

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.

#### *Unfunded Mandates*

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, state, or tribal governments or private entities.

#### **List of Subjects in 30 CFR Part 901**

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 21, 1998.

#### **Brent Wahlquist,**

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

[FR Doc. 98-11342 Filed 4-28-98; 8:45 am]

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## **DEPARTMENT OF THE INTERIOR**

### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 935**

[OH-218-FOR; Amendment Number 61R]

#### **Ohio Regulatory Program**

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

**ACTION:** Proposed rule; reopening of public comment period.

**SUMMARY:** OSM is reopening the public comment period on a proposed amendment to the Ohio regulatory program (hereinafter referred to as the "Ohio program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This amendment provides that areas reclaimed following the removal of temporary structures that are part of the sediment control system, such as sedimentation ponds, roads, and small diversions, are not subject to a revegetation responsibility period and bond liability period separate from that of the permit area or increment thereof served by such facilities. The amendment also authorizes as a husbandry practice that not restart the revegetation responsibility period, the repair of damage to land and/or established permanent vegetation that has been unavoidably disturbed. The amendment is intended to improve operational efficiency of the Ohio program.

**DATES:** Written comments must be received on or before 4:00 p.m. on May 29, 1998. If requested, a public hearing on the proposed amendments will be held on May 26, 1998. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on May 14, 1998.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or delivered to George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, at the address listed below.

Copies of the Ohio 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 the OSM Field Branch, Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief,  
Appalachian Regional Coordinating  
Center, Office of Surface Mining  
Reclamation and Enforcement, 3  
Parkway Center, Pittsburgh, PA 15220  
Telephone: (412) 937-2153.

Ohio Division of Mines and  
Reclamation, 1855 Fountain Square  
Court, Columbus, Ohio 43224,  
Telephone: (614) 265-1076.

**FOR FURTHER INFORMATION CONTACT:**

George Rieger, Field Branch Chief,  
Appalachian Regional Coordinating  
Center, Telephone: (412) 937-2153.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background on the Ohio Program**

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 935.11, 935.15, and 935.16.

##### **II. Description of the Proposed Amendment**

By letter dated February 11, 1993 (Administrative Record No. OH-1831), Ohio submitted proposed Program Amendment Number 61 concerning augmentative practices. OSM announced receipt of this amendment in the April 1, 1993, **Federal Register** (58 FR 17173) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on May 3, 1993. Since no one requested an opportunity to provide testimony at a public hearing, the scheduled hearing was canceled.

By letter dated June 11, 1993 (administrative Record No. OH-1888), Ohio submitted additional revisions to this proposed amendment. OSM announced receipt of the revised amendment in the July 6, 1993, **Federal Register** (58 FR 36177), and, in the same notice, reopened the public comment period and again provided an opportunity for a public hearing. The public comment period closed on July 21, 1993. On August 16, 1993 (58 FR 43261), OSM approved most of the proposed amendment, but deferred decision on Ohio Administrative Code (OAC) 1501:13-9-15(F) (5), (6), and (7) concerning nonaugmentative practices.

OSM reopened a public comment period on September 15, 1993 (58 FR 48333) for the provisions OAC 1501:13-9-15(F) (6) and (7) as originally submitted on February 11, 1993, and revised on June 11, 1993, with regard to removal of sedimentation ponds and associated areas. The comment period closed on October 15, 1993. This notice also included similar proposed revisions to the Kentucky and Illinois regulations as well as a discussion of OSM's proposed policy concerning restart of the revegetation responsibility

period upon the removal of required sedimentary control structures.

By letter dated April 14, 1998 (Administrative Record Number OH-2175-00), Ohio submitted revised language of the Program Amendment # 61R. Subsection (f)(4) provides for practices that will not be considered augmentative when the practice and the rate of application is an accepted local practice for comparable unmined lands that can be expected to continue as a postmining practice. Subsection (F)(5) provides for the nonaugmentative repair of areas that held required sediment control structures. Subsection (F)(6) provides the minimum time that vegetation established or reestablished under subsections (F)(4)(c) and (F)(5) must have been seeded prior to a request for Phase III bond release. The proposed language is as follows.

*OAC 1501:13-9-15(F)(4)*

(c) Reseeding and adding soil amendments when necessary to repair damage to land and/or established permanent vegetation, that is unavoidably disturbed in order to meet the reclamation standards of this chapter, provided that:

(I) The damage is not caused by a lack of planning, design, or implementation of the mining and reclamation plan, inappropriate reclamation practices on the part of the permittee, or the lack of established permanent vegetation; and

(II) The total acreage of repaired areas under paragraphs (F)(4) (b) & (c) of this rule does not exceed ten percent of the total land affected, with no individual area exceeding three acres.

*OAC 1501:13-9-15(F)(5)*

Reseeding of areas that have been unavoidably disturbed in the course of gaining access for removal of structures that are part of the sediment control system or initial seeding of areas upon which the sediment control system was located and subsequently removed will not restart the period of extended responsibility for revegetation success.

*OAC 1501:13-9-15(F)(6)*

For the purposes of paragraphs (F)(4)(c) and (F)(5) of this rule, permanent vegetation that is established or reestablished on these areas must have been seeded a minimum of twelve months prior to the request for Phase III bond release.

### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on the proposed amendments. Comments should address whether the amendments satisfy the

applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

#### Written Comments

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

#### Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business on May 14, 1998. If no one requests an opportunity to testify at the public hearing by that date, 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 remarks and appropriate questions.

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

#### Public Meeting

If only one person or group requests to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the amendments 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 in advance at the locations listed under **ADDRESSES**. A written summary of each public 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 12988

The Department of the Interior has conducted the reviews required by section 3 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 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 935**

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 21, 1998.

**Michael K. Robinson,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

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**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 943**

[SPATS No. TX-035-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 referred to as the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for Texas' proposed regulations pertain to terms and conditions of the bond, release of performance bond, backfilling and grading, and prime farmland.

The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations.

**DATES:** Written comments must be received by 4:00 p.m., c.d.t., May 14, 1998.

**ADDRESSES:** Written comments should be mailed or hand delivered to Michael C. Wolfrom, 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 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.

Michael C. Wolfrom, 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.

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

**FOR FURTHER INFORMATION CONTACT:** Michael C. Wolfrom, Director, Tulsa Field Office, Telephone: (918) 581-6430.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Texas Program
- II. Discussion of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

**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. Discussion of the Proposed Amendment**

By letter dated December 1, 1997 (Administrative Record No. TX-644), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to a June 17, 1997, letter (Administrative Record No. 640) that OSM sent to Texas in accordance with 30 CFR 732.17(c). Texas proposed to amend Chapter 12 of the Texas Administrative Code (TAC).

OSM announced receipt of the proposed amendment in the December 29, 1997, **Federal Register** (62 FR 67598) and invited public comment on its adequacy. The public comment period ended January 28, 1998.

During its review of the amendment, OSM identified concerns relating to release of performance bond and backfilling and grading. OSM notified Texas of the concerns by letter dated February 12, 1998 (Administrative Record No. TX-644.06). Texas responded in a letter dated March 6, 1998 (Administrative Record No. TX-644.07), by submitting the following revisions to its proposed amendment:

1. *§ 12.309, Terms and Conditions of the Bond.* Texas proposed the following new provision at §12.309(1):

Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request

the notification in writing to the Commission at the time collateral is offered.

2. *§ 12.312, Procedure for Seeking Release of Performance Bond.* at § 12.312(b)(2), Texas proposed to replace citation references to "§ 12.313(c)" with citation references to "§ 12.313(d)."

3. *§ 12.387, Backfilling and Grading—This Overburden.* Texas revised its proposal at § 12.387(2) to require the permittee to meet the requirements of §§ 12.385 and 12.386 (relating to Backfilling and Grading: General Requirements, and to Backfilling and Grading: Covering Coal and Acid- and Toxic-Forming Materials). Texas previously proposed only to require the permittee to meet the requirements of § 12.385.

4. *§ 12.388, Backfilling and Grading—Thick Overburden.* Texas revised its proposal at § 12.388(2) to require the permittee to meet the requirements of §§ 12.385 and 12.386 (relating to Backfilling and Grading: General Requirements, and to Backfilling and Grading: Covering Coal and Acid- and Toxic-Forming Materials). Texas previously proposed only to require the permittee to meet the requirements of § 12.385.

5. *12.620, Prime Farmland—Applicability and Special Requirements.* Texas withdrew the previously proposed revisions to this section of its regulations.

**III. Public Comment Procedures**

OSM is reopening the comment period on the proposed Texas program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. 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.