impact in Texas. On May 30, 1995, OSM confirmed with Texas that no underground mines have operated in Texas after October 24, 1992, and there is no underground mining activity proposed in the State (60 FR 38490, July 27, 1995). Therefore, the Director finds that Texas' proposed regulations at TCMR 784.188(d) (1)–(4) are no less effective than the corresponding Federal requirements at 30 CFR 784.14(e) and approves them.

(c) *TCMR 780.146(d)(5) and 784.188(d)(5), Supplemental Hydrologic Information.* The Federal requirements at 30 CFR 780.21(b)(3) and 784.14(b)(3) contain requirements for supplemental information that must be submitted if

the PHC projects or other conditions indicate that adverse hydrologic impacts may occur. The proposed Texas regulations at TCMR 780.146(d)(5) and 784.188(d)(5) contain language that is substantially identical to the Federal regulations. In addition, the proposed State regulations also include a requirement for information to be provided on alternative water supplies if such impacts are anticipated. This additional requirement supplements the existing State requirements for alternative water supply information at TCMR 779.130 and 783.176 and is not inconsistent with SMCRA or the Federal regulations. The Director finds that Texas' proposed regulations at TCMR 780.146(d)(5) and 784.188(d)(5) are no less effective than the corresponding Federal regulations and approves them.

(d) *Alternative Water Supply Information.* The Federal regulation at 30 CFR 780.21(e) contains requirements for alternative water supply information to be submitted in the permit application if the PHC indicates that the proposed mining operation may impact a surface or underground source of water within the permit or adjacent areas that is used for a legitimate purpose. The Texas counterpart to the Federal requirement is at TCMR 779.130. OSM informed Texas, in a letter sent under 30 CFR 732.17(c), that it should change its alternative water supply requirements to be no less effective than the Federal regulation at 30 CFR 780.21(e). As discussed in Findings III.C.18(a) and III.C.18(c), Texas proposed revised and new regulations at TCMR 780.146(a) and (d)(5), respectively, that supplement its existing requirements for alternative water supply information. The Director finds that Texas' requirements for alternative water supply information at TCMR 779.130 as supplemented with its requirements at TCMR 780.146(a) and (d)(5) are no less effective than the Federal requirements at 30 CFR 780.21(e).

19. TCMR 780.148(c)(3) and 784.190(c)(3), Surface and Underground Requirements—Reclamation Plan: Permanent and Temporary Impoundments

The Federal regulations at 30 CFR 780.25(c)(3) and 784.16(c)(3) provide that for ponds not meeting the requirements of subsections (c)(2), the regulatory authority may establish engineering design standards that ensure stability comparable to the 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the performance standards. Texas chose to not propose

engineering design standards. However, at TCMR 780.148(c)(3) and 784.190(c)(3), Texas proposed to establish a minimum static safety factor of 1.3 for ponds that do not meet the requirements of 816.347(a)(4)(i) and 817.517(a)(4)(i). Although Texas cross-references its performance standards instead of the permitting requirements as in the Federal regulations, the effect of the cross-reference is the same. The Director finds that the proposed Texas regulations at TCMR 780.148(c)(3) and 784.190(c)(3) are no less effective than the corresponding Federal requirements at 30 CFR 780.25(c)(3) and 784.16(c)(3), and approves them.

20. TCMR 806.311(d), Terms and Conditions for Liability Insurance

The Federal regulations at 30 CFR 800.60(d) contain provisions for self-insurance in lieu of a certificate for a public liability insurance policy. The regulations require that to be self-insured, an applicant must satisfy the applicable State self-insurance requirements approved as part of the regulatory program and the requirements of this Section. Texas proposed to add a provision to its regulations at TCMR 806.311(d) regarding self-insurance that states "[t]he Commission may, upon request of an applicant that is self-bonded or determined to be eligible for self-bonding under Section 309(j)(2), consider such applicant to meet the self-insurance requirements of this Paragraph." Texas regulation TCMR 806.309(j)(2) contains the self-bonding requirements for business and governmental entities. These requirements are substantially similar to the Federal requirements at 30 CFR 800.23(b), except for the alternative financial eligibility criteria of the Texas program found at TCMR 806.309(j)(2)(C)(iv) differ from the Federal requirements, and were approved as part of the Texas program on December 13, 1995 (60 FR 63922). Texas provided information to demonstrate it has authority to implement a self-insurance program for surface coal mining and reclamation operations. It submitted a letter from the Texas Department of Insurance that states: " \* \* \* there are no provisions in the Texas Insurance Code pertaining to self-insurance for general liability coverage \* \* \* [t]his does not mean that other state agencies could not have their own rules or regulations concerning self-insurance in lieu of purchasing an insurance policy." Texas stated that it derives its authority to set self-insurance requirements for coal mine operators from its Surface Coal



Mining and Reclamation Act, TEX. NAT. RES. CODE §§ 134.052, which provides: “(a) [a] permit application must be submitted in a manner satisfactory to the Commission and must contain: \* \* \* (19) \* \* \* evidence satisfactory to the commission that the applicant should be allowed to be self-insured \* \* \*.” The Texas requirements for self-bonding will ensure that an applicant which seeks to self-insure will possess sufficient financial capacity and solvency to adequately compensate a person who has personal injury or property damage as a result of the surface coal mining and reclamation operations to the minimum limits for certificated liability coverage under TCMR 806.311(a). The Director finds that the existing requirements of Texas’ Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE § 134.052(a)(19), together with existing TCMR 806.309(j)(2) and proposed TCMR 806.311(d) are no less effective than the Federal regulations at 30 CFR 800.60(d). Therefore, the Director approves TCMR 806.311(d).

21. TCMR 816.34(a)(4), Diversion Design Specifications

At TCMR 816.341(a)(4) (i)-(v) and 817.511(a)(4) (i)-(v), Texas proposed specific design criteria for diversions. The Federal regulations at 30 CFR 816.43(a) (4) and 817.43(a) (e) provide discretion for regulatory authorities to specify design criteria for diversions to meet the requirements of these sections. The proposed State design specifications address stabilization of diversion banks and channels, erosion protection for transition and critical areas, energy dissipators, handling of excess excavated material, and handling of topsoil. The Director finds the proposed State regulations are not inconsistent with any requirement of SMCR or the Federal regulations and is approving them.

22. TCMR 816.344(c) and 817.514(c), Siltation Structures

At TCMR 816.344(c) (1)-(2) and 817.514(c) (1)-(2), Texas proposed to add regulations that, with two exceptions, are substantially the same as the Federal regulations at 30 CFR 816.46 (c) and 817.46 (c). The proposed regulations at TCMR 816.344(c)(1)(iii)(A) and 817.514(c)(1)(iii)(A) state that sedimentation ponds shall be designed to provide adequate sediment storage volume, which is identical to the corresponding Federal requirements. The State regulations contain an additional provision in that they

establish a minimum sediment storage volume and describe how the sediment volume shall be determined. The proposed regulations at TCMR 816.344(c)(1)(c)(iii)(B) and 817.514(c)(1)(iii)(B) state that sedimentation ponds shall be designed to provide adequate detention time, which also is identical to the corresponding Federal requirements. The State regulations contain an additional provision in that they establish a minimum detention time of 10 hours unless chemical treatment is used. The Director finds these additional requirements are not inconsistent with any requirement of SMCRA or the Federal regulations. In addition, the Director finds that the proposed regulations at TCMR 816.344(c) (1)-(2) and 817.514(c) (1)-(2) are no less effective than the corresponding Federal requirements and is approving these regulations.

23. TCMR 817.519 (a)(3) and (b)(3), Hydrologic Balance: Ground Water Monitoring

At its underground mining performance standards at TCMR 817.519 (a)(3) and (b)(3), Texas proposed new regulations that, with one exception, are substantially the same as the Federal regulations at 30 CFR 817.41 (c)(3) and (e)(3). At TCMR 817.519 (a)(3)(1) and (b)(3)(i), Texas proposed to add the phrase “and the water rights of other users have been protected or replaces.” The corresponding Federal regulations do not contain this requirement. Texas proposed to place the same requirements on underground mining as it does for surface mining operations for ground water and surface monitoring. This includes ensuring that the water rights of users have been protected or replaced before allowing any modifications to the monitoring plans. The Director finds that the proposed regulations at TCMR 817.519 (a)(3) and (b)(3) are not inconsistent with any requirement of SMCRA or the Federal regulations, and approves them.

24. TCMR 816.357(d) and 817.526(d), Use of Explosives: General Requirements

At TCMR 816.357(d) and 817.526(d), Texas proposed new regulations that are substantially the same as the corresponding Federal regulations at 30 CFR 816.61(d) and 817.61(d), with two exceptions. Subsections (d)(1)(A) and (d)(1)(B) of the proposed regulations require that blast designs be submitted if blasting operations are within 1,000 feet of specific buildings or 500 feet of specific structures. At TCMR 816.357(d)(1)(A) and 817.526(d)(1)(A),

Texas proposed to add “hospital” and “nursing facilities” to the list of buildings identified in the Federal regulations. In addition, at TCMR 816.357(d)(1)(B) and 817.526(d)(1)(B), Texas proposed to add “disposal wells, petroleum or gas storage facilities” and “fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines” to the list of structures identified in the Federal regulations. Texas proposed to add the buildings and structures identified in these regulations to be consistent with its existing requirements at TCMR 816.360(a)(2) and 817.528(a)(2). The Director finds that the proposed Texas regulations at TCMR 816.357(d) and 817.526(d) are not inconsistent with any requirement of SMCRA and are no less effective than the Federal regulations at 30 CFR 816.61(d) and 817.61(d). Therefore, the Director approves them.

25. TCMR 816.330(f), 816.360, 817.500(f), and 817.528, Use of Explosives

(a) *TCMR 816.330(f) and 817.500(f), Blasting Signs.* Texas proposed to revise its blasting sign regulations for surface and underground mining to reference sections 816.360 and 817.528, respectively, to determine when blasting signs are required. These proposed regulations are similar to 30 CFR 816.666(a) and 817.66(a), which state, in part, that blasting signs shall meet the specifications of 30 CFR 816.11. The Director finds the proposed State regulations at TCMR 816.330(f) and 817.500(f) are no less effective than the comparable Federal regulations at 30 CFR 816.66(a) and 817.66(a) and approves them.

(b) *TCMR 816.360, Control of Adverse Effects.* OSM placed required amendments 30 CFR 943.16(n) (1)-(5) on the Texas program at 57 FR 37447 (August 19, 1992) which require that Texas require operators to submit blast designs for all blasting operations within 1000 feet of buildings listed in TCMR 816.360(a)(2)(A) and within 500 feet of the facilities listed in TCMR 816.360(a)(2)(B), add “public buildings” and “community or institutional buildings” to the list of protected buildings at TCMR 816.360(a)(2)(A), add “active and abandoned underground mines” to the list of facilities in TCMR 816.360(a)(2)(B), correct citation errors in TCMR 816.360(h), and correct a codification error and citation errors at proposed TCMR 816.360(i). Texas proposed to make changes to TCMR 816.360 (a)(2), (a)(2)(A), (a)(2)(B), (h)(1), (h)(2), (h)(3), and (i) that satisfy the required amendments. Texas also proposed to make changes to TCMR

816.360 to correct a citation error at Section .360(f)(1)(A) that is the result of recodifying Section .360(i), and to correct other citation errors at (g)(2), (h)(2)(A) and (h)(3)(A) and (B). The Director finds that proposed TCMR 816.360 is not less effective than the corresponding Federal regulations at 30 CFR 816.61 and 816.67 and approves it. In addition, the Director, is removing the required amendments at 30 CFR 943.16(n)(1)–(5).

(c) *TCMR 817.528, Control of Adverse Effects.* Texas proposed to substantially revise its underground mining regulations for use of explosives—control of adverse effects at TCMR 817.528. The Director finds that proposed TCMR 817.528 includes all the requirements of, and is no less effective than the corresponding Federal regulations at 30 CFR 817.61, 817.66, and 817.67. The Director approves these regulations.

26. TCMR 816.376(d) and 817.543(d), Coal Mine Waste Dams and Embankments

Texas proposed to add new regulations at TCMR 816.376(d) and 817.543(d) that, with one exception, are substantially the same as the corresponding Federal regulations at 30 CFR 816.84(b)(2) and 817.84(b)(2). The Federal regulations require that each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) shall have adequate spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a 6-hour precipitation event, or greater event as specified by the regulatory authority. Texas' proposed regulations at TCMR 816.376(d) and 817.543(d) require that all impoundments meeting the specified criteria to have a combination of principal and emergency spillways able to safely pass the probable maximum precipitation of a 6-hour or greater precipitation event. The Director finds that the proposed provisions which require that each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meet the criteria of 30 CFR 77.216(a) to have a combination of principal and emergency spillways able to safely pass the probable maximum precipitation of a 6-hour or greater precipitation event do not render proposed TCMR 816.376(d) and 817.543(d) less effective than the corresponding Federal requirements at 30 CFR 816.84(b)(2) and 817.84(b)(2).

Therefore, the Director approves the regulations.

27. TCMR 816.395 and 817.560, Revegetation Standards for Success

Texas proposed new requirements at TCMR 816.395 (a)–(c) and 817.560 (a)–(c). Except at TCMR 816.395(b)(1), 816.395(c)(4) and 817.560(c)(4), Texas' proposed requirements at TCMR 816.395 and 817.560 are substantially identical to the Federal requirements for revegetation success at 30 CFR 816.116 and 817.116. At proposed TCMR 816.395(b)(1), Texas proposed to add the postmining land use of “undeveloped land” to the list of land uses where ground cover and production of living plants shall be at least equal to that of a reference area or such other success standard approved by Texas. There is no Federal counterpart to the Texas proposal for a success standard for undeveloped land. However, since undeveloped land is a recognized land use category by both the Federal and Texas regulations, its use in proposed TCMR 816.395(b)(1) is not inconsistent with any requirement of SMCRA or the Federal regulations.

At TCMR 816.395(c)(4) and 817.560(c)(4) Texas proposed new regulations regarding normal husbandry practices. The corresponding Federal requirements at 30 CFR 816.116(c)(4) and 817.116(c)(4) include the requirement that discontinuance of the practices after the liability period expires will not reduce the probability of revegetation success. Texas has not included the part of the requirement regarding “after the liability period expires”. As proposed, Texas may only approve normal husbandry practices where discontinuance at any time, not only after the liability period expires, will not reduce the probability of revegetation success. The omission of the phrase “after the liability period expires” in the Texas regulations does not render them less effective than the Federal requirements. The Director finds the proposed Texas regulations at TCMR 816.395 and 817.560 are no less effective than the corresponding Federal requirements at 30 CFR 816.116 and 817.116 and approves them.

28. TCMR 817.522(f), Discharge of Water Into an Underground Mine

OSM placed a required amendment on the Texas program at 57 FR 37447 (August 19, 1992) which requires that Texas submit an amendment to the requirements at TCMR 817.522(f) to replace the term “surface mining activities” with “underground mining activities.” Texas proposed to revise TCMR 817.522(f) to address this

requirement. The proposed Texas regulation at TCMR 817.522(f) is essentially identical to the corresponding Federal requirement at 30 CFR 817.41(h)(i). The Director finds that Texas' proposed regulation at TCMR 817.522(f) is no less effective than the corresponding Federal requirement at 30 CFR 817.41(h)(i)(i) and approves it. In addition, the Director is removing the required amendment at 30 CFR 943.16(o).

29. TCMR Part 846, Individual Civil Penalties

(a) *TCMR 846.001, Definitions.* Texas proposed to adopt definitions of “knowingly” at subsection .001(1), “violation, failure, or refusal” at subsection .001(2), and “willfully” at subsection .001(3). The proposed Texas definitions of “knowingly” and “willfully” are substantially the same as the definitions in the Federal regulations at 30 CFR 846.5. The proposed definition of “violation, failure, or refusal” uses different language than the corresponding Federal definition at 30 CFR 846.5, but the meaning is substantially the same. The Federal definition includes “any order issued under section 521 of the Act, or any order incorporated in a final decision issued by the Secretary under the Act \* \* \*”. The proposed Texas definition includes “any order issued by the Commission, including, but not limited to, \* \* \*”. The Texas definition then contains a list of orders that is substantially identical to those included under section 521 of SMCRA. The list includes notice of violation, failure-to-abate cessation order, imminent harm cessation order, order to show cause why a permit should not be suspended or revoked, and order in connection with a civil action for relief. Additionally, the Federal definition goes on to include an exception for “an order incorporated in a decision issued under section 518(b) or section 703 of [SMCRA].” Texas proposed to except “an order incorporated in a decision issued under Section 134.175 of the Act,” which is the Texas counterpart to SMCRA section 518(b). Texas did not propose a counterpart to the Federal exception for orders issued under SMCRA section 703 because the Texas program does not include a corresponding requirement to that SMCRA section. The Director finds that Texas' proposed definitions at TCMR 846.001 are no less effective than the corresponding Federal regulations at 30 CFR 846.5 and approves them.

(b) *TCMR 846.004, Procedure for Assessment of Individual Civil Penalty.* Texas proposed to add regulations for

procedures for assessment of individual civil penalty. With one exception, the proposed State regulations are substantially the same as the corresponding Federal requirements at 30 CFR 846.17. Texas' proposed section 846.004(c) provides, in part, that for the purposes of section 846.004: "service shall be performed on the individual to be assessed an individual civil penalty by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under Tex. R. Civ. P. 21a." The Federal regulation dealing with service on an individual to be assessed an individual civil penalty is at 30 CFR 846.17(c). It is essentially identical to the State requirement, except it refers to Rule 4 of the Federal Rules of Civil Procedure rather than Tex. R. Civ. P. 21a. Although Rule 4 differs somewhat from Tex. R. Civ. P. 21a, the differences do not present a problem since Rule 4 allows service on an individual, with certain exceptions not relevant to this requirement, to be effected pursuant to State law. The Director finds that Texas' proposed regulations at TCMR 846.004 are no less effective than the corresponding Federal regulations at 30 CFR 846.17 and approves them.

(c) *TCMR 846.005, Payment of Penalty.* Texas proposed to add requirements for payment of an individual civil penalty. With one exception, the proposed State regulations at TCMR 846.005 are substantially the same as the corresponding Federal requirements at 30 CFR 846.18. The Federal regulation at 846.18(b) states that a penalty shall be due under the circumstances outlined "upon issuance of a final administrative order affirming, increasing, or decreasing the proposed penalty." Proposed TCMR 846.005(b) states "the penalty shall be due upon issuance of the final order \* \* \*", it does not specify a "final administrative order." Under the proposed Texas provision, payment is not due until a final order, which may be a judicial order, is issued. However, the Texas regulation at TCMR 845.697, under which the hearing is requested, requires that an amount equal to the proposed penalty be paid into escrow as part of the request. The Federal provisions do not require an escrow payment as part of the request for a hearing, a penalty is not paid until a final administrative order is issued. The fact that the penalty amount is in an escrow account instead of in the State's treasury if a judicial appeal is filed does not render this requirement less effective than the Federal requirements. The Director finds that

Texas' proposed regulations at TCMR 846.005 are no less effective than the corresponding Federal regulations at 30 CFR 846.18 and approves them.

### 30. *TCMR Part 850, Training, Examination, and Certification of Blasters*

(a) *TCMR 850.703 and 850.706, Training, Examination.* In response to a required program amendment at 30 CFR 943.16(p), Texas proposed at TCMR 850.703(b)(1)(A) and 850.706(a) to add the terms "storage" and "transportation" to the list of topics related to explosives that the blaster certification course and examination must cover. The Director finds that revised TCMR 850.703(b)(1)(A) and 850.706(a) are no less effective than the corresponding Federal regulations at 30 CFR 850.13(a)(1) and 850.14(a)(1). Therefore, the revised regulations are approved, and the required amendment at 30 CFR 943.16(p) is removed.

(b) *TCMR 850.704, Training Courses.* In response to a required program amendment at 30 CFR 943.16(a), Texas proposed at TCMR 850.704(b) to add a sentence that would require that blaster certification training courses " \* \* \* must provide and require completion of the subjects listed in paragraph (a) of this section." The Director finds that revised TCMR 850.704(b) is no less effective than the corresponding Federal regulation at 30 CFR 850.13(b). Therefore, the revised regulation is approved, and the required amendment at 30 CFR 943.16(a) is removed.

## 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. The Texas Parks and Wildlife Department (Administrative Record No. TX-559), Texas Water Commission (Administrative Record No. TX-560), Texas Mining and Reclamation Association (Administrative Record No. TX-568), Walnut Creek Mining Company (Administrative Record No. TX-570), TU Services (Administrative Record Nos. TX-569 and TX-607), and Texas Department of Health (Administrative Record No. TX-604) commented on the proposed amendment. No one requested an opportunity to speak at a public hearing, therefore, no hearing was held.

Following is a summary of the substantive comments received on the proposed amendment. Comments identifying errors of a purely typographical or editorial nature, and

comments voicing general support to the proposed amendment but devoid of any specific statements are not discussed.

One commenter suggested that Texas revise TCMR 761.071 (c) and (f), and 786.216(e) to add "publicly owned wildlife management areas or scientific areas" after "publicly owned park." The commenter justified the recommended change by stating the regulations, which address where mining is prohibited or limited, should include other major types of publicly owned areas. Texas' proposed regulations at TCMR 761.071(c) and (f), and 786.216(e) are substantially identical to the Federal regulations at 30 CFR 761.11 (c) and (f), and 30 CFR 773.15(c)(11), and, therefore, are not inconsistent with the Federal requirements. The appropriateness of the Federal rule is not at issue in this rulemaking.

One commenter responded that proposed TCMR 780.142(d), in following the Federal regulations, requires that " \* \* \* plans and drawings for each support structure to be constructed, used, or maintained in the proposed permit area \* \* \* be sufficient to demonstrate compliance with Section 816.422 for each facility." The commenter stated that it wished to underscore that Section .422 limits the evaluation of such facilities to certain specific and limited determinations, and that such evaluations should be possible with project layout plans together with baseline information, and should not require detailed architectural drawings such as those used in construction. As acknowledged by the commenter, proposed TCMR 780.142(d) is substantially identical to the Federal regulations at 30 CFR 780.38, and, therefore, is not inconsistent with the Federal requirements. In addition, TCMR 816.422 is not proposed to be revised by Texas in this amendment. In acting on State program amendments, the Director only addresses those sections of a State's law and regulations where revisions are proposed by a State.

A commenter expressed a concern with proposed TCMR 780.146(c)(2) that, based on the wording "seasonal quality and quantity, and usage" in Texas' May 20, 1993 submittal of the amendment, the regulation could be applied to existing wells which includes landowner wells that are often outside the permit area and outside the applicant's area of control.

This section of the Texas regulations address the requirements for the probable hydrologic consequences (PHC). Texas proposed in its July 31, 1996, revised submittal of the amendment to completely modify its

regulations at 780.146. The wording the commenter expressed concerns with is removed. Texas' proposed regulations at TCMR 780.146(d) (1)–(4), which address the PHC requirements in the revised regulations, are substantially identical to the Federal regulations at 30 CFR 780.21(f), and, therefore, are not inconsistent with the Federal requirements.

One commenter expressed the belief that, although proposed 786.210(a)(3) [redesignated as .210(c)(3) in the July 31, 1996, revised amendment] parallels the Federal regulation in that archaeological information made confidential includes only public and Indian land, it would be appropriate to keep confidential the specific locations of all such sites, whether on public, Indian or private lands. As acknowledged by the commenter, proposed TCMR 786.210(a)(3) [redesignated .210(c)(3)] is substantially identical to the Federal regulations at 30 CFR 773.13(d)(3)(iii), and, therefore, is not inconsistent with the Federal requirements.

One commenter questioned the intent of the proposed change at TCMR 786.220(d) from "permittee" to "operator," regarding who is responsible for paying AML fees. The commenter recommended that the Texas proposed rule be amended to read "permittee or operator" to provide flexibility needed by permittees and operators in the State. As acknowledged by the commenter, proposed TCMR 786.220(d) is substantially identical to the Federal regulations at 30 CFR 773.17(g), and, therefore, is not inconsistent with the Federal requirements.

Another commenter, in responding to Texas' May 20, 1993, submittal, suggested that Texas revise TCMR 816.342 Hydrologic Balance: Steam Channel Diversion to be similar to OSM rules, by adding a new part (c) that requires permanent diversions or reclaimed stream channels to be designed and constructed to restore or approximate the pre-mining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic and stream corridor habitat. In its July 31, 1996, submittal of a revised amendment, Texas proposed to remove all of its requirements at TCMR 816.341 and .342, and to replace them with a new regulations at TCMR 816.341 Hydrologic Balance: Diversions, that are similar to, and no less effective than the Federal regulations at 30 CFR 816.43. The language recommended by the

commenter is contained in revised TCMR 816.341(a)(3).

A commenter requested that the proposed language at TCMR 816.344(a) be revised by taking the language from the Federal regulations at 30 CFR 816.46(a)(1)–(a)(2)(ii) and replacing the proposed Texas language to better define areas that are not considered disturbed areas. In its July 31, 1996, revised amendment, Texas proposed to remove all of its requirements at TCMR 816.344 and to replace them with new regulations that are similar to and no less effective than the Federal regulations at 30 CFR 816.46. The language recommended by the commenter is contained in revised TCMR 816.344(a).

One commenter responded to proposed revisions to TCMR 816.355(c) by stating the expansion of the required notification (for pre-blast surveys) to include the area ½ mile from the permit boundary rather than the current Texas requirement of ½ mile from the blasting area unnecessarily penalizes Texas mining which is characterized by large permit areas compared to mines in other parts of the United States. The commenter went on to state that the reason for the regulation is safety, and safety is based on distance from the event—not from the permit boundary. Texas' proposed regulation at TCMR 816.355(c) is substantially identical to the Federal regulations at 30 CFR 816.62(a), and, therefore, is not inconsistent with the Federal requirements. The appropriations of the Federal rule is not at issue in this rulemaking.

Another commenter suggested that the language of TCMR 816.395(a) does not allow for demonstrations or the development of technical procedures that may be more representative of the revegetated areas and existing physical conditions of the areas. The comment contained specific recommended changes. This section contains general revegetation success requirements; it does not prohibit development of technical procedures that may be more representative of the revegetated area as suggested by the commenter. Proposed TCMR 816.395 is substantially identical to the Federal regulations at 30 CFR 816.116(a), and, therefore, is not inconsistent with the Federal requirements.

Two commenters expressed concerns with proposed TCMR 816.395(b)(3)(i). One commenter believes the requirement for approval by other agencies will create overlapping jurisdiction and will make the regulatory process less efficient and certain, and that dual agency authority

may cloud the technical issues and result in the removal of flexibility to use sound agronomic practices based on site specific conditions. The commenter requested that the "approval by" the State agencies responsible for the administration of forestry and wildlife programs be removed from the language. The second commenter stated that consultation with these agencies is adequate to provide the regulatory authority with the information required to make an informed decision on adequacy of the proposed revegetation (stocking) plans; and this is further supported by the high level of expertise maintained by the regulatory authority's technical staff. This commenter added that providing authority to approval to part of the application effectively places certain aspects of a revegetation into a group which has little knowledge of SMCRA and the surface mining and reclamation industry, and that it is entirely possible that revegetation plans would become research tools for these outside agencies and eventually interfere with postmine land uses in agriculture regions. Texas' proposed regulation at TCMR 816.395(b)(3)(i) is substantially identical to the Federal regulation at 30 CFR 816.116(b)(3)(i), and, therefore, is not inconsistent with the Federal requirements. Additionally, the appropriateness of the Federal rule is not at issue in this rulemaking.

One commenter expressed a concern that proposed 816.395(b)(3)(ii) is subject to improper interpretation. The commenter indicated that if the interpretation results in trees having to be in place for two years prior to initiating the 5-year period of extended responsibility, significant delays will occur in placing land into the 5-year period; and this will delay the return of land to landowners, increase the operator's cost of revegetation and maintenance of reclaimed lands, and extend the financial commitments for the operator's bonds. The commenter added that the two year requirement serves no practical purpose since the regulations require that 80% of the trees have to have been in place for 60% of the minimum responsibility period; and then recommended a change to eliminate the problems with interpretation. Texas' proposed regulation at TCMR 816.395(b)(3)(ii) is substantially identical to the Federal regulation at 30 CFR 816.116(b)(3)(ii), and, therefore, is not inconsistent with the Federal requirements. In addition, the commenter's concern is misplaced in that TCMR 816.395(b) addresses standards for success, which is the success of the vegetation for bond

release; it does not address the establishment of vegetation standard that must be met to initiate the extended responsibility period.

Comments were submitted regarding several proposed regulation changes that were subsequently withdrawn from the amendment by Texas. Specifically, two commenters responded to the May 20, 1993, submittal of the amendment with comments regarding TCMR 701.008(71), definition of road; TCMR 780.154 (a), (a)(5), and (a)(6), transportation facilities application requirements; TCMR 816.395—Appendix A, Revegetation Success Standards and Statistically Valid Sampling Techniques; and TCMR 816.401, .412(b), and .419(a), roads performance standards. On January 29, 1996, Texas withdrew the proposed regulation changes regarding roads and transportation from this amendment (Administrative Record No. TX-610). Texas submitted a separate amendment that dealt specifically with roads and transportation requirements (Administrative Record No. TX-610), which the Director approved in the April 8, 1996, **Federal Register** (61 FR 15380). On July 31, 1996, Texas withdrew its proposed guidance document on revegetation success standards and sampling techniques, and committed to resubmit a separate amendment dealing with this specific topic (Administrative Record No. TX-621).

Several commenters responded with comments regarding regulations that were not proposed to be revised in this amendment. Comments were submitted regarding TCMR 701.008(44) (b), (c), and (h), definitions of pastureland, grazingland, and fish and wildlife habitat; TCMR 779.136(i) and 784.182(i), surface and underground mine-general map requirements; TCMR 790.151(a) and 784.191(a) surface and underground mine-protection of public parks and historic places; TCMR 780.144(a) and 784.195(a), surface and underground mine-fish and wildlife plan; TCMR 780.148(a), surface mine-ponds, impoundments, banks, dams, and embankments; TCMR 800.301 (b) and (b)(1)(B), incremental bonding; TCMR 816.334(f) and 817.505(f), surface and underground mine-general topsoil performance standards; TCMR 816.363(g) and 817.531(g), surface and underground mine-general excess spoil performance standards; TCMR 816.380 (a), (b), (d), (e)(4), (e)(5), (e)(8), and 817.547 (a), (b), (d), (e)(4), (e)(5), (e)(8), surface and underground mine-fish and wildlife performance standards; and TCMR 816.384(a) (3) and (4), surface mine-general backfilling and grading

performance standards. In acting on State program amendments, the Director only addresses those sections of a State's law and regulations where revisions are proposed by a State. All comments received by OSM on this amendment, regardless of whether they addressed regulations proposed to be revised, have been sent to Texas.

#### *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. Comments were requested regarding Texas' original May 13, 1993 submittal, and its September 18, 1995, and July 31, 1996, revised submittals of the proposed amendment.

The National Park Service (NPS) responded on June 14, 1993, that it is pleased to note the TCMR 761.072(b)(2) will require that the NPS be notified of requests for determinations of valid existing rights within NPS boundaries. The NPS also recommended that the regulation be further amended to include notifying the NPS when determinations of valid existing rights would occur in the vicinity of NPS units (i.e., when NPS units are in the proposed mine's area of environmental impact). (Administrative Record No. TX-554). Texas' proposed regulation at TCMR 761.072(b)(2) is substantially identical to the Federal regulations at 30 CFR 761.12(b)(2), and, therefore is not inconsistent with the Federal requirements. The appropriateness of the Federal rule is not at issue in this rulemaking.

The Bureau of Mines responded on June 21, 1993, that it had no comments (Administrative Record No. TX-557).

The Soil Conservation Service (Natural Resources Conservation Service) responded on June 22, 1993, and October 17, 1995, that it did not have any negative comments or suggestions for improvement regarding the proposed rule changes (Administrative Record Nos. TX-555 and TX-602).

The Fish and Wildlife Service (FWS) responded on June 28, 1993, with three specific comments and two concerns, in addition to providing support to the Texas Parks and Wildlife Department's comments (Administrative Record No. TX-558). The FWS commented that additional wording should be added to the proposed amendment at TCMR 816.342 regarding reclamation of permanent diversions and restored stream channels in order to be compatible with 30 CFR 816.43(a)(3) of the Federal regulations. Texas revised

its proposed amendment at TCMR 816.341 and 816.342 to be essentially identical to the Federal requirements at 30 CFR 816.43(a)(3).

The FWS commented that subparts (e)(4) and (e)(5) of TCMR 816.380 should be modified to comply with the sequential mitigation requirement identified in its counterpart federal rule at 30 CFR 816.97(e)(4)(f). The FWS' third comment was a recommendation that Texas revise its underground permit requirements at TCMR 817.547 to be similar to its surface mining requirements at 816.380 for consistency. One concern noted by the FWS addressed what it contends are restrictive requirements in TCMR 816.334 and 816.363 dealing with topsoil removal and spoil disposal. The FWS' second concern is its stated frustration with the apparent disregard of the fish and wildlife values inherent in land use categories such as grazingland, forest land, and undeveloped land, and the lack of mitigation of these resource values during the reclamation phase of a mine project. It also states that a clear and significant long-term impact to wildlife habitat has occurred, but technically there has been no land use change. The FWS recommends that what it considers a loophole in the land use regulations needs to be addressed in future amendments. Texas does not propose any changes in this amendment to the previously approved requirements at TCMR 816.380 (e)(4), (e)(5), 817.547, or the land use definitions. In acting on State program amendments, the Director only addresses those sections of a State's law and regulations where revisions are proposed by a State. All comments received by OSM on this amendment, regardless of whether they addressed regulations proposed to be revised, have been sent to Texas.

The U.S. Army Corps of Engineers, Engineering Division (COE) responded on July 12, 1993, October 10, 1995, and August 28, 1996 (Administrative Record Nos. TX-561, TX-599, and TX-627). In its July 12, 1993, and August 28, 1996, responses the COE indicated that it had no comments, and that it found the changes to be satisfactory, respectively. The COE recommended in its October 10, 1995, response that dams and water control structures be added to the list of facilities in TCMR 816.360(a)(2)(A) and 817.528(a)(2)(A) [the COE comments incorrectly cited 81.526] where blasting will not be conducted within 1,000 feet. The COE stated that while these facilities are designed with factors of safety, the designs generally do not consider blasting in close proximity to the structure. As discussed at Finding

III.C.25(b), Texas' proposed regulations at TCMR 816.360(a)(2)(A) and 817.526(a)(2)(A) contain the same requirements as and are no less effective than the Federal regulations at 30 CFR 761.12(b)(2). Additionally, the appropriateness of the Federal rule is not at issue in this rulemaking.

The Bureau of Land Management (BLM) responded on October 13, 1995, with seven comments (Administrative Record No. TX-601). The BLM expressed a concern that by deleting the text in TCMR 700.002(b)(4) regarding coal exploration, the recovery of royalty for coal removed by exploration may be forgone. Although Texas proposed to remove the reference to coal exploration from 700.002(b)(4), it is adding a specific and more detailed reference to coal exploration activities on Federal lands at 700.002(b)(5). The net effect is no change in the requirements of 700.002(b) regarding coal exploration activities.

The BLM suggests that TCMR 709.030(a)(2) needs to state that coal recovered as specified is still subject to royalty, and such removal should be subject to administrative approval or denial. Section 709.030 addresses exemptions for coal extraction incidental to the extraction of other minerals. SMCRA and the Texas program do not contain any authority to address royalty issues. Proposed TCMR 709.27 (e) and (f), and 709.033(c) contain requirements for approval or denial of requested exemptions, and for administrative review of those decisions.

At TCMR 705.010(a)(3), the BLM suggests that "\* \* \* which may include legal measures \* \* \*" be added to replace "\* \* \* by initiating appropriate legal action \* \* \*", which is language proposed to be deleted. At TCMR 761.072(b)(2), the BLM recommends that any Government agencies with jurisdiction over said lands and any Government agencies with adjacent land that may be impacted by such determinations should be notified of requests for valid existing rights. At TCMR 779.126(d), the BLM recommends that, after citing "\* \* \* the 15th edition of *Standard Methods for the Examination of Water and Wastewater*" \* \* \* Texas may wish to add "\* \* \* or its successor editions \* \* \*" Lastly, at TCMR 816.348(b), the BLM recommends that this requirement should cross reference to 817.510 where groundwater degradation limits should be discussed. The regulations at TCMR 705.010(a)(3), 761.072(b)(2), 779.126(d), and 816.348(b), as proposed by Texas, are substantially identical to the counterpart Federal requirements at 30

CFR 705.4(a)(3), 761.12(b)(2), 780.21(a), and 816.41(b), and, therefore, are not inconsistent with the Federal requirements.

#### *Environmental Protection Agency (EPA)*

None of the revisions that Texas proposed to make in this amendment pertain to revising its 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 Nos. TX-551.03, TX-598.01, and TX-623). EPA responded on October 19, 1995, with two comments (Administrative Record No. TX-603). It recommended that the surface water information requirements at TCMR 779.129(a) and 783.175(a) include "Basin names, Segment Nos. and uses in accordance with Texas Surface Water Quality Standards, 30 TAC Sections 307.2-307.10., (latest edition)." In its July 31, 1996, revised amendment, Texas changed its proposed regulations at 779.129(a) and 783.175(a) to be substantially identical to the corresponding Federal regulations at 30 CFR 780.21(b)(2) and 784.14(b)(2). The proposed Texas regulations require that the surface water information include "\* \* \* the name, location ownership and description of all surface water bodies such as streams, lakes, ponds, impoundments, and springs \* \* \* and information on surface water quantity and quality sufficient to demonstrate seasonal variation and water usage." EPA's second comment consisted of a suggestion that "[TCMR] 817.510 should be more correctly retitled only as Effluent Limitations and Conditions."

Texas' title for this section of Hydrologic Balance: Water Quality Standards and Effluent Limitations is the same title used in the corresponding Federal regulation at 30 CFR 817.42. Also, the proposed Texas regulation at TCMR 817.510 supports the section title in requiring that water discharges "\* \* \* shall be made in compliance with all applicable State and Federal water quality laws and regulations and with the effluent limitations for coal mining \* \* \*"

#### *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 Nos. TX-551.02,

TX-598.01, and TX-624). The SHPO responded on June 9, 1993, October 9, 1995, and August 16, 1996 (Administrative Record Nos. TX-553, TX-600, and TX-626). In its letters dated June 9, 1993, and August 16, 1996, it concurred with the proposal and stated that the project would have no effect on National Register-eligible or listed properties or State Archaeological Landmarks. In its October 9, 1995, letter, it requested clarification of whether mining activities exempted under the provisions of TCMR 709.030-709.034, the exemption for coal extraction incidental to the extraction of other minerals, would be considered by OSM to be undertakings under Section 106 of the National Historic Preservation Act (NHPA). Because there is no SMCRA jurisdiction on sites which the activities are exempted, neither OSM or the ACHP consider these exempted activities to be Federal undertakings pursuant to the NHPA.

#### **V. Director's Decision**

Based on the above findings, the Director approves the proposed amendment as submitted by Texas on May 13, 1993, and as revised and/or supplemented with explanatory information on September 18, 1995, December 15, 1995, March 1, 1996, July 31, 1996, September 12, 1996, December 31, 1996, and February 4, 1997.

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.

#### *Effect of Director's Decision*

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Texas program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Texas of only such provisions.

**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: February 27, 1997.

**Brent Wahlquist,**

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

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

**PART 943—TEXAS**

1. The authority citation for Part 943 continues to read as follows:

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

2. Section 943.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

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

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* May 13, 1993 .....	* March 16, 1997 .....	* TCMR 700.002(b)(4), (5), (f); .003(1), (3); 701.008(4), (5), (9), (10), (18), (19), (21), (24), (25), (26), (34), (41), (55), (67), (68), (69), (70), (76), (82), (84), (95), (102), (107); 705.010(a)(3), (c); .011(2), (3), (5), (9); .013(a); .014; .015(a); .016(a); 707.022; 709.025; .026; .027; .028; .029; .030; .031; .032; .033; .034; 760.069; .070(5), (6), (7), (9), (11); 761.071 (a) through (e); .072 (a) through (h); .073; 762.074(3), (4), (5); .075(a), (b); .076(a); .077; 764.078; .079(a), (b), (c); .080(a)(1), (2), (4) through (7), (b), (c), (d); .081(a), (b); .082(a)(3), (b), (c), (d); .083(a), (b); .084(a), (b); .085(b); 770.101; 776.111(a)(e)(E); 779.126(d); .127(a), (b), (c); .128(a), (3), (4), (b); .129, (a), (b), (1), (3); 780.141(g), (h); .142(b)(11), (c), (d); .146 (a) through (e); .148(a)(3)(i), (c)(1), (2), (3); 783.172(d); .173 (a) through (e); .174(a), (3), (4), (b); .175, (a), (b), (1), (3); 784.188 (a) through (f); .190 (a)(3)(i), (c)(1), (2), (3); .197(c), (d); 785.201(b), (c), (d)(2); .202(b)(1)(i), (2), (3); 786.210 (a) through (e); .216(c), (e); .220(d); 800.301(b)(2); .311(d); 807.312(a), (b), (c); .313(a)(2); 815.327(a); .328(a), (b); 816.330(f); .340; .341; .342; .344; .347; .348; .349; .350; .355; .357(a), (c), (d); .358 (a) through (d); .360(a)(2), (A), (B), (f)(1)(A), (g)(2), (h)(1), (2), (3), (i); .362(d); .376 (a) through (d); .377; .378(a), (c); .380(e)(10); .385(b)(3); .390; .395; .396; 817.500(f); .509(a); .510; .511; .512; .514; .517; .519; .522(f); .524; .526(b), (c), (d); .527 (a) through (d); .528 (a) through (i); .529; .530, (c), (d), (e), (g), (j), (s), (t); .535(c); .538(c)(3); .543 (a) through (d); .544; .545(a), (c); .547(e)(10); .552(b)(3); .555; .560; .561; 823.620(a), (b), (c); .621(a)(1), (2), (3), (b); .622(a), (b), (c); .623; .624 (a) through (g); .625(a), (b); 843.681(c), (f) through (j); .682(a)(1); .695(b)(1); 846.001; .002; .003; .004; .005; 850.703(b)(1)(A); .704(b); .706(a).



**§ 943.16 [Amended]**

3. Section 943.16 is amended by removing paragraphs (k), (l), (m), (n), (o), (p), and (q).

[FR Doc. 97-7533 Filed 3-25-97; 8:45 am]

BILLING CODE 4310-05-M

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[TN-165-01-9633a; FRL-5709-8]

**Approval and Promulgation of Air Quality Implementation Plans, Tennessee; Approval of Revisions to Knox County Regulations for Violations and General Requirements**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the permit requirements, definitions, and administrative requirements for the Knoxville/Knox County portion of the Tennessee State Implementation Plan (SIP). On March 4, 1996, the State submitted revisions to the Knoxville/Knox County portion of the Tennessee SIP on behalf of Knoxville/Knox County. These were revisions to the enforcement authority requirements in the Knoxville/Knox County portion of the SIP. At this time, EPA is acting on the SIP revisions submitted on March 4, 1996 and is approving all of the submitted revisions.

**DATES:** This final rule is effective May 27, 1997 unless adverse or critical comments are received by April 25, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments on this action should be addressed to Karen C. Borel, at the Environmental Protection Agency, Region 4 Air Planning Branch, 100 Alabama Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file TN165-01-9633. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency,

401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 100 Alabama Street, SW, Atlanta, Georgia 30303. [contact Karen Borel, 404/562-9029].

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 9th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1531. Knox County Department of Air Pollution Control, City-County Building, Suite 339, 400 West Main Street, Knoxville, Tennessee, 37902.

**FOR FURTHER INFORMATION CONTACT:**

Karen C. Borel at (404) 562-9029.

**SUPPLEMENTARY INFORMATION:** The State of Tennessee submitted revisions to the Knoxville/Knox County portion of the Tennessee SIP to EPA on March 4, 1996. EPA found this submittal to be complete on April 17, 1996. These revisions to the Knoxville County portion of the SIP establish consistent regulatory authority between the title V Permit Program for major sources and the SIP for minor sources.

**A. SIP Revisions**

The Knoxville/Knox County Air Pollution Control Board officially adopted the proposed amendments to the Knoxville County Air Pollution Control Regulations affecting Sections 30.1.D, 30.1.F, and 30.1.G, *Violations*. These regulatory revisions to their Section 30 make changes which are required to establish consistent regulatory authority between the SIP (minor sources) and title V (major sources). These revisions are the remainder of their plan to bring the SIP into accordance with title I requirements and to support their title V program. EPA is approving the following revisions to Section 30, *Violations/General*.

**Section 30.1.D**

The following statement is added to this section:

These penalties shall be recoverable in a maximum amount of \$25,000 per day per violation as provided by State Law.

**Section 30.1.F**

The following statement is added to the end of this section:

Such actions may be taken by the Director without the necessity of a prior revocation of any permit."

**Section 30.1.G**

The following statement is added to the end of this section:

The Director has the authority to restrain or enjoin immediately and effectively any

person, by order or by suit in court, from engaging in any activity in violation of a permit or the Knox County Air Pollution Control Regulations that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment.

**Final Action**

EPA is fully approving the submitted revisions to the Knoxville/Knox County portion of the Tennessee State Implementation Plan (SIP).

The Agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on May 27, 1997 unless, by April 25, 1997 adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on May 27, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to any state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

**Administrative Requirements**

**A. Executive Order 12866**

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management