

Dated: August 20, 1996.

Ronald C. Recker,

*Acting Regional Director, Appalachian
Regional Coordinating Center.*

[FR Doc. 96-21862 Filed 8-27-96; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 943

[SPATS No. TX-017-FOR]

Texas Regulatory Program

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

ACTION: Proposed Rule; Reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Texas regulatory program (hereinafter, the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions of Texas' proposed rules pertain to exemption for coal extraction incidental to the extraction of other minerals; surface water information; protection of hydrologic balance; permitting; siltation structures; impoundments; revegetation; definitions; lands unsuitable for mining; areas designated by act of congress; prime farmland; notices of violation, hydrology and geology requirements; use of explosives; bond release; assessment of civil penalties; and individual civil penalties. Texas also proposed nonsubstantive changes in wording, numbering, and punctuation of its rules. The amendment is intended to revise the State program to be consistent with the corresponding Federal regulations.

This notice sets forth the times and locations that the Texas program and revisions to the proposed amendment to that program are available for public inspection, and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4:00 p.m., c.d.t., September 27, 1996.

ADDRESSES: Written comments 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, and all written comments received in response to this notice 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 and program amendments can be found at 30 CFR 943.10, 943.15, and 943.16.

II. 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 letters dated May 20, 1985; June 9, 1987; October 20, 1988; February 7, 1990; and February 21, 1990 (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) and in response to the required program amendments at 30 CFR 943.16(k) through (q). OSM announced receipt of the proposed amendment in the June 21, 1993, Federal Register (58 FR 33785), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on the adequacy of the amendment (Administrative Record No. TX-556). The public comment period would have closed 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 (Administrative Record No. TX-563). OSM announced receipt of the extension request and reopened the comment period in the August 16, 1993, Federal Register (58 FR 43308). The extended public comment period ended August 20, 1993.

During its review of the May 13, 1993, proposed amendment, OSM identified concerns relating to several of the proposed regulations. OSM notified Texas of its concerns by letter dated July 25, 1994 (Administrative Record No. TX-578). Further Clarification of OSM's concerns were provided to Texas by letters dated November 4, 1994, November 21, 1994, and January 18, 1995 (Administrative Record Nos. TX-581, TX-589, and TX-585). Texas responded in a letter dated September 18, 1995, by submitting a revised amendment package (Administrative Record No. TX-598). OSM announced receipt of the proposed amendment in the October 25, 1995, Federal Register (60 FR 54620) and invited public comment on the adequacy of the amendment. The public comment period closed November 9, 1995.

During its review of the September 18, 1995, revised amendment, OSM identified concerns relating to several of the proposed regulations. OSM notified Texas of its concerns by letter dated June 18, 1996, (Administrative Record No. TX-614). Texas responded in a letter dated July 31, 1996, by submitting a revised amendment package (Administrative Record No. TX-621). Texas proposed revisions to its September 18, 1995, revised amendment submittal; proposed to include in its approved program new and revised regulations that were adopted in State rulemaking at Surface Mining and Reclamation Division (SMRD) 1-87, SMRD 2-87, and SMRD 2-88; and proposed editorial corrections throughout its regulations. The substantive proposals are discussed below.

A. Revisions to September 18, 1995, Revised Amendment

1. TCMR Part 709 Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

a. At TCMR 709.027(f) [originally proposed as TCMR 702.11(f)], Texas proposes to revise the provisions pertaining to administrative review of its determinations on exemptions for coal extraction incidental to the extraction of other minerals by deleting paragraph (f)(2) and revising paragraph (f)(1) as follows:

(f) Appeal and review. Any adversely affected person may request appeal or review of a determination under Paragraph (e) of this Section in accordance with procedures established under Section 787.222 of this chapter.

b. At TCMR 709.033(c) [originally proposed as TCMR 702.17(c)], Texas proposes to revise the provisions pertaining to revocation of an

exemption for coal extraction incidental to the extraction of other minerals by deleting paragraph (c)(3) and revising paragraph (c)(2) as follows:

Any adversely affected person may request appeal or review of a decision whether to revoke an exemption in accordance with procedures established under Section 787.222 of this chapter.

2. TCMR 779.129 (Surface) and TCMR 783.175 (Underground) Surface Water Information

At TCMR 779.129 and 783.175, Texas proposes to require the name, location, ownership, and description of all surface water bodies in the proposed permit and adjacent areas. Texas also proposes to require information on surface-water quantity and quality sufficient to demonstrate seasonal variation and water usage.

3. TCMR 780.146 (Surface) and TCMR 784.188 (Underground) Reclamation Plan: Protection of Hydrologic Balance

a. At TCMR 780.146(a), Texas proposed to add references to Sections 816.340 and 816.341. At TCMR 784.188(a), Texas proposes to add references to sections 817.509–511, 817.516, and 817.518–23.

b. At TCMR 780.146(d)(5), Texas proposes to add references to Sections 779.128 and 779.129. At TCMR 784.188(d)(5) Texas proposes to add references to Sections 783.174 and 783.175. The following provision was added to both TCMR 780.146(d)(5) and 784.188(d)(5).

Information shall be provided on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses.

4. TCMR 786.220 Conditions of Permits: General and Right of Entry

At TCMR 786.220(d), Texas proposes to add language that requires operators to pay all reclamation fees required by 30 CFR Subchapter R.

5. TCMR 817.514 (Underground) Hydrologic Balance: Siltation Structures

At TCMR 817.514, Texas proposes to remove the language “in Paragraph (c)(2)(ii) of this section, except as set forth.”

6. TCMR 816.347 (Surface) and TCMR 817.517 (Underground) Hydrologic Balance: Permanent and Temporary Impoundments

Texas proposes to revise TCMR 816.347(a)(5) and 817.517(a)(5) to add language requiring impoundments to have adequate freeboard so as to resist overtopping by waves and by sudden increases in storage volume.

7. TCMR 816.390 (Surface) and TCMR 817.555 (Underground) Revegetation: General Requirements

Texas proposes to remove the current language from these sections and add the following new language.

(a) The permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is—

- (1) Diverse, effective, and permanent;
- (2) Comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the Commission;
- (3) At least equal in extent of cover to the natural vegetation of the area; and
- (4) Capable of stabilizing the soil surface from erosion.

(b) The reestablished plan species shall—

- (1) Be compatible with the approved postmining land use;
- (2) Have the same seasonal characteristics of growth as the original vegetation;
- (3) Be capable of self-regeneration and plant succession;
- (4) Be compatible with the plant and animal species of the area; and
- (5) Meet the requirements of applicable State and Federal seed, poisonous and noxious plant, and introduced species laws or regulations.

(c) The Commission may grant exception to the requirements of Paragraphs (b)(2) and (b)(3) of this Section when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

(d) When the Commission approves a cropland postmining land use, the Commission may grant exception to the requirements of Paragraphs (a)(1), (a)(3), (b)(2), and (b)(3) of this Section. The requirements of Part 823 of this Chapter apply to areas identified as prime farmland.

8. Texas is withdrawing its proposed revegetation guidelines entitled “Field Sampling Procedures for Determining Ground Cover, Productivity, and Woody-Plant Stocking Success of Reclaimed Surface Mined Land Uses; Revegetation Success Standards for Reclaimed Surface Mined Land Uses; and Normal Husbandry Practices on Unmined Land.”

B. *SMRD 1–87*. Texas proposes to include in its approved program the following regulations as added or revised in State rulemaking SMRD 1–87.

1. TCMR 701.008 Definitions

The definitions for “cropland” at TCMR 701.008(25), “historically used for cropland” at TCMR 701.008(41), “prime farmland” at TCMR 701.008(67), “soil horizons” at TCMR 701.008(84), and “topsoil” at TCMR 701.008(95) were revised.

2. TCMR Part 760 Lands Unsuitable for Mining—General

a. *TCMR 760.069, Objectives*. Texas replaced the currently approve language in TCMR 760.069 with the following language.

This Subchapter establishes the procedures and standards to be followed in determining whether a proposed surface coal mining and reclamation operation can be authorized in light of the prohibitions and limitations in Section 33 of the Act for those types of operations on certain public and private lands.

b. *TCMR 760.070, Definitions*. Texas numbered its definitions TCMR 760.070 (1) through (14); added a new definition for “owner of record” or “ownership interest of record” at TCMR 760.070(5) and “publicly-owned park” at TCMR 760.070(9); and made nonsubstantive paragraph notation and wording changes to its definitions for “public building” at TCMR 760.070(6), “public park” at TCMR 760.070(7), and “significant recreational, timber, economic, or other values incompatible with surface coal mining operations” at TCMR 760.070(11).

3. TCMR Part 761 Areas Designated by Act of Congress

a. *TCMR 761.071, Areas Where Mining is Prohibited or Limited*. Texas added a new provision at TCMR 761.071(b) concerning prohibition of mining on Federal lands; added a new provision at TCMR 761.071(e)(2) concerning an exception to the prohibition of mining within 300 feet of an occupied dwelling for specific haul roads or access roads; and made nonsubstantive editorial or wording changes at redesignated TCMR 761.071(c), (d)(2), (e), (e)(1), (f), and (g).

b. *TCMR 761.072 Procedures for Determining Whether Surface Mining Operations are Limited or Prohibited*. Texas made nonsubstantive editorial and wording changes to TCMR 761.072(a), (b), (c), (d)(1), (d)(2), (d)(3), (g), and (h); made substantive revisions to TCMR 761.072(d)(4) concerning a written finding as to whether the interest of the public and affected landowners will be protected from the proposed mining operation; added a new provision at TCMR 761.072(d)(4) pertaining to mining within 100 feet of the outside right-of-way line of a road and relocation or closure of a road; made substantive revisions to TCMR 761.072(e) concerning a written waiver for conducting mining within 300 feet of an occupied dwelling; and made substantive revisions to TCMR 761.072(f) concerning the Commission’s determination that a proposed surface coal mining operation will adversely

affect any publicly owned park or any place included in the National Register of Historic Places.

4. TCMR Part 762 Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations

Texas made nonsubstantive editorial and wording changes throughout this part and substantive revisions or additions to the following provisions.

a. *TCMR 762.074, Definitions.* Texas added a definition at TCMR 762.074(4) for "renewable resource lands" and made substantive revisions to its definition at TCMR 762.072(5) for "substantial legal and financial commitments in a surface coal mining operation."

b. *TCMR 762.076, Land Exempt From Designation as Unsuitable for Surface Coal Mining Operations.* Texas revised TCMR 762.076(a) by changing the date of exemption from August 3, 1977, to "the date of enactment of the Act."

5. TCMR Part 764 Process for Designating Areas Unsuitable for Surface Coal Mining Operations

Texas made nonsubstantive editorial and wording changes and clarifying language changes throughout this part. Texas made substantive revisions or additions to the following provisions.

a. *TCMR 764.079, Procedures: Petitions.* Texas added a new provision at TCMR 764.079(a) pertaining to an "injury in fact" test for persons petitioning the Commission to have an area designated as unsuitable for mining.

Texas made substantive revisions at TCMR 764.079(b) pertaining to the Commission's determination of the information that must be provided by the petitioner for designations of lands as unsuitable for surface coal mining operations and at TCMR 764.079(c) pertaining to the Commission's determination of the information that must be provided by petitioner to terminate designations of lands as unsuitable for mining.

b. *TCMR 764.080 Procedures: Initial Processing, Recordkeeping, and Notification Requirements.* Texas revised TCMR 764.080(a)(1) by changing the time for notifying the petitioner of whether the petition is complete from 90 days to 60 days. Texas also added a definition for "complete, for a designation or termination petition."

At TCMR 764.080(a)(4), Texas added "or that the petitioner does not meet the requirement of Section .079(a)" to its list of reasons for returning the petition to the petitioner. Texas also defined "frivolous petition."

Texas made a substantive revision to TCMR 764.080(a)(7) concerning the

Commission's determination not to process a petition pertaining to lands for which an administratively complete permit application had been filed and the first newspaper notice had been published.

Texas made a substantive revision to TCMR 764.080(b)(1) concerning notification of the general public of the receipt of a petition and to TCMR 764.080(b)(2) concerning provision for a hearing or a period of written comments on completeness of petitions.

At TCMR 764.080(d), Texas added a new provision that requires the Commission to maintain information at or near the area in which the petitioned land is located.

c. *TCMR 764.081 Procedures: Hearing Requirements.* At TCMR 764.081(a), Texas clarified an expanded it provisions concerning the procedures for a public hearing on petitions.

At TCMR 764.081(b)(1)(C), Texas proposes to also give notice of the date, time, and location of a hearing to "any person known by the Commission to have a property interest in the petitioned area" via regular mail. At TCMR 764.081(b)(2), Texas proposes to send notice to petitioners and intervenors by certified mail and to government agencies and property owners by regular mail.

d. *TCMR 764.082 Procedures: Decision.* At TCMR 764.082(b), Texas proposes to send the decision "by certified mail to the petitioner and intervenors and by regular mail to all other persons with an ownership interest of record and persons known to the Commission to have an interest in the property as evidenced by the hearing registration forms."

At TCMR 764.082(c), Texas clarifies that "all relevant portions of the data base, inventory system, and public comments received during the public comment period set by the Commission shall be considered and included in the record of the administrative proceeding."

e. *TCMR 764.084 Public Information.* At TCMR 764.084, Texas specifies that it will make information in the data base and inventory system available to the public "except that specific information relating to location of properties proposed to be nominated to, or listed in, the National Register of Historic Places need not be disclosed if the Commission determines that the disclosure of such information could create a risk of destruction or harm to such properties."

6. TCMR 785.201 Prime Farmland

Texas revised its prime farmland plan provisions at TCMR 785.201(b)(1) concerning the requirement for a soil

survey; TCMR 785.201(b)(2) concerning the requirement for a plan for soil reconstruction, replacement, and stabilization; TCMR 785.201(b)(3) concerning a requirement for scientific data; and TCMR 785.201(b)(4) concerning a requirement for the productivity data prior to mining. Texas also revised its provision for consultation with the Secretary of Agriculture at TCMR 785.201(c) and its provision for permit issuance at TCMR 785.201(d)(2).

7. TCMR Part 823 Special Permanent Program Performance Standards—Operations on Prime Farmland

Texas proposes to revise TCMR 823.620 pertaining to prime farmland applicability and special requirements by adding new paragraphs (a)(1) and (a)(2); redesignating the introductory paragraph as (b), paragraph (a) as (b)(1), and (b) as (b)(2); and removing old paragraph (c). New paragraphs (a)(1) and (a)(2) pertain to prime farmland areas that are not subject to the requirements of Part 823.

Texas proposes to amend TCMR 823.621 pertaining to prime farmland soil removal by revising paragraphs (a)(1), (a)(2), and (b) and removing paragraph (a)(3). The substantive revision to this section concerns the requirement that other suitable soil materials have a "greater", rather than "equal or greater," productive capacity than the topsoil which existed prior to mining.

Texas proposes to amend TCMR 823.622 pertaining to prime farmland soil stockpiling by reorganizing the existing requirements into paragraphs (a), (b), and (c).

Texas proposes to delete TCMR 823.623 pertaining to an alternative to separate soil horizon removal and stockpiling.

At TCMR 823.624 pertaining to prime farmland soil replacement, Texas proposes to add new paragraph (a) and to redesignate existing paragraphs (a) through (f) as (b) through (g). New paragraph (a) concerns soil reconstruction specification established by the U.S. Soil Conservation Service. Editorial and nonsubstantive language changes were made to the existing paragraphs.

At TCMR 823.625, Texas proposes to expand and clarify its requirements for prime farmland revegetation and restoration of soil productivity.

8. TCMR 843.681 Notices of Violation

At TCMR 843.681(c), Texas added an exception to the requirement that the total time for abatement of a notice of violation shall not exceed 90 days from the date of issuance. New paragraph (f)

provides the circumstances that would be considered for an extension to the abatement period. New paragraph (g) provides that interim abatement measures shall be imposed when an abatement time in excess of 90 days is allowed. New paragraph (h) provides procedures for the authorized representative's determination on a request for extension of the abatement period. New paragraph (i) provides that the determination under paragraph (h) shall be in writing and contain a right of review. New paragraph (j) specifies that an extension may not exceed 90 days and allows the permittee to request further extension.

C. *SMRD 2-87*. Texas proposes to include in its approved program the following regulations as added or reviewed in State rulemaking SMRD 2-87.

1. *TCMR 701.008 Definitions*. The definitions for "coal mine waste" at TCMR 701.008(18), "coal preparation" at TCMR 701.008(19), "experimental practice" at TCMR 701.008(34), "professional specialist" at TCMR 701.008(69), "registered professional engineer" at TCMR 701.008(76), "unwarranted failure to comply" at TCMR 701.008(102), and "willful violation" at TCMR 701.008(107) were added to the definition section.

2. *TCMR 779.127 Geology Description*. Texas revised TCMR 779.127(a) by expanding and clarifying the geology information that must be included in a permit application.

3. *TCMR 780.141 Operations Plan: Blasting*. Texas added two additional requirements for permit application blasting plans: a description of ground vibration and airblast limitations at TCMR 780.141(g) and a description of the methods to be used in controlling adverse effects of blasting at TCMR 780.141(h).

4. *TCMR 780.146 (Surface) and TCMR 784.188 (Underground) Reclamation Plan: Protection of Hydrologic Balance*. Texas revised TCMR 780.146(a) and 784.188(a) by expanding and clarifying the hydrologic information that must be included in permit applications; added TCMR 780.146(d) and 784.188(d) to require a probable hydrologic consequences determination be included in permit applications; and added TCMR 780.146(e) and 784.188(e) concerning the requirement for a cumulative hydrologic impact assessment.

5. *TCMR 788.232 Transfer, Assignment or Sale of Permit Rights: Obtaining Approval*. Texas revised TCMR 788.232(c)(2) by changing the term "person seeking approval" to "applicant."

6. *TCMR 806.311 Terms and Conditions for Liability Insurance*. Texas revised TCMR 806.311(d) by adding language concerning what is required for an applicant to meet self-insurance requirements.

7. *TCMR 807.312 Procedure for Seeking Release of Performance Bond*. Texas revised TCMR 807.312 (b) and (c) concerning the Commission's inspection and reevaluation of the reclamation on areas required to be released from bond.

8. *TCMR 816.357 and TCMR 817.526 Use of Explosives: General Requirements*. Texas revised TCMR 816.357(c) and 817.526(c) concerning responsibilities of the person responsible for blasting operations by adding two additional responsibilities at (c)(1) and (c)(2). Texas also added TCMR 816.357(d) and 817.526(d) concerning submittal of an anticipated blast design under specified circumstances.

9. *TCMR 816.358 and TCMR 817.527 Use of Explosives: Pre-Blasting Survey*. Texas revised TCMR 816.358(a) and 817.527(a) by adding the requirement that the operator notify residents or owners of dwellings or other structures of how to request a preblasting survey. Texas also added TCMR 816.358(d) and 817.527(d) to require that pre-blasting surveys requested before the tenth day of planned blasting be completed before the blasting.

10. *TCMR 817.500 Signs and Markers*. Texas revised TCMR 817.500(f) concerning warning signs of surface blasting incidental to underground mining activities.

11. *TCMR 817.528 Use of Explosives: Control of Adverse Effects*. Texas made substantive revisions to TCMR 817.528(a) concerning general requirements for controlling adverse effects of blasting; TCMR 817.528(b) concerning scheduled blasting; TCMR 817.528(e) concerning access control; TCMR 817.528(f) concerning airblast limits and monitoring; and TCMR 817.528(g) concerning flyrock limitations. Texas added provisions at TCMR 817.528(c) concerning unscheduled blasting; TCMR 817.528(d) concerning blasting signs, warnings, and access control; and TCMR 817.528(h) concerning ground vibration.

12. *TCMR 817.529 Use of Explosives; Seismographic Measurements*. Texas deleted this section in State rulemaking SMRD 2-87.

13. *TCMR 817.530 Use of Explosives: Records of Blasting Operations*. Texas revised and clarified the existing provisions concerning the requirement for operator's to retain a record of each blast.

14. *TCMR 843.682 Suspension or Revocation of Permits*. Texas deleted the

definitions for "willful violation" and "unwarranted failure to comply" from TCMR 843.682(a)(1) and added them to TCMR 701.008.

15. *TCMR 845.695 Procedures for Assessment of Civil Penalties*. Texas revised TCMR 845.695(b) by adding a provision at (b)(1) concerning service of proposed assessments. Tendering a proposed assessment at the address of the person to whom it was issued, even if the person refuses to accept delivery, meets the requirements of service.

D. *SMRD 2-88*. Texas proposes to include in its approved program the following regulations as added or revised in State rulemaking SMRD 2-88.

1. *TCMR 807.312 Procedure for Seeking Release of Performance Bond*. Texas included revisions to TCMR 807.312(a) concerning the filing of a request for release of performance bond or deposit.

2. *TCMR Part 846 Individual Civil Penalties*. Texas included new regulations at TCMR 846.001 concerning definitions for "knowingly", "violation, failure, or refusal", and "willfully"; TCMR 846.002 concerning when an individual civil penalty may be assessed; TCMR 846.003 concerning the criteria used in determining the amount of an individual civil penalty; TCMR 846.004 concerning procedures for service of a notice of proposed individual civil penalty assessment and the opportunity for review; and TCMR 846.005 concerning requirements for payment of a penalty.

E. Additional Proposed Changes

1. *TCMR 701.003(1)*. Texas proposes to change the definitions of "Act" to reflect recent recodification of the Texas Surface Coal Mining and Reclamation Act at Chapter 134 of the Texas Natural Resources Code.

2. *TCMR 701.003(3)*. Texas proposes to change the definition of "APTRA" to reflect recent recodification of its Administrative Procedure Act (APA) at Chapter 2001, Texas Government Code.

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 issue 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.

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 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 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 (54 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.

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: August 16, 1996.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 96-21861 Filed 8-27-96; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO35-1-6190, CO41-1-6826, CO40-1-6701, CO42-1-6836; FRL-5559-8]

Clean Air Act Approval and Promulgation of State Implementation Plans; Colorado; New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State implementation plan (SIP) revisions submitted by the Governor of Colorado on November 12, 1993, August 25, 1994, September 29, 1994, November 17, 1994, and January 29, 1996. These submittals revised Colorado Regulation No. 3 and the Common Provisions Regulation pertaining to the State's new source review (NSR) permitting requirements. The submittals included revisions to make the State's NSR rules more compatible with its title V operating permit program, the addition of nonattainment NSR provisions for new and modified major sources of PM-10 precursors locating in the Denver PM-10 nonattainment area, a change from the dual "source" definition to the plantwide definition of "source" in the State's nonattainment NSR permitting requirements, and correction of deficiencies in the State's

construction permitting rules. EPA is proposing to approve these regulatory revisions because they provide for consistency with the Clean Air Act (Act), as amended, and the corresponding Federal regulations and guidance.

DATES: Comments must be received in writing on or before October 28, 1996.

ADDRESSES: Written comments should be addressed to: Vicki Stamper, 8P2-A, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202-2466. Copies of the State's submittals and other information relevant to this proposed action are available for inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405; and the Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222-1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper at (303) 312-6445.

SUPPLEMENTARY INFORMATION: Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565-13566).

I. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. [See sections 110(a)(2) and 110(l) of the Act.] EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see section 110(k)(1) of the Act and 57 FR 13565]. The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V.

To entertain public comment, the Colorado Air Quality Control Commission (AQCC), after providing adequate notice, held public hearings on (1) August 20, 1992 regarding changes to the definition of "source" in the Common Provisions Regulation and Regulation No. 3; (2) July 15, 1993 regarding revisions to make the State's title V and NSR programs more compatible and on the complete restructuring of Regulation No. 3; (3) February 17, 1994 regarding PM-10 precursor NSR provisions for the Denver moderate PM-10 nonattainment area; (4) August 18, 1994 regarding revisions to Regulation No. 3 addressing title V/SIP deficiencies; and (5) March 16, 1995 regarding revisions to address other deficiencies in Regulation No. 3. Following the public hearings, the AQCC adopted the respective rule revisions. The Governor of Colorado