

**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 counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. 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 counterpart Federal regulations.

**List of Subjects in 30 CFR Part 943**

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 3, 1995.

Brent Wahlquist,

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

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**30 CFR Part 943**

[SPATS No. TX-025-FOR]

**Texas Regulatory Program**

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Texas regulatory program (hereinafter the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of the recodification of the Texas Surface Coal Mining and Reclamation Act. The proposed amendment is intended to reclassify and rearrange the statutes into a format that will accommodate future expansion of the law and to eliminate repealed, invalid, and duplicative provisions in order to make the statutes more understandable and usable without altering the meaning or effect of the law.

**DATES:** Written comments must be received by 4 p.m., c.s.t., November 15, 1995. If requested, a public hearing on

the proposed amendment will be held on November 13, 1995. Requests to speak at the hearing must be received by 4 p.m., c.s.t., on October 31, 1995.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Jack R. Carson, Acting Director, Tulsa Field Office, at the address listed below.

Copies of the Texas program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma, 74135-6547, Telephone: (918) 581-6430.

Railroad Commission of Texas, Surface Mining and Reclamation Division, 1701 North Congress Avenue, P.O. Box 12967, Austin, Texas, 78711-2967, Telephone: (512) 463-6900.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jack R. Carson, Acting Director, Tulsa Field Office, Telephone: (918) 581-6430.

**SUPPLEMENTARY INFORMATION:**

**I. Background on the Texas Program**

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, Federal Register (45 FR 12998). Subsequent actions concerning the Texas program can be found at 30 CFR 943.10, 943.15, and 943.16.

**II. Description of the Proposed Amendment**

By letter dated August 24, 1995 (Administrative Record No. TX-594), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. The proposed amendment concerns recodification of the Texas Surface Coal Mining and Reclamation Act (TSCMRA) as enacted by Senate Bill (SB) 959, 74th Texas Legislature (1995). SB 959 codified, with revisions, the TSCMRA at Chapter 134 of Title 4, Natural Resources Code, and it repealed Article

5920-11, Vernon's Texas Civil Statutes, with the exception of sections 11 (b), (c), and (d). Substantive revisions which pertain to the approved Texas program are discussed below.

**1. Recodification**

The substantive provisions in Article 5920-11, TSCMRA, sections 1 through 38, with the exception of sections 3(2), 3(7), 11(b)-(d), 18(d), 27(c), 34(b), and 35(4) are proposed to be recodified at Chapter 134 of Title 4, Natural Resources Code, TSCMRA, sections 134.001 through 134.188. Listed below are the existing Article 5920-11 section numbers with the new corresponding Chapter 134 section numbers.

Article 5920-11 Section	Chapter 134 Section
1 .....	134.001.
2(1)-(5) .....	134.002.
2(5)(A)-(F) .....	134.003.
3(1) .....	134.004(2).
3(3)-(6) .....	134.004(3)-(6)
3(8)-(15) .....	134.004(8)-(15)
3(16)-(18) .....	134.004(18)-(20)
3(19) .....	134.004(16)
4(a) .....	134.012(a)(1).
4(b) .....	134.012(a)(2), (b)-(c).
4(c) .....	134.188
5 .....	134.011.
6 .....	134.013.
7 .....	134.141.
8(a) .....	134.144.
8(b) .....	134.143.
8(c) .....	134.145.
8(d) .....	134.146, 147.
8(e) .....	134.148, 149.
9(a) .....	134.150.
9(b) .....	134.151.
10 .....	134.152.
11(a) .....	134.051.
12(a) .....	134.071, 073
12(b) .....	134.072.
13(a) .....	134.074, 075.
13(b) .....	134.075(c).
13(c) .....	134.076.
13(d) .....	134.077, 078.
14(a)(1)-(a)(15) .....	134.052, 012(d).
14(a) (16) .....	134.031(a).
14(b) .....	134.031(b).
15(1)-(13) .....	134.041.
15(14) .....	134.031(c)
16 .....	134.042.
17 .....	134.057.
18(a)-(b) .....	134.054(a)-(c).
18(c) .....	134.055
19 .....	134.056.
20(a) .....	134.058, 059, 060.
20(b) .....	134.061.
20(c) .....	134.062(a).
20(d) .....	134.062(b).
20(e) .....	134.063.
20(f) .....	134.064.
21(a) .....	134.065.
21(b) .....	134.066, 067, 012(d).
21(c) .....	134.068, 069.
21(d) .....	134.070.
22(a) .....	134.079, 080, 081, 076(a).
22(b) .....	134.083.

Article 5920-11 Section	Chapter 134 Section	Article 5920-11 Section	Chapter 134 Section
22(c) .....	134.082(a).	32(c)(4) .....	134.164(b) and (d).
23(a) .....	134.091.	32(c)(5) .....	134.172.
23(b) .....	134.092(a).	32(d) .....	134.164(a) and (b).
23(b)(1)- (2).	134.092(a) (1)-(2).	32(e) .....	134.165, 166, 167.
23(b)(3) .....	134.092(a)(3), 093, 094.	32(f) .....	134.173.
23(b)(4) .....	134.092(a)(4).	33(a) .....	134.016.
23(b)(5) .....	134.092(a)(5), 095.	33(b) .....	134.020, 021.
23(b)(6) .....	134.092(a)(6).	33(c) .....	134.017, 018.
23(b)(7) .....	134.092(a)(7), 096 097.	33(d) .....	134.019.
23(b)(8) .....	134.092(a)(8).	33(e) .....	134.022.
23(b)(9) .....	134.092(a)(9), 098.	34(a) .....	134.023.
23(b)(10) .....	134.092(a)(10), 099.	35(1)-(3) ...	134.005.
23(b)(11) .....	134.092(a)(11).	36 .....	134.024.
23(b)(12) .....	134.092(a)(12), 100.	37(a) .....	134.006.
23(b)(13) .....	134.092(a)(13), 092(b).	37(b) .....	134.110.
23(b)(14) .....	134.092(a)(14).	38 .....	134.025.
23(b)(15) .....	134.092(a)(15), 101.		
23(b)(16) .....	134.092(a)(16), 102.		
23(b)(17)- (18).	134.092(a)(17)-(18).		
23(b)(19) .....	134.092(a)(19), 103.		
23(b)(20) .....	134.092(a)(20), 104, 105.		
23(b)(21) .....	134.092(a)(21).		
23(b)(22) .....	134.092(a)(22), 106.		
23(b)(23)- 25.	134.092(a)(23)-(25).		
23(c) .....	134.107.		
23(d) .....	134.108.		
23(e) .....	134.109.		
24 .....	134.052(19), 053.		
25(a) .....	134.121, 122.		
25(b) .....	134.125, 126.		
25(c) .....	134.123, 124.		
25(d) .....	134.127.		
26(a) .....	134.128, 129.		
26(b) .....	134.130, 132(a).		
26(c) .....	134.131.		
26(d) .....	134.132(b).		
26(e) .....	134.133.		
26(f) .....	134.134.		
27(a), (d) ..	134.014.		
27(b) .....	134.031(d).		
28 .....	134.015.		
29(a) .....	134.026.		
29(b) .....	134.029.		
29(c) .....	134.027.		
29(d) .....	134.030.		
29(e) .....	134.028.		
29(f) .....	134.007.		
30(a) .....	134.174.		
30(b) .....	134.175.		
30(c) .....	134.176.		
30(d) .....	134.178.		
30(e) .....	134.179.		
30(f) .....	134.177.		
30(g) .....	134.181.		
30(h) .....	134.180.		
31(a) .....	134.182(a).		
31(b) .....	134.183(a)-(c).		
31(c)(A) ....	134.183(d).		
31(c)(B) ....	134.182(d).		
31(d)(1) ....	134.184.		
31(d)(2) ....	134.185.		
31(e) .....	134.186.		
31(f) .....	134.187.		
31(g) .....	134.182(b) and (c), 184.		
32(a) .....	134.161, 163.		
32(b) .....	134.162, 163.		
32(c)(1) ....	134.168, 169.		
32(c)(2) ....	134.170.		
32(c)(3) ....	134.171.		

2. All references to the Texas Surface Coal Mining and Reclamation Act are proposed to be changed from "Act" to "chapter" throughout the recodified statutes.

3. All references to the "Administrative procedure and Texas Register Act, as amended" are proposed to be changed to "Chapter 2001, Government Code" throughout the recodified statutes.

#### 4. Chapter 134, Section 134.004 (Article 5920-11, Sec. 3), Definitions

a. Texas is proposing to define "Affected person" at Chapter 134, section 134.004(1), as meaning "a person having an interest that is or may be affected." Accordingly, all references to "a person having an interest that is or may be affected" are proposed to be changed to "affected person" throughout the recodified statutes.

b. Texas is proposing to remove its definition for "Applicant" at existing Article 5920-11, section 3(2). Therefore, this definition is not proposed to be recodified.

c. Texas is proposing to remove the language "and water impoundments may be permitted if the commission determines that they are in compliance with Section 23(b)(8) of this Act" from the definition of "Approximate original contour," which is recodified at Chapter 134, section 134.004(3) (existing Article 5920-11, section 3(3)).

d. Texas is proposing to remove its definition for "Eligible land and water" at existing Article 5920-11, section 3(7). Therefore, this definition is not proposed to be recodified.

e. Texas is proposing to define "Federal Act" at Chapter 134, section 134.004(7), as meaning "the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. Section 1201 et seq.)." Consequently, all references to SMCRA are proposed to be changed to "federal Act" throughout the recodified statutes.

f. At Chapter 134, section 134.004(13) [existing Article 5920-11, section 3(13)], Texas is proposing to change the term "permittee" to "permit holder." Accordingly, all references to "permittee" are proposed to be changed to "permit holder" throughout the recodified statutes.

g. Texas proposes to change the term "Secretary" to "Secretary of agriculture" at Chapter 134, section 134.004(16) [existing Article 5920-11, section 3(19)]. Consequently, all references to "secretary" are proposed to be changed to "secretary of agriculture" throughout the recodified statutes.

h. Texas proposes to define "Secretary of the interior" as meaning "the secretary of the United States Department of the Interior." Accordingly, all references to "the secretary of the United States Department of the Interior" are proposed to be changed to "the secretary of the interior" throughout the recodified statutes.

#### 5. Chapter 134, Sec. 134.012 and 134.188 (Article 5920-11, Sec. 4, as Amended by Acts 1983, 68th Legislature and Acts 1985, 69th Legislature), Jurisdiction

At Chapter 134, section 134.012(a)(2), (b), and (c) and section 134.188 [Article 5920-11, section 4(b) and (c), as amended by Acts 1983, 68th Legislature and Acts 1985, 69th Legislature], Texas proposes to add provisions for jurisdiction of the commission over iron ore, and iron ore gravel mining and reclamation operations. Section 134.012(a)(2) [Article 5920-11, section 4(b), as amended] would provide for exclusive jurisdiction over iron ore and iron ore gravel mining and reclamation operations in the State of Texas. Section 134.012(b) [Article 5920-11, section (4)(b), as amended] would provide for Chapter 134 to govern these operations to the extent it can be made applicable. Section 134.012(c) [Article 5920-11, section 4(1) and (2), as amended] would provide for exceptions for iron ore and iron ore gravel mining and reclamation activity in progress on or before September 1, 1985 or for iron ore and iron ore gravel mining operation and reclamation activity that is conducted solely on real property owned in fee simple by the person authorizing the operation or reclamation activity and that is confined to a single, contiguous tract of land if the activity is conducted in an area not larger than 20 acres, the depth of the mining operation is restricted to 30 inches or less, and the fee simple owner receives surface damages. Section 134.188 [Article 5920-11, section 4(c), as amended] would

provide that it is a defense to a civil or criminal penalty under Chapter 134 that a person allegedly conducting an iron ore or iron ore gravel mining and reclamation operation in violation of Chapter 134 has a written general warranty of ownership of land, separate from any lease, from the person authorizing the operation./

6. At Chapter 134, section 134.057(b) [existing Article 5920-11, section 17(b)], Texas is proposing to add a new provision that specifies that subsection (b) does not apply to records, reports, inspection materials, or information that is confidential under section 134.031.

7. *Chapter 134, Sections 134.054 and 134.055 (Existing Article 5920-11, Section 18, as Amended by Acts 1983, 68th Legislature and Acts 1985, 69th Legislature), Application Fees*

a. At Chapter 134, section 134.054(b) [Article 5920-11, section 18(b), as amended (old section 18(a))], Texas proposes to change its minimum initial application fee for a permit from \$1,000 to \$5,000, require a minimum application fee of \$3,000 for renewal of a permit, and require a minimum application fee of \$500 for revision of a permit.

b. Texas proposes to remove the provision at Article 5920-11, section 18(d), as amended (old section 18(b)), that requires an application fee to be deposited in the state treasury and credited to the general revenue fund. Therefore, this provision is not proposed to be recodified at Chapter 134.

c. At Chapter 134, section 134.054(c) [Article 5920-11, section 18(b), as amended], Texas proposes to allow initial application fees and renewal application fees to be paid in equal annual installments during the term of the permit.

d. Texas proposes to add a new provision at Chapter 134, section 134.055 [Article 5920-11, section 18(c), as amended], that requires a permit holder to pay the commission an annual fee, in an amount determined by the commission, for each acre of land in the permit area on which the permit holder actually conducted operations for removing coal during the year; the fee is due by March 15 of the year following the year of the removal operations; and the minimum fee is \$120 an acre.

8. Texas proposes to remove the provision in existing Article 5920-11, section 21(c), that requires an applicant to file a schedule listing notices of violation "of any department or agency in the United States." Therefore, this provision is not proposed to be recodified at Chapter 134.

9. Texas proposes to remove the provision at existing Article 5920-11, section 27(c), that requires persons who conduct coal exploration operations that substantially disturb the natural land surface in violation of its statutes or rules to be subject to its civil penalty provisions. Therefore, this provision is not proposed to be recodified at Chapter 134.

10. Texas proposes to remove the provision at existing Article 5920-11, section 34(b), that requires any agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government, that proposes to engage in surface coal mining operations that are subject to the requirements of TSCMRA to comply with all provisions of TSCMRA. Therefore, this provision is not proposed to be recodified at Chapter 134.

11. Texas proposes to remove the provision at existing Article 5920-11, section 35(4), that exempts from the provisions of TSCMRA the extraction of coal incidental to the extraction of other minerals where the coal does not exceed 16 $\frac{2}{3}$  percent of the total tonnage of coal and other minerals removed annually for purposes of commercial use or sale or coal explorations subject to TSCMRA. Therefore, this provision is not proposed to be recodified at Chapter 134, section 134.005.

### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

#### *Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

#### *Public Hearing*

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t., on October 31, 1995. The location and time of the hearing will be arranged with those

persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

#### *Public Meeting*

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

### IV. 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 12778*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, 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 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 counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. 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 counterpart Federal regulations.

#### List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 3, 1995.

Brent Wahlquist,

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

[FR Doc. 95-25561 Filed 10-13-95; 8:45 am]

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## FEDERAL MARITIME COMMISSION

### 46 CFR Part 552

[Docket No. 95-15]

#### Availability of the Annual Financial and Operating Statements Filed by Domestic Offshore Carriers

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Federal Maritime Commission proposes amending its regulations governing the availability of the annual financial and operating statements filed by vessel-operating common carriers by water in the domestic offshore trades. Comments are sought on a proposal to allow access to the annual statements by the attorneys general of the non-contiguous states, territories, and possessions having ports in the trade served by the carrier. The proposed rule addresses a comment made in a prior proceeding by the State of Hawaii, and is intended to improve parties' access to the information while avoiding harm to a regulated carrier's competitive position.

**DATES:** Comments due November 15, 1995.

**ADDRESSES:** Comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington D.C. 20573-0001, 202-523-5725.

#### FOR FURTHER INFORMATION CONTACT:

Anne M. McAloon, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington D.C. 20573-0001, 202-523-5790

C. Douglass Miller, Office of the General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington D.C. 20573-0001, 202-523-5740

**SUPPLEMENTARY INFORMATION:** On September 5, 1995, the Federal Maritime Commission ("FMC" or "Commission") published a final rule in FMC Docket No. 94-07, Financial Reporting Requirements and Rate of Return Methodology in the Domestic Offshore Trades ("Docket 94-07"), which amended the provisions governing carriers' financial reporting requirements and rate of return methodology in the domestic offshore trades (60 FR 46047). Among other things, the rule changed the method of determining the reasonableness of a carrier's return on rate base from the comparable earnings test to the before-tax weighted average cost of capital methodology ("BTWACC").

In comments on the proposed rule in Docket 94-07, the State of Hawaii ("Hawaii") argued that the proposed BTWACC methodology would require that all interested parties have access to complete and accurate information regarding a carrier's financing and capitalization. Hawaii pointed out that the comparable earnings test, which was previously required to be used, does not rely on company-specific data because it uses a cost of capital estimate based on the rate of return of U.S. manufacturing firms in general. However, under the BTWACC methodology, Hawaii noted that carriers would be using company-specific data to compute their cost of capital and thus any meaningful rebuttal would require access to such information. Hawaii concluded therefore that: "The Commission's current ruling that a carrier's annual financial report need not be made available to all parties, places the parties at a disadvantage because it is impossible to present meaningful rebuttal testimony without a carrier's cost of capital data." (Hawaii Initial Comments at 5).

The Commission's current regulations require the domestic offshore carriers to file financial and operating data under two circumstances—annually within 150 days after the close of the carrier's fiscal year and in support of any general rate increases. The annual statement of financial and operating data consists of a rate base exhibit and supporting schedules, an income account exhibit and supporting schedules, and a rate of return exhibit and supporting schedules. The annual statement is to be accompanied by a company wide balance sheet and income statement. The Commission's regulations, at 46 CFR 552.4(c), protect the carriers' annual reports from public disclosure and treats them as confidential information in the files of the Commission.

In support of general rate increases, domestic offshore carriers are required to file, pursuant to 46 CFR 552.2(f), the following material: an actual midyear rate base exhibit and supporting schedules for a twelve-month period commencing not more than fifteen months prior to the proposed increase; a projected midyear rate base exhibit and supporting schedules for a twelve-month period commencing on the first day of the month following the date on which the proposed increase will become effective; a projected income account exhibit and supporting schedules for the same period as the projected midyear rate base exhibit; actual and projected rate of return exhibits; and associated workpapers. In